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Environment Protection and Biodiversity Conservation Bill 1999

No. , 1999

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

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1 THIS bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*

7 The Senate
8 23 June 1999

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

12 The Parliament of Australia enacts:

13 **Chapter 1—Preliminary**

14 **Part 1—Preliminary**
15

Section 1

1 **1 Short title**

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

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 12 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, land-holders and indigenous peoples; and
 - 23 (e) to assist in the co-operative implementation of Australia's
24 international environmental responsibilities; and
 - 25 (f) to recognise the role of indigenous people in the conservation
26 and ecologically sustainable use of Australia's biodiversity;
27 and
 - 28 (g) to promote the use of indigenous peoples' knowledge of
29 biodiversity with the involvement of, and in co-operation
30 with, the owners of the knowledge.

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

Section 3A

- 1 (i) bilateral agreements with States and Territories; and
2 (ii) conservation agreements with land-holders; and
3 (iii) recognising and promoting indigenous peoples' role in,
4 and knowledge of, the conservation and ecologically
5 sustainable use of biodiversity; and
6 (iv) the involvement of the community in management
7 planning.

8 **3A Principles of ecologically sustainable development**

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

- 11 (a) decision-making processes should effectively integrate both
12 long-term and short-term economic, environmental, social
13 and equitable considerations;
14 (b) if there are threats of serious or irreversible environmental
15 damage, lack of full scientific certainty should not be used as
16 a reason for postponing measures to prevent environmental
17 degradation;
18 (c) the principle of inter-generational equity—that the present
19 generation should ensure that the health, diversity and
20 productivity of the environment is maintained or enhanced
21 for the benefit of future generations;
22 (d) the conservation of biological diversity and ecological
23 integrity should be a fundamental consideration in
24 decision-making;
25 (e) improved valuation, pricing and incentive mechanisms
26 should be promoted.

27 **4 Act to bind Crown**

28 This Act binds the Crown in each of its capacities.

1 **5 Application of Act**

2 *Extension to external Territories*

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

4 *Limited extraterritorial application*

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

9 *Application limited to Australians outside exclusive economic zone*

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

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

- 27 (4) A provision of this Act that has effect in relation to a place that is
28 within the outer limits of the exclusive economic zone (whether the

Section 5

- 1 place is in the zone or in Australia or an external Territory) or that
2 is on or in the continental shelf applies in relation to:
- 3 (a) all persons (including persons who are not Australian
4 citizens); and
 - 5 (b) all aircraft (including aircraft that are not Australian aircraft);
6 and
 - 7 (c) all vessels (including vessels that are not Australian vessels).

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

11 *Definitions*

12 (5) In this Act:

13 ***Australian aircraft*** means:

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

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

- 21 (a) Australia; or
- 22 (b) an external Territory; or
- 23 (c) the exclusive economic zone; or
- 24 (d) the continental shelf.

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

28 ***Australian vessel*** means:

- 29 (a) a vessel that is owned, possessed or controlled by:
 - 30 (i) the Commonwealth or a Commonwealth agency; or
 - 31 (ii) a State, a self-governing Territory or an agency of a
32 State or self-governing Territory; or
-

- 1 (b) a vessel that is registered in Australia; or
2 (c) a vessel that is flying the Australian flag.

3 **7 Application of the *Criminal Code***

4 Chapter 2 of the *Criminal Code* applies to all offences against this
5 Act.

6 **8 Native title rights not affected**

- 7 (1) To avoid doubt, nothing in this Act affects the operation of section
8 211 of the *Native Title Act 1993* in relation to a provision of this
9 Act.

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

- 13 (2) This Act does not affect the operation of:
14 (a) the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
15 (b) the *Native Title Act 1993*.

16 **9 Relationship with other Acts**

17 *Aboriginal Land Rights (Northern Territory) Act 1976*

- 18 (1A) Subsection 70(1) of the *Aboriginal Land Rights (Northern*
19 *Territory) Act 1976* does not prevent a person exercising powers or
20 performing functions or duties under Division 4 or 5 of Part 15, or
21 Division 5 of Part 19, of this Act from entering or remaining on
22 land:

- 23 (a) in the Kakadu region or Uluru region; and
24 (b) in which an Aboriginal Land Trust established under that Act
25 holds an estate in fee simple.

26 *Airports Act 1996 not affected*

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

Section 10

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

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

5 *Australian Heritage Commission Act 1975 does not apply*

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

9 **10 Relationship with State law**

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

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Chapter 2—Protecting the environment

Part 2—Simplified outline of this Chapter

11 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

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

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

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

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

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

Section 12

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 this section is not a controlling provision for the
- 23 action and, if the decision was made because the Minister
- 24 believed the action would be taken in a manner specified in
- 25 the notice of the decision under section 77, the action is taken
- 26 in that manner; or
- 27 (d) the action is an action described in subsection 160(2) (which
- 28 describes actions whose authorisation is subject to a special
- 29 environmental assessment process).

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:

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 14

- 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:

- 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 *Declarations because of threat in force for a year or less*

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

Section 15

1 **15 Amending or revoking a declaration of a declared World**
2 **Heritage property**

3 *Revoking declarations specifying nominated property*

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

9 *Amending declarations specifying nominated property*

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

16 *Revoking declarations specifying property not yet nominated*

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

27 **15A Offences relating to declared World Heritage properties**

- 28 (1) A person is guilty of an offence if:
29 (a) the person takes an action; and

1 (b) the action results or will result in a significant impact on the
2 world heritage values of a declared World Heritage property.

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

5 (2) A person is guilty of an offence if:

6 (a) the person takes an action; and

7 (b) the action is likely to have a significant impact on the world
8 heritage values of a declared World Heritage property and
9 the person is reckless as to that fact.

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

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

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

18 Note 2: An executive officer of a body corporate convicted of an offence
19 against this section may also be guilty of an offence against section
20 495.

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

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

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

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

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

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Section 16

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

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

4 **16 Requirement for approval of activities with a significant impact**
5 **on a declared Ramsar wetland**

- 6 (1) A person must not take an action that:
7 (a) has or will have a significant impact on the ecological
8 character of a declared Ramsar wetland; or
9 (b) is likely to have a significant impact on the ecological
10 character of a declared Ramsar wetland.

11 Civil penalty:

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

- 14 (2) Subsection (1) does not apply to an action if:
15 (a) an approval of the taking of the action by the person is in
16 operation under Part 9 for the purposes of this section; or
17 (b) Part 4 lets the person take the action without an approval
18 under Part 9 for the purposes of this section; or
19 (c) there is in force a decision of the Minister under Division 2
20 of Part 7 that this section is not a controlling provision for the
21 action and, if the decision was made because the Minister
22 believed the action would be taken in a manner specified in
23 the notice of the decision under section 77, the action is taken
24 in that manner; or
25 (d) the action is an action described in subsection 160(2) (which
26 describes actions whose authorisation is subject to a special
27 environmental assessment process).

28 (3) In this Act:

29 *ecological character* has the same meaning as in the Ramsar
30 Convention.

1 **17 What is a *declared Ramsar wetland*?**

2 *Areas designated for listing*

- 3 (1) A wetland, or part of a wetland, designated by the Commonwealth
4 under Article 2 of the Ramsar Convention for inclusion in the List
5 of Wetlands of International Importance kept under that Article is a
6 ***declared Ramsar wetland*** as long as the wetland or part is not:
7 (a) excluded by the Commonwealth from the boundaries of a
8 wetland in the List under that Article; or
9 (b) deleted by the Commonwealth from the List under that
10 Article.

11 *Areas declared by the Minister*

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

15 **17A Making and revoking declarations of wetlands**

16 *Declaring threatened wetlands of international importance*

- 17 (1) The Minister may declare a specified wetland to be a declared
18 Ramsar wetland by notice in the *Gazette* if the Minister is satisfied
19 that:
20 (a) the wetland is of international significance or is likely to be
21 of international significance because of its ecology, botany,
22 zoology, limnology or hydrology; and
23 (b) the ecological character of some or all of the wetland is under
24 threat.

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

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Section 17A

1 *Consulting State or Territory before making declaration*

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

7 *Consultation not required if threat is imminent*

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

11 *Failure to comply with subsection (2)*

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

14 *When a declaration is in force*

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

18 *Specifying period for which declaration is in force*

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

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

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

26 (ii) designate the wetland for inclusion in the List of
27 Wetlands of International Importance kept under Article
28 2 of the Ramsar Convention;

29 (b) 12 months.

1 *Revocation of declaration of threatened wetland*

- 2 (7) The Minister must, by notice in the *Gazette*, revoke a declaration
3 of a wetland if:
4 (a) the Minister is satisfied that the wetland is not of
5 international significance because of its ecology, botany,
6 zoology, limnology or hydrology; or
7 (b) the Minister is satisfied that there is no longer a threat to any
8 part of the wetland.

9 **17B Offences relating to declared Ramsar wetlands**

- 10 (1) A person is guilty of an offence if:
11 (a) the person takes an action; and
12 (b) the action results or will result in a significant impact on the
13 ecological character of a declared Ramsar wetland.

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

- 16 (2) A person is guilty of an offence if:
17 (a) the person takes an action; and
18 (b) the action is likely to have a significant impact on the
19 ecological character of a declared Ramsar wetland and the
20 person is reckless as to that fact.

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

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

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

29 Note 2: An executive officer of a body corporate convicted of an offence
30 against this section may also be guilty of an offence against section
31 495.

- 32 (4) Subsections (1) and (2) do not apply to an action if:
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Section 18

- 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 this section is not a controlling provision for the
7 action and, if the decision was made because the Minister
8 believed the action would be taken in a manner specified in
9 the notice of the decision under section 77, the action is taken
10 in that manner; 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).

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

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

17 **18 Actions with significant impact on listed threatened species or**
18 **endangered community prohibited without approval**

19 *Species that are extinct in the wild*

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

25 Civil penalty:

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

28 *Critically endangered species*

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

- 1 (a) has or will have a significant impact on a listed threatened
2 species included in the critically endangered category; or
3 (b) is likely to have a significant impact on a listed threatened
4 species included in the critically endangered category.

5 Civil penalty:

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

8 *Endangered species*

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

- 10 (a) has or will have a significant impact on a listed threatened
11 species included in the endangered category; or
12 (b) is likely to have a significant impact on a listed threatened
13 species included in the endangered category.

14 Civil penalty:

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

17 *Vulnerable species*

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

- 19 (a) has or will have a significant impact on a listed threatened
20 species included in the vulnerable category; or
21 (b) is likely to have a significant impact on a listed threatened
22 species included in the vulnerable category.

23 Civil penalty:

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

26 *Critically endangered communities*

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

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Section 18A

- 1 (a) has or will have a significant impact on a listed threatened
2 ecological community included in the critically endangered
3 category; or
4 (b) is likely to have a significant impact on a listed threatened
5 ecological community included in the critically endangered
6 category.

7 Civil penalty:

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

10 *Endangered communities*

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

17 Civil penalty:

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

20 **18A Offences relating to threatened species etc.**

- 21 (1) A person is guilty of an offence if:
22 (a) the person takes an action; and
23 (b) the action results or will result in a significant impact on:
24 (i) a listed threatened species; or
25 (ii) a listed threatened ecological community.

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

- 28 (2) A person is guilty of an offence if:
29 (a) the person takes an action; and
30 (b) the action is likely to have a significant impact on:
-

- 1 (i) a listed threatened species; or
2 (ii) a listed threatened ecological community;
3 and the person is reckless as to that fact.

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

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

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

12 Note 2: An executive officer of a body corporate convicted of an offence
13 against this section may also be guilty of an offence against section
14 495.

- 15 (4) Subsections (1) and (2) do not apply to an action if:
16 (a) the listed threatened species subject to the significant impact
17 (or likely to be subject to the significant impact) is:
18 (i) a species included in the extinct category of the list
19 under section 178; or
20 (ii) a conservation dependent species; or
21 (b) the listed threatened ecological community subject to the
22 significant impact (or likely to be subject to the significant
23 impact) is an ecological community included in the
24 vulnerable category of the list under section 181.

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

27 Note 2: Section 19 sets out other defences. The defendant bears an evidential
28 burden in relation to the matters in that section too. See subsection
29 13.3(3) of the *Criminal Code*.

30 **19 Certain actions relating to listed threatened species and listed**
31 **threatened ecological communities not prohibited**

- 32 (1) A subsection of section 18 or 18A relating to a listed threatened
33 species does not apply to an action if an approval of the taking of
34 the action by the person is in operation under Part 9 for the
-

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Section 20

- 1 purposes of any subsection of that section that relates to a listed
2 threatened species.
- 3 (2) A subsection of section 18 or 18A relating to a listed threatened
4 ecological community does not apply to an action if an approval of
5 the taking of the action by the person is in operation under Part 9
6 for the purposes of either subsection of that section that relates to a
7 listed threatened ecological community.
- 8 (3) A subsection of section 18 or 18A does not apply to an action if:
9 (a) Part 4 lets the person take the action without an approval
10 under Part 9 for the purposes of the subsection; or
11 (b) there is in force a decision of the Minister under Division 2
12 of Part 7 that the subsection is not a controlling provision for
13 the action and, if the decision was made because the Minister
14 believed the action would be taken in a manner specified in
15 the notice of the decision under section 77, the action is taken
16 in that manner; or
17 (c) the action is an action described in subsection 160(2) (which
18 describes actions whose authorisation is subject to a special
19 environmental assessment process).

20 **Subdivision D—Listed migratory species**

21 **20 Requirement for approval of activities with a significant impact**
22 **on a listed migratory species**

- 23 (1) A person must not take an action that:
24 (a) has or will have a significant impact on a listed migratory
25 species; or
26 (b) is likely to have a significant impact on a listed migratory
27 species.
- 28 Civil penalty:
29 (a) for an individual—5,000 penalty units;
30 (b) for a body corporate—50,000 penalty units.

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

15 **20A Offences relating to listed migratory species**

- 16 (1) A person is guilty of an offence if:
- 17 (a) the person takes an action; and
- 18 (b) the action results or will result in a significant impact on a
- 19 listed migratory species.

20 Note: Chapter 2 of the *Criminal Code* sets out the general principles of

21 criminal responsibility.

- 22 (2) A person is guilty of an offence if:
- 23 (a) the person takes an action; and
- 24 (b) the action is likely to have a significant impact on a listed
- 25 migratory species and the person is reckless as to that fact.

26 Note: Chapter 2 of the *Criminal Code* sets out the general principles of

27 criminal responsibility.

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

31 Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body

32 corporate up to 5 times the maximum amount the court could fine a

33 person under this subsection.

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1 Note 2: An executive officer of a body corporate convicted of an offence
2 against this section may also be guilty of an offence against section
3 495.

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

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

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

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

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

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

20 **Subdivision E—Protection of the environment from nuclear**
21 **actions**

22 **21 Requirement for approval of nuclear actions**

23 (1) A constitutional corporation, the Commonwealth or
24 Commonwealth agency must not take a nuclear action that has,
25 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;

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

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

31 (a) between Australia and another country; or

32 (b) between 2 States; or

- 1 (c) between a State and a Territory; or
2 (d) between 2 Territories;
3 take a nuclear action that has, will have or is likely to have a
4 significant impact on the environment.
- 5 Civil penalty:
6 (a) for an individual—5,000 penalty units;
7 (b) for a body corporate—50,000 penalty units.
- 8 (3) A person must not take in a Territory a nuclear action that has, will
9 have or is likely to have a significant impact on the environment.
- 10 Civil penalty:
11 (a) for an individual—5,000 penalty units;
12 (b) for a body corporate—50,000 penalty units.
- 13 (4) Subsections (1), (2) and (3) do not apply to an action if:
14 (a) an approval of the taking of the action by the constitutional
15 corporation, Commonwealth agency, Commonwealth or
16 person is in operation under Part 9 for the purposes of this
17 section; or
18 (b) Part 4 lets the constitutional corporation, Commonwealth
19 agency, Commonwealth or person take the action without an
20 approval 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 this section is not a controlling provision for the
23 action and, if the decision was made because the Minister
24 believed the action would be taken in a manner specified in
25 the notice of the decision under section 77, the action is taken
26 in that manner; or
27 (d) the action is an action described in subsection 160(2) (which
28 describes actions whose authorisation is subject to a special
29 environmental assessment process).

30 **22 What is a *nuclear action*?**

- 31 (1) In this Act:
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Section 22

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nuclear action means any of the following:

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

nuclear installation means any of the following:

- (a) a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and sub-critical assemblies);
- (b) a plant for preparing or storing fuel for use in a nuclear reactor as described in paragraph (a);
- (c) a nuclear waste storage or disposal facility with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section;
- (d) a facility for production of radioisotopes with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section.

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

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

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

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

1 (2) In this Act:

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

5 **22A Offences relating to nuclear actions**

6 (1) A constitutional corporation, or a Commonwealth agency that does
7 not enjoy the immunities of the Commonwealth, is guilty of an
8 offence if:

- 9 (a) the corporation or agency takes a nuclear action; and
10 (b) the nuclear action results or will result in a significant impact
11 on the environment.

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

14 (2) A constitutional corporation, or a Commonwealth agency that does
15 not enjoy the immunities of the Commonwealth, is guilty of an
16 offence if:

- 17 (a) the corporation or agency takes a nuclear action; and
18 (b) the nuclear action is likely to have a significant impact on the
19 environment and the corporation or agency is reckless as to
20 that fact.

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

23 (3) A person is guilty of an offence if:

- 24 (a) the person takes a nuclear action; and
25 (b) the nuclear action is taken for the purposes of trade or
26 commerce:
27 (i) between Australia and another country; or
28 (ii) between 2 States; or
29 (iii) between a State and a Territory; or
30 (iv) between 2 Territories; and
31 (c) the nuclear action results or will result in a significant impact
32 on the environment.
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1 Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body
2 corporate up to 5 times the maximum amount the court could fine a
3 person under this subsection.

4 Note 2: An executive officer of a body corporate convicted of an offence
5 against this section may also be guilty of an offence against section
6 495.

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

- 9 (a) an approval of the taking of the action by the person is in
10 operation under Part 9 for the purposes of this section; or
11 (b) Part 4 lets the person take the action without an approval
12 under Part 9 for the purposes of this section; or
13 (c) there is in force a decision of the Minister under Division 2
14 of Part 7 that this section is not a controlling provision for the
15 action and, if the decision was made because the Minister
16 believed the action would be taken in a manner specified in
17 the notice of the decision under section 77, the action is taken
18 in that manner; or
19 (d) the action is an action described in subsection 160(2) (which
20 describes actions whose authorisation is subject to a special
21 environmental assessment process).

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

24 **Subdivision F—Marine environment**

25 **23 Requirement for approval of activities involving the marine** 26 **environment**

27 *Actions in Commonwealth marine areas affecting the environment*

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

31 Civil penalty:

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

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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.

1 *Exceptions to prohibitions*

- 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 the subsection is not a controlling provision for
9 the action and, if the decision was made because the Minister
10 believed the action would be taken in a manner specified in
11 the notice of the decision under section 77, the action is taken
12 in that manner; or
- 13 (d) the person taking the action is the Commonwealth or a
14 Commonwealth agency; or
- 15 (e) the action is an action described in subsection 160(2) (which
16 describes actions whose authorisation is subject to a special
17 environmental assessment process).

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*
23 *1991*); 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 *Exception—fishing outside Commonwealth marine areas*

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

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- 1 (a) is fishing (as defined in the *Fisheries Management Act*
2 *1991*); and
3 (b) is permitted under a law of a State or self-governing
4 Territory.

5 **24 What is a *Commonwealth marine area*?**

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

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

27 **24A Offences relating to marine areas**

28 *Actions in Commonwealth marine areas affecting the environment*

- 29 (1) A person is guilty of an offence if:
30 (a) the person takes an action; and

- 1 (b) the action is taken in a Commonwealth marine area; and
2 (c) the action results or will result in a significant impact on the
3 environment.

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

6 *Actions in Commonwealth marine areas likely to affect the*
7 *environment*

- 8 (2) A person is guilty of an offence if:
9 (a) the person takes an action; and
10 (b) the action is taken in a Commonwealth marine area; and
11 (c) the action is likely to have a significant impact on the
12 environment and the person is reckless as to that fact.

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

15 *Actions outside Commonwealth marine areas affecting those areas*

- 16 (3) A person is guilty of an offence if:
17 (a) the person takes an action; and
18 (b) the action is taken outside a Commonwealth marine area but
19 in the Australian jurisdiction; and
20 (c) the action results or will result in a significant impact on the
21 environment in a Commonwealth marine area.

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

24 *Actions likely to affect environment in Commonwealth marine*
25 *areas*

- 26 (4) A person is guilty of an offence if:
27 (a) the person takes an action; and
28 (b) the action is taken outside a Commonwealth marine area but
29 in the Australian jurisdiction; and

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- 1 (c) the action is likely to have a significant impact on the
2 environment in a Commonwealth marine area and the person
3 is reckless as to that fact.

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

6 *Fishing with impact in State or Territory waters managed by*
7 *Commonwealth*

8 (5) A person is guilty of an offence if:

9 (a) the person takes an action that:

10 (i) is fishing (as defined in the *Fisheries Management Act*
11 *1991*); and

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

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

20 (c) the action results or will result in a significant impact on the
21 environment in those coastal waters.

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

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

26 (6) A person is guilty of an offence if:

27 (a) the person takes an action that:

28 (i) is fishing (as defined in the *Fisheries Management Act*
29 *1991*); and

30 (ii) is included in the class of activities forming a fishery (as
31 defined in that Act) that is managed under the law of the
32 Commonwealth as a result of an agreement made under

1 section 71 or 72 of that Act before the commencement
2 of this section; and

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

6 (c) the action is likely to have a significant impact on the
7 environment in those coastal waters and the person is
8 reckless as to that fact.

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

11 *Penalties*

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

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

18 Note 2: An executive officer of a body corporate convicted of an offence
19 against this section may also be guilty of an offence against section
20 495.

21 *Defences—general*

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

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

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

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

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- 1 (d) 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).

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

6 *Defence—fishing in Commonwealth waters managed by State*

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

8 (a) is fishing (as defined in the *Fisheries Management Act*
9 *1991*); and

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

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

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

18 *Defence—fishing outside Commonwealth marine areas*

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

20 (a) is fishing (as defined in the *Fisheries Management Act*
21 *1991*); and

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

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

26 **Subdivision G—Additional matters of national environmental**
27 **significance**

28 **25 Requirement for approval of prescribed actions**

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

- 1 Civil penalty:
- 2 (a) for an individual—5,000 penalty units;
- 3 (b) for a body corporate—50,000 penalty units.
- 4 (2) Subsection (1) does not apply to an action if:
- 5 (a) an approval of the taking of the action by the person is in
- 6 operation under Part 9 for the purposes of this section; or
- 7 (b) Part 4 lets the person take the action without an approval
- 8 under Part 9 for the purposes of this section; or
- 9 (c) there is in force a decision of the Minister under Division 2
- 10 of Part 7 that this section is not a controlling provision for the
- 11 action and, if the decision was made because the Minister
- 12 believed the action would be taken in a manner specified in
- 13 the notice of the decision under section 77, the action is taken
- 14 in that manner; or
- 15 (d) the action is an action described in subsection 160(2) (which
- 16 describes actions whose authorisation is subject to a special
- 17 environmental assessment process).
- 18 (3) Before the Governor-General makes regulations prescribing an
- 19 action for the purposes of subsection (1), the Minister (the
- 20 ***Environment Minister***) must:
- 21 (a) inform the appropriate Minister of each State and
- 22 self-governing Territory of the proposal to prescribe:
- 23 (i) the action; and
- 24 (ii) a thing as matter protected by this section in relation to
- 25 the action; and
- 26 (b) invite the appropriate Minister of each State and
- 27 self-governing Territory to give the Environment Minister
- 28 comments on the proposal within a specified period of at
- 29 least 28 days; and
- 30 (c) consider the comments (if any); and
- 31 (d) if comments have been given as described in paragraph (b)—
- 32 take all reasonable steps to consult the appropriate Minister
- 33 of each State and self-governing Territory with a view to
- 34 agreeing on:
-

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- 1 (i) the action to be prescribed; and
2 (ii) the thing to be prescribed as matter protected by this
3 section in relation to the action.
- 4 Note: Section 34 provides that the matter protected by this section is a thing
5 prescribed by the regulations in relation to the action.
- 6 (3A) To avoid doubt, regulations may be made for the purposes of this
7 section even if no agreement is reached on the matters described in
8 paragraph (3)(d).
- 9 (4) The regulations may prescribe different things as matter protected
10 by this section in relation to different actions prescribed for the
11 purposes of subsection (1).
- 12 (5) This section applies only to actions:
13 (a) taken in a Territory or a place acquired by the
14 Commonwealth for public purposes (within the meaning of
15 section 52 of the Constitution); or
16 (b) taken in a Commonwealth marine area; or
17 (c) taken for the purpose of trade or commerce:
18 (i) between Australia and another country; or
19 (ii) between 2 States; or
20 (iii) between a State and a Territory; or
21 (iv) between 2 Territories; or
22 (d) taken by a constitutional corporation; or
23 (e) whose regulation is appropriate and adapted to give effect to
24 Australia's obligations under an agreement with one or more
25 other countries.
- 26 (6) Regulations prescribing an action whose regulation is appropriate
27 and adapted to give effect to Australia's obligations under an
28 agreement with one or more countries must specify the agreement.

1

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

3

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

4

5

6 **26 Requirement for approval of activities involving Commonwealth**
7 **land**

6

7

8 *Actions on Commonwealth land*

8

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

9

10

11

12 Civil penalty:

12

13

14

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

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

15

15 *Actions outside Commonwealth land affecting that land*

16

- 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
18 Commonwealth land; or
19 (b) is likely to have a significant impact on the environment on
20 Commonwealth land.

17

18

19

20

21 Civil penalty:

21

22

23

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

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

24

24 *Exceptions to prohibitions*

25

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

26

27

(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

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Section 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 (d) there is in force a decision of the Minister under Division 2
4 of Part 7 that the subsection is not a controlling provision for
5 the action and, if the decision was made because the Minister
6 believed the action would be taken in a manner specified in
7 the notice of the decision under section 77, the action is taken
8 in that manner; or
9 (e) the action is an action described in subsection 160(2) (which
10 describes actions whose authorisation is subject to a special
11 environmental assessment process); or
12 (f) the person taking the action is the Commonwealth or a
13 Commonwealth agency.

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

16 **27 What is *Commonwealth land*?**

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

19 **27A Offences relating to Commonwealth land**

- 20 (1) A person is guilty of an offence if:
21 (a) the person takes an action; and
22 (b) the action is taken on Commonwealth land; and
23 (c) the action results or will result in a significant impact on the
24 environment.

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

- 27 (2) A person is guilty of an offence if:
28 (a) the person takes an action; and
29 (b) the action is taken on Commonwealth land; and
30 (c) the action is likely to have a significant impact on the
31 environment and the person is reckless as to that fact.

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Section 28

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

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

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

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

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

15 **Subdivision B—Protection of the environment from**
16 **Commonwealth actions**

17 **28 Requirement for approval of activities of Commonwealth**
18 **agencies significantly affecting the environment**

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

23 Civil penalty:

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

26 (b) for a Commonwealth agency that is a body corporate—
27 10,000 penalty units.

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

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

- 1 (a) an approval of the taking of the action by the Commonwealth
2 or Commonwealth agency is in operation under Part 9 for the
3 purposes of this section; or
4 (b) Part 4 lets the Commonwealth or Commonwealth agency
5 take the action without an approval under Part 9 for the
6 purposes of this section; or
7 (c) the action is one declared by the Minister in writing to be an
8 action to which this section does not apply; or
9 (d) there is in force a decision of the Minister under Division 2
10 of Part 7 that this section is not a controlling provision for the
11 action and, if the decision was made because the Minister
12 believed the action would be taken in a manner specified in
13 the notice of the decision under section 77, the action is taken
14 in that manner; or
15 (e) the action is an action described in subsection 160(2) (which
16 describes actions whose authorisation is subject to a special
17 environmental assessment process).
- 18 (3) The Minister may make a written declaration that actions are
19 actions to which this section does not apply, but only if he or she is
20 satisfied that it is necessary in the interests of:
21 (a) Australia's defence or security; or
22 (b) preventing, mitigating or dealing with a national emergency.
- 23 (4) The Minister may make a written declaration that all actions, or a
24 specified class of actions, taken by a specified Commonwealth
25 agency are actions to which this section does not apply.
- 26 (5) The Minister may make a declaration under subsection (4) relating
27 to a Commonwealth agency's actions only if he or she is satisfied
28 that, in taking the actions to which the declaration relates, the
29 agency must comply with the law of a State or Territory dealing
30 with environmental protection.

Section 28A

1 **Division 3—Review of extension of operation of this Part**

2 **28A Identifying extra matters to be protected by this Part**

- 3 (1) Every 5 years after the commencement of this Act, the Minister
4 must cause a report to be prepared on whether this Part should be
5 amended (or regulations made for the purposes of section 25) to
6 prohibit or regulate additional actions that have, will have or are
7 likely to have a significant impact on environmental matters that
8 may properly be regarded as being of national or international
9 significance.
- 10 (2) The following must be taken into account in preparing the report:
- 11 (a) environmental matters that are properly regarded as being of
12 national or international significance;
- 13 (b) the adequacy of existing legislation and administrative
14 measures of the Commonwealth, the States and the
15 Territories to prevent significant impacts on those matters;
- 16 (c) the principles of ecologically sustainable development;
- 17 (d) Australia's international obligations;
- 18 (e) the objects of this Act;
- 19 (f) the matters (if any) prescribed by the regulations for the
20 purposes of this paragraph.
- 21 (3) Before preparation of the report begins, the Minister must publish
22 in accordance with the regulations (if any) an invitation for persons
23 to comment, within a specified period, on the matters to be covered
24 by the report.
- 25 (4) Before preparation of the report is completed, the Minister must
26 cause to be published in accordance with the regulations (if any):
- 27 (a) a draft of the report; and
- 28 (b) an invitation to comment on the draft within the period
29 specified by the Minister.
- 30 (5) The Minister must publish the report.

- 1 (6) To avoid doubt, this section does not affect the operation of section
2 25.

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 (because the action is approved in
14 accordance with a management plan that is a bilaterally
15 accredited management plan for the purposes of the bilateral
16 agreement); and
17 (c) the provision of the bilateral agreement making the
18 declaration is in operation in relation to the action; and
19 (d) the bilaterally accredited management plan is in force under a
20 law of the State or Territory identified in or under the
21 bilateral agreement; and
22 (e) the action is taken in accordance with the bilaterally
23 accredited management plan.

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

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

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

4 **30 Extended operation in State and Northern Territory waters**

- 5 (1) Section 29 applies to an action taken on, over or under the seabed
6 vested in a State by section 4 of the *Coastal Waters (State Title)*
7 *Act 1980* in the same way that it applies to an action taken in the
8 State.
- 9 (2) Section 29 applies to an action taken on, over or under the seabed
10 vested in the Northern Territory by section 4 of the *Coastal Waters*
11 *(Northern Territory Title) Act 1980* in the same way that it applies
12 to an action taken in the Territory.
- 13 (3) Section 29 applies to an action taken in a Commonwealth marine
14 area to which a law of a State or self-governing Territory is applied
15 by a Commonwealth law or by an agreement or arrangement under
16 a Commonwealth law (other than this Act) in the same way as it
17 applies to an action in the State or Territory, if the provision of the
18 bilateral agreement has effect in relation to the area.

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

22 **31 Extended operation in non-self-governing Territories**

- 23 A person may take an action described in a provision of Part 3
24 without an approval under Part 9 for the purposes of the provision
25 if:
- 26 (a) the action is taken in a Territory (the *action Territory*) that is
27 not a self-governing Territory; and
- 28 (b) an Act providing for the government of the action Territory
29 provides that some or all of the law of a State or
30 self-governing Territory is in force in the action Territory as
31 a law of the Territory; and

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Part 4 Cases in which environmental approvals are not needed

Division 1 Actions covered by bilateral agreements

Section 31

- 1 (c) the action is one of a class of actions declared by a bilateral
2 agreement between the Commonwealth and the State or
3 self-governing Territory not to require approval under Part 9
4 for the purposes of the provision of Part 3 (because the action
5 is approved or taken in accordance with a bilaterally
6 accredited management plan); and
7 (d) the bilateral agreement specifies that the provision of the
8 agreement making the declaration has effect in relation to
9 actions in the action Territory; and
10 (e) the provision of the bilateral agreement making the
11 declaration is in operation in relation to the action; and
12 (f) the bilaterally accredited management plan is in force under a
13 law of the State or self-governing Territory identified in or
14 under the bilateral agreement; and
15 (g) the action is taken in accordance with the bilaterally
16 accredited management plan.
- 17 Note: Division 3 of Part 5 explains how the operation of a bilateral
18 agreement may be ended or suspended.

1

2 **Division 2—Actions covered by Ministerial declarations**

3 **Subdivision A—Effect of declarations**

4 **32 Actions declared by Minister not to need approval**

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

- 8 (a) the action is one of a class of actions declared by the Minister
9 under section 33 not to require approval under Part 9 for the
10 purposes of the provision (because the action is approved in
11 accordance with an accredited management plan for the
12 purposes of the declaration); and
13 (b) the declaration is in operation when the action is taken; and
14 (c) the accredited management plan is in force under a law of the
15 Commonwealth identified in or under the declaration; and
16 (d) the action is taken in accordance with the accredited
17 management plan.

18 **Subdivision B—Making declarations**

19 **33 Making declaration that actions do not need approval under Part**
20 **9**

21 *Declaration of actions not needing approval*

- 22 (1) The Minister may declare in writing that actions in a class of
23 actions specified in the declaration wholly or partly by reference to
24 the fact that their taking has been approved by the Commonwealth
25 or a specified Commonwealth agency, in accordance with a
26 management plan that is an accredited management plan for the
27 purposes of the declaration, do not require approval under Part 9
28 for the purposes of a specified provision of Part 3.

29 Note 1: Subdivisions C and D set out rules about prerequisites for making a
30 declaration and limits on making a declaration.

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Part 4 Cases in which environmental approvals are not needed

Division 2 Actions covered by Ministerial declarations

Section 33

1 Note 2: Section 35 provides for revocation of a declaration.

2 *What is an **accredited management plan**?*

- 3 (2) A management plan is an **accredited management plan** for the
4 purposes of a declaration that certain actions do not require
5 approval under Part 9 for the purposes of a specified provision of
6 Part 3 if and only if the management plan:
7 (a) is in force under a law of the Commonwealth identified in or
8 under the declaration; and
9 (b) has been accredited in writing by the Minister in accordance
10 with this section for the purposes of the declaration.

11 *Accrediting management plan*

- 12 (3) For the purposes of subsection (2), the Minister may accredit by
13 written instrument a management plan for the purposes of a
14 declaration. However, the Minister may do so only if the Minister
15 is satisfied that:
16 (a) the management plan and the law under which it is in force
17 (or is to be in force) meet the criteria prescribed by the
18 regulations; and
19 (b) there has been or will be adequate assessment of the impacts
20 that actions approved in accordance with the plan:
21 (i) have or will have; or
22 (ii) are likely to have;
23 on each matter protected by a provision of Part 3 to which the
24 declaration relates; and
25 (c) actions approved or taken in accordance with the
26 management plan will not have unacceptable or
27 unsustainable impacts on a matter protected by a provision of
28 Part 3 to which the declaration relates.

29 The Minister must publish in accordance with the regulations (if
30 any) the instrument accrediting the management plan.

31 Note: Subdivision C sets out more prerequisites for accrediting a plan.

1 *Tabling of management plan before accreditation*

- 2 (4) The Minister must cause to be laid before each House of the
3 Parliament a copy of a management plan that the Minister is
4 considering accrediting for the purposes of subsection (2), together
5 with a notice that the Minister proposes to accredit the plan for a
6 declaration under this section.

7 *No accreditation before end of period for opposition*

- 8 (5) The Minister must not accredit a management plan for the purposes
9 of subsection (2) under a bilateral agreement:
10 (a) before, or within 15 sitting days after, a copy of the
11 management plan is laid before each House of the Parliament
12 under this section; or
13 (b) if, within those 15 sitting days of a House, notice of a motion
14 to oppose accreditation of the management plan is given in
15 that House—within 15 sitting days of that House after the
16 notice is given.

17 *No accreditation after accreditation opposed*

- 18 (6) The Minister must not accredit the management plan if either
19 House of the Parliament passes a resolution opposing accreditation
20 of the management plan following a motion of which notice has
21 been given within 15 sitting days after the management plan has
22 been laid before the House under this section.

23 *No accreditation if motion not defeated in time*

- 24 (7) The Minister must not accredit the management plan if at the end
25 of 15 sitting days after notice of a motion to oppose accreditation
26 of the management plan that was given in a House of the
27 Parliament within 15 sitting days after the management plan was
28 laid before the House under this section:
29 (a) the notice has not been withdrawn and the motion has not
30 been called on; or

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Part 4 Cases in which environmental approvals are not needed

Division 2 Actions covered by Ministerial declarations

Section 34

- 1 (b) the motion has been called on, moved and seconded and has
2 not been withdrawn or otherwise disposed of.

3 *Extended time after dissolution or prorogation*

4 (8) If:

- 5 (a) notice of a motion to oppose the accreditation of the
6 management plan is given in a House of the Parliament (the
7 *opposing House*); and
8 (b) before the end of 15 sitting days of the opposing House after
9 the notice is given:
10 (i) the House of Representatives is dissolved or expires; or
11 (ii) the Parliament is prorogued; and
12 (c) at the time of the dissolution, expiry or prorogation (as
13 appropriate):
14 (i) the notice has not been withdrawn and the motion has
15 not been called on; or
16 (ii) the motion has been called on, moved and seconded and
17 has not been withdrawn or otherwise disposed of;
18 the management plan is taken for the purposes of subsections (5),
19 (6) and (7) to have been laid before the opposing House on the first
20 sitting day of that House after the dissolution, expiry or
21 prorogation (as appropriate).

22 **34 What is *matter protected* by a provision of Part 3?**

23 The *matter protected* by a provision of Part 3 specified in column 2
24 of an item of the following table is the thing specified in column 3
25 of the item.

26

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
1	section 12	the world heritage values of a declared World Heritage property
1A	section 15A	the world heritage values of a declared World Heritage property

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
2	section 16	the ecological character of a declared Ramsar wetland
2A	section 17B	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
8A	subsection 18A(1) or (2)	a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species) and a listed threatened ecological community (except an ecological community included in the vulnerable category of the list referred to in section 181)
9	section 20	a listed migratory species
9A	section 20A	a listed migratory species
10	section 21	the environment
10A	section 22A	the environment
11	subsection 23(1)	the environment
12	subsection 23(2)	the environment in a Commonwealth marine area

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Matter protected by provisions of Part 3		
Item	Provision	Matter protected
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
13A	subsection 24A(1) or (2)	the environment
13B	subsection 24A(3) or (4)	the environment in a Commonwealth marine area
13C	subsection 24A(5) or (6)	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
16A	subsection 27A(1) or (2)	the environment
16B	subsection 27A(3) or (4)	the environment on Commonwealth land
17	section 28	the environment

1 **Subdivision C—Prerequisites for making declarations**

2 **34A Minister may only make declaration if prescribed criteria are**
3 **met**

4 The Minister may make a declaration under section 33 only if the
5 Minister is satisfied that the declaration:

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

8 **34B Declarations relating to declared World Heritage properties**

9 (1) The Minister may make a declaration under section 33 relating to a
10 declared World Heritage property only if:

- 11 (a) the Minister is satisfied that the declaration is not
12 inconsistent with Australia's obligations under the World
13 Heritage Convention; and
14 (b) the Minister is satisfied that the declaration will promote the
15 management of the property in accordance with the
16 Australian World Heritage management principles; and
17 (c) the declaration meets the requirements (if any) prescribed by
18 the regulations.

19 (2) The Minister may accredit a management plan under section 33 for
20 the purposes of a declaration relating to a declared World Heritage
21 property only if:

- 22 (a) the Minister is satisfied that the management plan is not
23 inconsistent with Australia's obligations under the World
24 Heritage Convention; and
25 (b) the Minister is satisfied that the management plan will
26 promote the management of the property in accordance with
27 the Australian World Heritage management principles.

28 **34C Declarations relating to declared Ramsar wetlands**

29 (1) The Minister may make a declaration under section 33 relating to a
30 declared Ramsar wetland only if:

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- 1 (a) the Minister is satisfied that the declaration is not
2 inconsistent with Australia's obligations under the Ramsar
3 Convention; and
4 (b) the Minister is satisfied that the declaration will promote the
5 management of the wetland in accordance with the
6 Australian Ramsar management principles; and
7 (c) the declaration meets the requirements (if any) prescribed by
8 the regulations.
- 9 (2) The Minister may accredit a management plan under section 33 for
10 the purposes of a declaration relating to a declared Ramsar wetland
11 only if:
12 (a) the Minister is satisfied that the management plan is not
13 inconsistent with Australia's obligations under the Ramsar
14 Convention; and
15 (b) the Minister is satisfied that the management plan will
16 promote the management of the wetland in accordance with
17 the Australian Ramsar management principles.

18 **34D Declarations relating to listed threatened species and ecological**
19 **communities**

- 20 (1) The Minister may make a declaration under section 33 relating to a
21 listed threatened species or a listed threatened ecological
22 community only if:
23 (a) the Minister is satisfied that the declaration is not
24 inconsistent with Australia's obligations under:
25 (i) the Biodiversity Convention; or
26 (ii) the Apia Convention; or
27 (iii) CITES; and
28 (b) the Minister is satisfied that the declaration will promote the
29 survival and/or enhance the conservation status of each
30 species or community to which the declaration relates; and
31 (c) the Minister is satisfied that the declaration is not
32 inconsistent with any recovery plan for the species or
33 community or a threat abatement plan; and
-

Section 34E

- 1 (d) the declaration meets the requirements (if any) prescribed by
2 the regulations.
- 3 (2) The Minister may accredit a management plan under section 33 for
4 the purposes of a declaration relating to a listed threatened species
5 or a listed threatened ecological community only if:
- 6 (a) the Minister is satisfied that the management plan is not
7 inconsistent with Australia's obligations under:
- 8 (i) the Biodiversity Convention; or
9 (ii) the Apia Convention; or
10 (iii) CITES; and
- 11 (b) the Minister is satisfied that the management plan will
12 promote the survival and/or enhance the conservation status
13 of each species or community to which the declaration
14 relates; and
- 15 (c) the Minister is satisfied that the management plan is not
16 inconsistent with any recovery plan for the species or
17 community or a threat abatement plan.

18 **34E Declarations relating to migratory species**

- 19 (1) The Minister may make a declaration under section 33 relating to a
20 listed migratory species only if:
- 21 (a) the Minister is satisfied that the declaration is not
22 inconsistent with the Commonwealth's obligations under
23 whichever of the following conventions or agreements
24 because of which the species is listed:
- 25 (i) the Bonn Convention;
26 (ii) CAMBA;
27 (iii) JAMBA;
28 (iv) an international agreement approved under subsection
29 209(4); and
- 30 (b) the Minister is satisfied that the declaration will promote the
31 survival and/or enhance the conservation status of each
32 species to which the declaration relates; and

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- 1 (c) the declaration meets the requirements (if any) prescribed by
2 the regulations.
- 3 (2) The Minister may accredit a management plan under section 33 for
4 the purposes of a declaration relating to a listed migratory species
5 only if:
- 6 (a) the Minister is satisfied that the management plan is not
7 inconsistent with the Commonwealth's obligations under
8 whichever of the following conventions or agreements
9 because of which the species is listed:
- 10 (i) the Bonn Convention;
11 (ii) CAMBA;
12 (iii) JAMBA;
13 (iv) an international agreement approved under subsection
14 209(4); and
- 15 (b) the Minister is satisfied that the management plan will
16 promote the survival and/or enhance the conservation status
17 of each species to which the declaration relates.

18 **Subdivision D—Other rules about declarations**

19 **35 Revoking declarations**

20 *Revoking declarations*

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

23 *Revocation does not affect some actions*

- 24 (2) If:
- 25 (a) before the revocation of a declaration made under section 33,
26 an action could be taken without approval under Part 9
27 because its taking had been approved by the Commonwealth
28 or a Commonwealth agency in accordance with a
29 management plan that was an accredited management plan
30 for the purposes of the declaration; and
-

- 1 (b) the declaration is revoked;
2 this Act continues to operate in relation to the action as if the
3 declaration had not been revoked.

4 **36 Other rules about declarations**

5 *Minister must not give preference*

- 6 (1) In making a declaration or accrediting a management plan under
7 section 33, or revoking a declaration under section 35, relating to
8 an action taken:
9 (a) by a person for the purposes of trade between Australia and
10 another country or between 2 States; or
11 (b) by a constitutional corporation;
12 the Minister must not give preference (within the meaning of
13 section 99 of the Constitution) to one State or part of a State over
14 another State or part of a State.

15 *Publishing declarations*

- 16 (2) The Minister must publish a declaration made under section 33, an
17 instrument accrediting a management plan under section 33, or an
18 instrument under section 35 revoking a declaration, in accordance
19 with the regulations.

2

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

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

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

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

10 Note: This section does not apply to some forestry operations. See section
11 42.

12 (2) In this Act:

13 *regional forest agreement* has the same meaning as in the
14 *Regional Forest Agreements Act 1999*.

15 *RFA forestry operations* has the same meaning as in the *Regional*
16 *Forest Agreements Act 1999*.

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

19 **39 Object of this Subdivision**

20 The purpose of this Subdivision is to ensure that an approval under
21 Part 9 is not required for forestry operations in a region for which a
22 process (involving the conduct of a comprehensive regional
23 assessment, assessment under the *Environment Protection (Impact*
24 *of Proposals) Act 1974* and protection of the environment through
25 agreements between the Commonwealth and the relevant State and
26 conditions on licences for the export of wood chips) of developing
27 and negotiating a regional forest agreement is being, or has been,
28 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 1999*.

- 13 (2) In this Act:

14 *forestry operations* has the same meaning as in the *Regional*
15 *Forest Agreements Act 1999*.

- 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 delineated as the Eden RFA Region on the map of
5 that New South Wales Region dated 13 May 1999 and
6 published by the Bureau of Resource Sciences;
- 7 (b) the area delineated as the Lower North East RFA Region on
8 the map of that New South Wales Region dated 13 May 1999
9 and published by the Bureau of Resource Sciences;
- 10 (c) the area delineated as the Upper North East RFA Region on
11 the map of that New South Wales Region dated 13 May 1999
12 and published by the Bureau of Resource Sciences;
- 13 (d) the area delineated as the South Region on the map of the
14 Comprehensive Regional Assessment South CRA Region
15 dated August 1997 and published by the State Forests GIS
16 Branch of the organisation known as State Forests of New
17 South Wales;
- 18 (e) the area delineated as the Gippsland Region in the map of
19 that Region dated 11 March 1998 and published by the Forest
20 Information Section of the Department of Natural Resources
21 and Environment of Victoria;
- 22 (f) the area delineated as the North East RFA Region in the map
23 of that Region dated 11 March 1998 and published by the
24 Forest Information Section of the Department of Natural
25 Resources and Environment of Victoria;
- 26 (g) the area delineated as the West Region in the map of that
27 Region dated 3 March 1999 and published by the Forest
28 Information Section of the Department of Natural Resources
29 and Environment of Victoria;
- 30 (h) the area delineated as the South East Queensland RFA
31 Region on the map of that Region dated 21 August 1998 and
32 published by the Bureau of Resource Sciences.

1 *Regulations may amend list of regions*

2 (2) The regulations may amend subsection (1).

3 *Prerequisites for prescribing RFA regions*

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

9 **Subdivision C—Limits on application**

10 **42 This Division does not apply to some forestry operations**

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

- 12 (a) in a property included in the World Heritage List; or
13 (b) in a wetland included in the List of Wetlands of International
14 Importance kept under the Ramsar Convention; or
15 (c) that are incidental to another action whose primary purpose
16 does not relate to forestry.

Section 43

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
without an approval under Part 9 for the purposes of the provision
if:

5

6

7

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

8

9

10

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

11

12

13

14

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

12

environmental assessment and approval of actions; and

13

(d) minimise duplication in the environmental assessment and

14

approval process through Commonwealth accreditation of the

15

processes of the State or Territory (and vice versa).

Section 45

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 and 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 notice of intention to enter into agreement*

- 28 (3) As soon as practicable after starting the process of developing a
29 draft bilateral agreement with a State or self-governing Territory,
-

1 the Minister must publish, in accordance with the regulations (if
2 any), notice of his or her intention to develop a draft bilateral
3 agreement with the State or Territory.

4 *Publishing bilateral agreements and related material*

- 5 (4) As soon as practicable after entering into a bilateral agreement, the
6 Minister must publish in accordance with the regulations:
7 (a) the agreement; and
8 (b) a statement of the Minister's reasons for entering into the
9 agreement; and
10 (c) a report on the comments (if any) received on the draft of the
11 agreement published under Subdivision B.

12 **46 Agreement may declare actions do not need approval under Part**
13 **9**

14 *Declaration of actions not needing approval*

- 15 (1) A bilateral agreement may declare that actions in a class of actions
16 specified in the agreement wholly or partly by reference to the fact
17 that their taking has been approved by:
18 (a) the State or self-governing Territory that is party to the
19 agreement; or
20 (b) an agency of the State or Territory;
21 in accordance with a management plan that is a bilaterally
22 accredited management plan for the purposes of the agreement do
23 not require approval under Part 9 for the purposes of a specified
24 provision of Part 3.

25 *What is a **bilaterally accredited management plan**?*

- 26 (2) A management plan is a **bilaterally accredited management plan**
27 for the purposes of a bilateral agreement declaring that certain
28 actions do not require approval under Part 9 for the purposes of a
29 specified provision of Part 3 if and only if the management plan:
30 (a) is in force under a law:

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- 1 (i) of the State or Territory that is party to the agreement;
2 and
3 (ii) identified in or under the agreement; and
4 (b) has been accredited in writing by the Minister in accordance
5 with this section for the purposes of the agreement.

6 *Accrediting management plan*

- 7 (3) For the purposes of subsection (2), the Minister may accredit in
8 writing a management plan for the purposes of a bilateral
9 agreement with a State or self-governing Territory. However, the
10 Minister may do so only if the Minister is satisfied that:
11 (a) the management plan and the law of the State or Territory
12 under which the management plan is in force (or is to be in
13 force) meet the criteria prescribed by the regulations; and
14 (b) there has been or will be adequate assessment of the impacts
15 that actions approved in accordance with the management
16 plan:
17 (i) have or will have; or
18 (ii) are likely to have;
19 on each matter protected by a provision of Part 3 in relation
20 to which the agreement makes a declaration under subsection
21 (1); and
22 (c) actions approved in accordance with the management plan
23 will not have unacceptable or unsustainable impacts on a
24 matter protected by a provision of Part 3 in relation to which
25 the agreement makes a declaration under subsection (1).

26 The Minister must publish in accordance with the regulations (if
27 any) the instrument accrediting the management plan.

28 Note: Subdivision B sets out more prerequisites for accrediting a plan.

29 *Tabling of management plan before accreditation*

- 30 (4) The Minister must cause to be laid before each House of the
31 Parliament a copy of a management plan that the Minister is
32 considering accrediting for the purposes of subsection (2).

1 *No accreditation before end of period for disallowance*

- 2 (5) The Minister must not accredit a management plan for the purposes
3 of subsection (2) under a bilateral agreement:
4 (a) before, or within 15 sitting days after, a copy of the plan is
5 laid before each House of the Parliament; or
6 (b) if, within those 15 sitting days of a House, notice of a motion
7 to disallow the management plan is given in that House—
8 within 15 sitting days of that House after the notice is given.

9 *Disallowance motion passed*

- 10 (6) The Minister must not accredit the management plan if either
11 House of the Parliament passes a resolution disallowing the
12 management plan following a motion of which notice has been
13 given within 15 sitting days after the plan has been laid before the
14 House.

15 *Disallowance motion not defeated in time*

- 16 (7) The Minister must not accredit the management plan if at the end
17 of 15 sitting days after notice of a motion to disallow the
18 management plan that was given in a House of the Parliament
19 within 15 sitting days after the management plan was laid before
20 the House:
21 (a) the notice has not been withdrawn and the motion has not
22 been called on; or
23 (b) the motion has been called on, moved and seconded and has
24 not been withdrawn or otherwise disposed of.

25 *Extended time after dissolution or prorogation*

- 26 (8) If:
27 (a) notice of a motion to disallow the management plan is given
28 in a House of the Parliament (the *disallowing House*); and
29 (b) before the end of 15 sitting days of the disallowing House
30 after the notice is given:
31 (i) the House of Representatives is dissolved or expires; or
-

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- 1 (ii) the Parliament is prorogued; and
2 (c) at the time of the dissolution, expiry or prorogation (as
3 appropriate):
4 (i) the notice has not been withdrawn and the motion has
5 not been called on; or
6 (ii) the motion has been called on, moved and seconded and
7 has not been withdrawn or otherwise disposed of;
8 the management plan is taken for the purposes of subsections (5),
9 (6) and (7) to have been laid before the disallowing House on the
10 first sitting day of that House after the dissolution, expiry or
11 prorogation (as appropriate).

12 *No preference*

- 13 (9) In accrediting a management plan for the purposes of a bilateral
14 agreement making a declaration relating to an action:
15 (a) by a person for the purposes of trade between Australia and
16 another country or between 2 States; or
17 (b) by a constitutional corporation;
18 the Minister must not give preference (within the meaning of
19 section 99 of the Constitution) to one State or part of a State over
20 another State or part of a State.

21 *Requirements for bilateral agreement making declaration*

- 22 (10) The declaration does not have effect for the purposes of this Act
23 unless the bilateral agreement requires the State or self-governing
24 Territory that is party to the agreement and agencies of the State or
25 Territory:
26 (a) to act in accordance with a management plan that is a
27 bilaterally accredited management plan for the purposes of
28 the agreement; and
29 (b) not to approve the taking of actions that would be
30 inconsistent with a management plan that is a bilaterally
31 accredited management plan for the purposes of the
32 agreement.

1 **47 Agreement may declare classes of actions do not need assessment**

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

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

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

10 *Prerequisite to declaration*

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

19 *Assessment approaches that may be accredited*

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

30 This does not limit subsection (1).

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Report on actions that do not need further assessment

- 1
- 2 (4) If a bilateral agreement has (or could have) the effect that an action
3 need not be assessed under Part 8 but the action must still be
4 approved under Part 9, the agreement must provide for the Minister
5 to receive a report including, or accompanied by, enough
6 information about the relevant impacts of the action to let the
7 Minister make an informed decision whether or not to approve
8 under Part 9 (for the purposes of each controlling provision) the
9 taking of the action.

10 **48 Other provisions of bilateral agreements**

- 11 (1) A bilateral agreement may include:
- 12 (a) provisions for State accreditation of Commonwealth
13 processes and decisions; and
- 14 (b) other provisions for achieving the object of this Part; and
- 15 (c) provisions for the provision of information by one party to
16 the agreement to the other party; and
- 17 (d) provisions for the publication of information relating to the
18 agreement; and
- 19 (e) provisions relating to the operation of the whole agreement
20 or particular provisions of the agreement, such as:
- 21 (i) provisions for the commencement of all or part of the
22 agreement; or
- 23 (ii) provisions for auditing, monitoring and reporting on the
24 operation and effectiveness of all or part of the
25 agreement; or
- 26 (iii) provisions for review of all or part of the agreement; or
- 27 (iv) provisions for rescission of all or part of the agreement;
28 or
- 29 (v) provisions for expiry of the agreement; and
- 30 (f) provisions varying or revoking another bilateral agreement
31 between the same parties; and
- 32 (g) a provision dealing with a matter that another section of this
33 Act permits a bilateral agreement to deal with.
-

1 *Consistency with Act and regulations*

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

8 *Relationship with sections 46 and 47*

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

10 **48A Mandatory provisions**

11 *Application*

- 12 (1) A bilateral agreement with a State or self-governing Territory
13 including a declaration that is described in section 46 or 47 and
14 covers actions described in subsection (2) or (3) does not have
15 effect for the purposes of this Act unless the agreement also
16 includes the undertaking required by subsection (2) or (3) (as
17 appropriate).

18 *Agreements including declarations about approvals*

- 19 (2) A bilateral agreement including a declaration described in section
20 46 must include an undertaking by the State or Territory to ensure
21 that the environmental impacts that the following actions covered
22 by the declaration have, will have or are likely to have on a thing
23 that is not a matter protected by a provision of Part 3 for which the
24 declaration has effect will be assessed to the greatest extent
25 practicable:
26 (a) actions taken in the State or Territory by a constitutional
27 corporation;
28 (b) actions taken in the State or Territory by a person for the
29 purposes of trade or commerce between Australia and

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- 1 another country, between 2 States, between a State and a
2 Territory or between 2 Territories;
3 (c) actions that are taken in the State or Territory and are actions
4 whose regulation is appropriate and adapted to give effect to
5 Australia's obligations under an agreement with one or more
6 other countries;
7 (d) actions taken in the Territory (if applicable).

8 *Agreements including declarations about assessment*

- 9 (3) A bilateral agreement including a declaration described in section
10 47 must include an undertaking by the State or Territory to ensure
11 that the environmental impacts that the following actions covered
12 by the declaration have, will have or are likely to have (other than
13 the relevant impacts of those actions) will be assessed to the
14 greatest extent practicable:
15 (a) actions taken in the State or Territory by a constitutional
16 corporation;
17 (b) actions taken in the State or Territory by a person for the
18 purposes of trade or commerce between Australia and
19 another country, between 2 States, between a State and a
20 Territory or between 2 Territories;
21 (c) actions that are taken in the State or Territory and are actions
22 whose regulation is appropriate and adapted to give effect to
23 Australia's obligations under an agreement with one or more
24 other countries;
25 (d) actions taken in the Territory (if applicable).

26 *Auditing*

- 27 (4) A bilateral agreement does not have effect for the purposes of this
28 Act unless it includes a provision recognising that, under the
29 *Auditor-General Act 1997*, the Auditor-General may audit the
30 operations of the Commonwealth public sector (as defined in
31 section 18 of that Act) relating to the bilateral agreement.

1 **49 Express provision needed to affect Commonwealth areas or**
2 **actions**

- 3 (1) A provision of a bilateral agreement does not have any effect in
4 relation to an action in a Commonwealth area or an action by the
5 Commonwealth or a Commonwealth agency, unless the agreement
6 expressly provides otherwise.
- 7 (2) A provision of a bilateral agreement does not have any effect in
8 relation to an action in Booderee National Park, Kakadu National
9 Park or Uluru-Kata Tjuta National Park.
- 10 (3) *Booderee National Park* is the Commonwealth reserve (as it exists
11 from time to time) to which the name Booderee National Park was
12 given by Proclamation continued in force by the *Environmental*
13 *Reform (Consequential Provisions) Act 1999*.

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

15 **49A Consultation on draft agreement**

16 The Minister may enter into a bilateral agreement only if he or she:

17 (a) has published in accordance with the regulations:

18 (i) a draft of the agreement; and

19 (ii) an invitation for any person to give the Minister
20 comments on the draft within a specified period of at
21 least 28 days after the latest day on which the draft or
22 invitation was published; and

23 (b) has taken into account the comments (if any) received in
24 response to the invitation; and

25 (c) has considered the role and interests of indigenous peoples in
26 promoting the conservation and ecologically sustainable use
27 of natural resources in the context of the proposed agreement,
28 taking into account Australia's relevant obligations under the
29 Biodiversity Convention.

Section 50

1 **50 Minister may only enter into agreement if prescribed criteria are**
2 **met**

- 3 The Minister may enter into a bilateral agreement only if the
4 Minister is satisfied that the agreement:
5 (a) accords with the objects of this Act; and
6 (b) meets the requirements (if any) prescribed by the regulations.

7 **51 Agreements relating to declared World Heritage properties**

- 8 (1) The Minister may enter into a bilateral agreement containing a
9 provision relating to a declared World Heritage property only if:
10 (a) the Minister is satisfied that the provision is not inconsistent
11 with Australia's obligations under the World Heritage
12 Convention; and
13 (b) the Minister is satisfied that the agreement will promote the
14 management of the property in accordance with the
15 Australian World Heritage management principles; and
16 (c) the provision meets the requirements (if any) prescribed by
17 the regulations.
- 18 (2) The Minister may accredit a management plan under section 46 for
19 the purposes of a bilateral agreement containing a provision
20 relating to a declared World Heritage property only if:
21 (a) the Minister is satisfied that the plan is not inconsistent with
22 Australia's obligations under the World Heritage
23 Convention; and
24 (b) the Minister is satisfied that the plan will promote the
25 management of the property in accordance with the
26 Australian World Heritage management principles.

27 **52 Agreements relating to declared Ramsar wetlands**

- 28 (1) The Minister may enter into a bilateral agreement containing a
29 provision relating to a declared Ramsar wetland only if:

- 1 (a) the Minister is satisfied that the provision is not inconsistent
2 with Australia's obligations under the Ramsar Convention;
3 and
4 (b) the Minister is satisfied that the agreement will promote the
5 management of the wetland in accordance with the
6 Australian Ramsar management principles; and
7 (c) the provision meets the requirements (if any) prescribed by
8 the regulations.
- 9 (2) The Minister may accredit a management plan under section 46 for
10 the purposes of a bilateral agreement containing a provision
11 relating to a declared Ramsar wetland only if:
12 (a) the Minister is satisfied that the plan is not inconsistent with
13 Australia's obligations under the Ramsar Convention; and
14 (b) the Minister is satisfied that the plan will promote the
15 management of the wetland in accordance with the
16 Australian Ramsar management principles.

17 **53 Agreements relating to listed threatened species and ecological**
18 **communities**

- 19 (1) The Minister may enter into a bilateral agreement containing a
20 provision relating to a listed threatened species or a listed
21 threatened ecological community only if:
22 (a) the Minister is satisfied that the provision is not inconsistent
23 with Australia's obligations under:
24 (i) the Biodiversity Convention; or
25 (ii) the Apia Convention; or
26 (iii) CITES; and
27 (b) the Minister is satisfied that the agreement will promote the
28 survival and/or enhance the conservation status of each
29 species or community to which the provision relates; and
30 (c) the Minister is satisfied that the provision is not inconsistent
31 with any recovery plan for the species or community or a
32 threat abatement plan; and

Section 54

- 1 (d) the provision meets the requirements (if any) prescribed by
2 the regulations.
- 3 (2) The Minister may accredit a management plan under section 46 for
4 the purposes of a bilateral agreement containing a provision
5 relating to a listed threatened species or a listed threatened
6 ecological community only if:
- 7 (a) the Minister is satisfied that the plan is not inconsistent with
8 Australia's obligations under:
- 9 (i) the Biodiversity Convention; or
10 (ii) the Apia Convention; or
11 (iii) CITES; and
- 12 (b) the Minister is satisfied that the plan will promote the
13 survival and/or enhance the conservation status of each
14 species or community to which the provision relates; and
- 15 (c) the Minister is satisfied that the plan is not inconsistent with
16 any recovery plan for the species or community or a threat
17 abatement plan.

18 **54 Agreements relating to migratory species**

- 19 (1) The Minister may enter into a bilateral agreement containing a
20 provision relating to a listed migratory species only if:
- 21 (a) the Minister is satisfied that the provision is not inconsistent
22 with the Commonwealth's obligations under whichever of
23 the following conventions or agreements because of which
24 the species is listed:
- 25 (i) the Bonn Convention;
26 (ii) CAMBA;
27 (iii) JAMBA;
28 (iv) an international agreement approved under subsection
29 209(4); and
- 30 (b) the Minister is satisfied that the agreement will promote the
31 survival and/or enhance the conservation status of each
32 species to which the provision relates; and

- 1 (c) the provision meets the requirements (if any) prescribed by
2 the regulations.
- 3 (2) The Minister may accredit a management plan under section 46 for
4 the purposes of a bilateral agreement containing a provision
5 relating to a listed migratory species only if:
- 6 (a) the Minister is satisfied that the plan is not inconsistent with
7 the Commonwealth's obligations under whichever of the
8 following conventions or agreements because of which the
9 species is listed:
- 10 (i) the Bonn Convention;
11 (ii) CAMBA;
12 (iii) JAMBA;
13 (iv) an international agreement approved under subsection
14 209(4); and
- 15 (b) the Minister is satisfied that the plan will promote the
16 survival and/or enhance the conservation status of each
17 species to which the provision relates.

18 **55 Agreements relating to nuclear actions**

- 19 The Minister must not enter into a bilateral agreement, or accredit
20 for the purposes of a bilateral agreement a management plan,
21 containing a provision that:
- 22 (a) relates to a nuclear action; and
23 (b) has the effect of giving preference (within the meaning of
24 section 99 of the Constitution) to one State or part of a State
25 over another State or part of a State, in relation to the taking
26 of a nuclear action:
- 27 (i) by a person for the purposes of trade or commerce
28 between Australia and another country or between 2
29 States; or
30 (ii) by a constitutional corporation.

Section 56

1 **56 Agreements relating to prescribed actions**

2 The Minister must not enter into a bilateral agreement containing a
3 provision that:

4 (a) relates to an action prescribed for the purposes of subsection
5 25(1); and

6 (b) has the effect of giving preference (within the meaning of
7 section 99 of the Constitution) to one State or part of a State
8 over another State or part of a State, in relation to the taking
9 of the action:

10 (i) by a person for the purposes of trade or commerce
11 between Australia and another country or between 2
12 States; or

13 (ii) by a constitutional corporation.

1

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

3

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

4

5 **57 Representations about suspension or cancellation**

5

6 *Representations*

6

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

7

8

9 *Minister must decide whether agreement has been contravened*

9

10 (2) The Minister must:

10

11 (a) decide whether or not the bilateral agreement has been
12 contravened; and

11

12

13 (b) decide what action he or she should take in relation to any
14 contravention.

13

14

15 *Publication of decision and reasons*

15

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

16

17

18 *Minister need not decide on vexatious referrals*

18

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

19

20

21 (a) the referral was vexatious, frivolous, or not supported by
22 sufficient information to make a decision; or

21

22

23 (b) the matter referred is the same in substance as a matter that
24 has been referred before; or

23

24

25 (c) if the alleged contravention of the bilateral agreement were a
26 contravention of the Act, the person referring the matter

25

26

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.

Chapter 3 Bilateral agreements

Part 5 Bilateral agreements

Division 3 Suspending and ending the effect of bilateral agreements

Section 60

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.
-

- 1 (3) The suspension continues for the shorter of the following periods:
2 (a) 3 months;
3 (b) the period that is specified in the notice (either by reference
4 to time or by reference to the occurrence of an event).
- 5 (4) Subsection (3) has effect subject to section 62.
- 6 (5) As soon as practicable after the Minister (the *Environment*
7 *Minister*) gives the appropriate Minister of the State or Territory
8 (the *State or Territory Minister*) notice of the suspension, the
9 Environment Minister must consult the State or Territory Minister
10 about the non-compliance.
- 11 (6) To avoid doubt, this section has effect despite sections 58 and 59.

12 **61 Cancellation during suspension**

- 13 (1) The Minister may give notice of the cancellation of the effect of a
14 bilateral agreement even while its effect is suspended under section
15 59 or 60.
- 16 (2) The cancellation may occur even though the period of suspension
17 has not ended.
- 18 (3) This section applies whether the cancellation or suspension has
19 effect generally or in relation to actions in a specified class.

20 **62 Revocation of notice of suspension or cancellation**

- 21 (1) This section applies if the Minister:
22 (a) has given a notice under section 59 or 60 to suspend or
23 cancel the effect of a bilateral agreement (either generally or
24 in relation to actions in a specified class); and
25 (b) is later satisfied that the State or Territory that is party to the
26 agreement will comply with the agreement and give effect to
27 it in a way that:
28 (i) accords with the objects of this Act and the objects of
29 this Part; and

Chapter 3 Bilateral agreements

Part 5 Bilateral agreements

Division 3 Suspending and ending the effect of bilateral agreements

Section 63

- 1 (ii) promotes the discharge of Australia's obligations under
2 all international agreements (if any) relevant to a matter
3 covered by the agreement.
- 4 (2) The Minister must revoke the notice of suspension or cancellation
5 by another written notice:
6 (a) given to the appropriate Minister of the State or Territory;
7 and
8 (b) published in accordance with the regulations.
9 However, the Environment Minister must not revoke the notice of
10 cancellation after cancellation of the effect of the agreement
11 occurs.
- 12 (3) Suspension or cancellation of the effect of the agreement does not
13 occur if the notice of suspension or cancellation is revoked before
14 the suspension or cancellation would otherwise occur.
- 15 (4) Suspension of the effect of the agreement ends when the notice of
16 suspension is revoked.

63 Cancellation or suspension at request of other party

Minister may give notice of cancellation or suspension

- 18
19 (1) The Minister must give the appropriate Minister of a State or
20 self-governing Territory that is party to a bilateral agreement a
21 notice under subsection (2) or (3) if the appropriate Minister has
22 requested a notice under that subsection in accordance with the
23 agreement.

Notice of suspension

- 24
25 (2) A notice may state that 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 is suspended, either generally or in
28 relation to actions in a specified class, for a period:
29 (a) starting on a specified day after the day on which the notice
30 is given; and
-

- 1 (b) ending on a specified later day or on the occurrence of a
2 specified event.

3 *Notice of cancellation*

- 4 (3) A notice may state that the effect of the agreement, or specified
5 provisions of the agreement, for the purposes of this Act or
6 specified provisions of this Act is cancelled, either generally or in
7 relation to actions in a specified class, on a specified day after the
8 day on which the notice is given.

9 *Effect suspended or cancelled in accordance with notice*

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

14 *Publishing notice and reasons*

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

19 **64 Cancellation or suspension of bilateral agreement does not affect**
20 **certain actions**

21 *Application*

- 22 (1) This section explains how this Act operates in relation to an action
23 that a person was able to take without approval under Part 9 for the
24 purposes of a provision of Part 3 because of Division 1 of Part 4
25 and a provision of a bilateral agreement immediately before the
26 cancellation or suspension of the operation of the provision of the
27 agreement for the purposes of this Act or of any provision of this
28 Act.

Chapter 3 Bilateral agreements

Part 5 Bilateral agreements

Division 3 Suspending and ending the effect of bilateral agreements

Section 65

1 *Actions approved in specified manner may be taken*

2 (2) If the action was able to be taken without approval under Part 9
3 because its taking had already been approved in accordance with a
4 management plan that is a bilaterally accredited management plan
5 for the purposes of the agreement, this Act continues to operate in
6 relation to the action as if the suspension or cancellation had not
7 occurred.

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

9 **65 Expiry and review of bilateral agreements**

10 (1) A bilateral agreement ceases to have effect for the purposes of this
11 Act:
12 (a) 5 years after it is entered into; or
13 (b) at an earlier time when the agreement provides for it to cease
14 to have effect for the purposes of this Act.

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

16 (2) The Minister must:
17 (a) cause a review of the operation of a bilateral agreement to be
18 carried out; and
19 (b) give a report of the review to the appropriate Minister of the
20 State or Territory that is party to the agreement;
21 before the agreement ceases to have effect as a result of this
22 section.

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

24 (3) The Minister must publish the report in accordance with the
25 regulations.

1 **65A Expiry of bilateral agreement does not affect certain actions**

2 *Application of subsection (2)*

3 (1) Subsection (2) explains how this Act operates in relation to an
4 action that a person was able to take without approval under Part 9
5 for the purposes of a provision of Part 3 because of Division 1 of
6 Part 4 and a provision of a bilateral agreement immediately before
7 the agreement ceases to have effect for the purposes of this Act
8 under section 65.

9 *Actions already approved may be taken*

10 (2) This Act continues to operate in relation to the action as if the
11 agreement had not ceased to have effect if the action was able to be
12 taken without approval under Part 9 because its taking had already
13 been approved in accordance with a management plan that was a
14 bilaterally accredited management plan for the purposes of the
15 agreement.

Section 66

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Chapter 4—Environmental assessments and approvals

Part 6—Simplified outline of this Chapter

66 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

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

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

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

An assessment may be done using:

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

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- (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

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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 (5) Subsections (1) and (2) do not apply in relation to a person
25 proposing to take an action if the person has been informed by the
26 Minister under section 73 that the proposal has been referred to the
27 Minister.

1 **69 State or Territory may refer proposal to Minister**

2 (1) A State, self-governing Territory or agency of a State or
3 self-governing Territory that is aware of a proposal by a person to
4 take an action may refer the proposal to the Minister for a decision
5 whether or not the action is a controlled action, if the State,
6 Territory or agency has administrative responsibilities relating to
7 the action.

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

11 Note: Section 68 applies instead.

12 **70 Minister may request referral of proposal**

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

16 (a) the person; or

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

20 to refer the proposal to the Minister within 15 business days or a
21 longer period agreed by the Minister and the requested person,
22 State, Territory or agency (as appropriate).

23 Note 1: If the proposal to take the action is not referred, the person cannot get
24 an approval under Part 9 to take the action. If taking the action without
25 approval contravenes Part 3, an injunction could be sought to prevent
26 or stop the action, or the person could be ordered to pay a pecuniary
27 penalty.

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

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

Section 71

1 **71 Commonwealth agency may refer proposal to Minister**

2 (1) A Commonwealth agency (except the Minister) that is aware of a
3 proposal by a person to take an action may refer the proposal to the
4 Minister for a decision whether or not the action is a controlled
5 action, if the agency has administrative responsibilities relating to
6 the action.

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

9 Note: Section 68 applies instead.

10 **72 Form and content of referrals**

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

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

15 **73 Informing person proposing to take action of referral**

16 As soon as practicable after receiving a referral under section 69 or
17 71 of a proposal by a person to take an action, the Minister must:

- 18 (a) inform the person of the referral; and
19 (b) invite the person to give the Minister relevant information
20 about whether the action is a controlled action, within 10
21 business days.

22 **74 Inviting provision of information on referred proposal**

23 *Inviting other Commonwealth Ministers to provide information*

- 24 (1) As soon as practicable after receiving a referral of a proposal to
25 take an action, the Minister (the ***Environment Minister***) must:
26 (a) inform any other Minister whom the Environment Minister
27 believes has administrative responsibilities relating to the
28 proposal; and
-

- 1 (b) invite each other Minister informed to give the Environment
2 Minister within 10 business days information that relates to
3 the proposed action and is relevant to deciding whether or not
4 the proposed action is a controlled action.

5 *Inviting comments from appropriate State or Territory Minister*

- 6 (2) As soon as practicable after receiving, from the person proposing
7 to take an action or from a Commonwealth agency, a referral of a
8 proposal to take an action in a State or self-governing Territory, the
9 Environment Minister must:
10 (a) inform the appropriate Minister of the State or Territory; and
11 (b) invite that Minister to give the Environment Minister
12 comments within 10 business days on whether the proposed
13 action is a controlled action;
14 if the Environment Minister thinks the action may have an impact
15 on a matter protected by a provision of Division 1 of Part 3 (about
16 matters of national environmental significance).

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

19 *Inviting public comment*

- 20 (3) As soon as practicable after receiving a referral of a proposal to
21 take an action, the Environment Minister must cause to be
22 published on the Internet:
23 (a) the referral; and
24 (b) an invitation for anyone to give the Minister comments
25 within 10 business days (measured in Canberra) on whether
26 the action is a controlled action.

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

- 28 (4) This section does not apply in relation to a referral of a proposal to
29 take an action by the person proposing to take the action if the
30 person states in the referral that the person thinks the action is a
31 controlled action.

Section 75

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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 *Minister must consider public comment*

- 12 (1A) In making a decision under subsection (1) about the action, the
13 Minister must consider the comments (if any) received:
14 (a) in response to the invitation (if any) under subsection 74(3)
15 for anyone to give the Minister comments on whether the
16 action is a controlled action; and
17 (b) within the period specified in the invitation.

18 *Considerations in decision*

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

1 *Designating a proponent of the action*

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

4 *Consent to designation*

- 5 (4) The Minister may designate a person who does not propose to take
6 the action only if:
7 (a) the person agrees to being designated; and
8 (b) the person proposing to take the action agrees to the
9 designation.

10 *Timing of decision and designation*

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

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

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

- 19 (6) If the Minister has requested more information under section 76 for
20 the purposes of making a decision, a day is not to be counted as a
21 business day for the purposes of subsection (5) if it is:
22 (a) on or after the day the Minister requested the information;
23 and
24 (b) on or before the day on which the Minister receives the last
25 of the information requested.

26 *Running of time may be suspended by agreement*

- 27 (7) The Minister and the person proposing to take the action may agree
28 in writing that days within a period worked out in accordance with
29 the agreement are not to be counted as business days for the
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Section 76

1 purposes of subsection (5). If the agreement is made, those days
2 are not to be counted for the purposes of that subsection.

3 **76 Minister may request more information for making decision**

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

- 7 (a) whether the action is a controlled action; or
8 (b) which provisions of Part 3 (if any) are controlling provisions
9 for the action;

10 the Minister may request the person proposing to take the action to
11 provide specified information relevant to making the decision.

12 **77 Notice and reasons for decision**

13 *Giving notice*

14 (1) Within 10 business days after deciding whether an action that is the
15 subject of a proposal referred to the Minister is a controlled action
16 or not, the Minister must:

- 17 (a) give written notice of the decision to:
18 (i) the person proposing to take the action; and
19 (ii) if the Minister has designated as proponent of the action
20 a person who does not propose to take the action—that
21 person; and
22 (iii) if the Minister decided that the action is a controlled
23 action because of Division 1 of Part 3 (which deals with
24 matters of national environmental significance)—the
25 appropriate Minister of each State or self-governing
26 Territory in which the action is to be taken; and
27 (b) publish notice of the decision in accordance with the
28 regulations.

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

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

1 *Notice must identify any applicable controlling provisions*

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

4 *Identifying manner of action so it is not caught by provision of Part*
5 *3*

6 (3) If, in deciding whether the action is a controlled action or not, the
7 Minister has made a decision (the ***component decision***) that a
8 particular provision of Part 3 is not a controlling provision for the
9 action because the Minister believes it will be taken in a particular
10 manner (whether or not in accordance with an accredited
11 management plan for the purposes of a declaration under section
12 33 or a bilaterally accredited management plan for the purposes of
13 a bilateral agreement), the notice must set out the component
14 decision, identifying the provision and the manner.

15 Note: The Minister may decide a provision of Part 3 is not a controlling
16 provision for an action because he or she believes that the action will
17 be taken in a manner that will ensure the action will not have (and is
18 not likely to have) an adverse impact on the matter protected by the
19 provision.

20 *Reasons for decision*

21 (4) The Minister must give reasons for the decision to a person who:
22 (a) has been given the notice; and
23 (b) within 28 days of being given the notice, has requested the
24 Minister to provide reasons.

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

27 *Reasons need not be given in some cases*

28 (5) Subsection (4) does not apply in relation to a decision whether or
29 not an action is a controlled action if the person proposing to take
30 the action:

31 (a) referred the proposal to the Minister; and

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- 1 (b) stated in the referral that the person thought the action was a
2 controlled action.

3 **78 Reconsideration of decision**

4 *Limited power to vary or substitute decisions*

- 5 (1) The Minister may revoke a decision (the *first decision*) made under
6 subsection 75(1) about an action and substitute a new decision
7 under that subsection for the first decision, but only if:
- 8 (a) the Minister is satisfied that the revocation and substitution is
9 warranted by the availability of substantial new information
10 about the impacts that the action:
- 11 (i) has or will have; or
12 (ii) is likely to have;
13 on a matter protected by a provision of Part 3; or
- 14 (aa) the Minister is satisfied that the revocation and substitution is
15 warranted by a substantial change in circumstances that was
16 not foreseen at the time of the first decision and relates to the
17 impacts that the action:
- 18 (i) has or will have; or
19 (ii) is likely to have;
20 on a matter protected by a provision of Part 3; or
- 21 (b) if the first decision was that the action was not a controlled
22 action because the Minister believed the action would be
23 taken in the manner identified in the notice under subsection
24 77(3)—the Minister is satisfied that the action is not being, or
25 will not be, taken in the manner identified; or
- 26 (c) if the first decision was that the action was not a controlled
27 action because of a provision of a bilateral agreement or a
28 declaration under section 33 and a management plan that is a
29 bilaterally accredited management plan for the purposes of
30 the agreement or an accredited management plan for the
31 purposes of the declaration:
- 32 (i) the provision of the agreement or declaration no longer
33 operates in relation to the action; or
-

- 1 (ii) the management plan is no longer in force under a law
2 of the Commonwealth, a State or a self-governing
3 Territory identified in or under the agreement or
4 declaration; or
5 (d) the Minister is requested under section 79 to reconsider the
6 decision.

7 *Reversing decision that provision of Part 3 is not controlling*
8 *provision*

- 9 (2) A provision of Part 3 letting an action be taken if the Minister has
10 decided that a particular provision (the *prohibiting provision*) of
11 that Part is not a controlling provision for the action does not
12 prevent the Minister from acting under subsection (1) to revoke a
13 decision that the prohibiting provision is not a controlling
14 provision for an action and substitute a decision that the prohibiting
15 provision is a controlling provision for the action.

16 *Decision not to be revoked after approval granted or refused or*
17 *action taken*

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

22 *General effect of change of decision*

- 23 (4) When the first decision is revoked and a new decision is
24 substituted for it:
25 (a) any provisions of this Chapter that applied in relation to the
26 action because of the first decision cease to apply in relation
27 to the action; and
28 (b) any provisions of this Chapter that are relevant because of the
29 new decision apply in relation to the action.

Section 79

1 *Change of designation of proponent*

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

7 *Consent to designation*

- 8 (6) The Minister may designate the other person as proponent of the
9 action only if:
10 (a) he or she consents to it and the person proposing to take the
11 action agrees to it; or
12 (b) the other person is the person proposing to take the action.

13 *Effect of change of designated proponent*

- 14 (7) If the Minister revokes the designation of the first proponent and
15 designates the later proponent:
16 (a) the provisions of this Chapter that applied to the first
17 proponent cease to apply to the first proponent in relation to
18 the action but apply to the later proponent; and
19 (b) for the purposes of those provisions the later proponent is
20 taken to have done anything the first proponent did in
21 relation to the action; and
22 (c) for the purposes of those provisions anything done in relation
23 to the first proponent in relation to the action is taken to have
24 been done in relation to the later proponent.

25 **79 Reconsideration of decision on request by a State or Territory**

- 26 (1) This section applies if:
27 (a) the Minister (the *Environment Minister*) makes a decision
28 about whether a provision of Division 1 of Part 3 is a
29 controlling provision for an action proposed to be taken in a
30 State or self-governing Territory; and

1 (b) the person proposing to take the action did not refer the
2 proposal to the Minister with a statement that the person
3 thought the action was a controlled action.

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

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

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

12 Note: Subsection 75(1) provides for decisions about whether the action is a
13 controlled action and what the controlling provisions for the action
14 are.

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

17 (a) reconsider the decision; and

18 (b) either confirm it or revoke it and substitute a new decision
19 for it; and

20 (c) give written notice of the outcome of the reconsideration and
21 reasons for the outcome to:

22 (i) the Minister who requested the reconsideration; and

23 (ii) the person proposing to take the action; and

24 (iii) the designated proponent of the action; and

25 (d) after giving notice as described in paragraph (c), publish
26 notice of the outcome and the reasons for it in accordance
27 with the regulations.

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

Section 80

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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.

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

12

13

(a) an accredited assessment 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;

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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 2A: An action will be in a class of actions declared not to need assessment

20 under this Part only if the action has been assessed in a manner

21 specified in the bilateral agreement.

22 Note 3: Division 3 of Part 5 explains how the operation of a bilateral

23 agreement may be ended or suspended. Also, under section 49,

24 bilateral agreements do not operate in relation to actions in

25 Commonwealth areas, or actions taken by the Commonwealth or a

26 Commonwealth agency, unless they expressly provide that they do.

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

1 **84 This Part does not apply if action covered by declaration**

2 *When this Part does not apply*

- 3 (1) This Part does not apply in relation to an action if:
4 (a) the Minister has declared in writing that actions in a class
5 that includes the action need not be assessed under this Part;
6 and
7 (b) the declaration is in operation.

8 Note: An action will be in a class of actions declared not to need assessment
9 under this Part only if the action has been assessed in a manner
10 specified in the declaration.

11 *Declaration*

- 12 (2) The Minister may declare in writing that actions in a specified
13 class of actions assessed by the Commonwealth or a
14 Commonwealth agency in a specified manner do not require
15 assessment under this Part.

16 *Prerequisites for making a declaration*

- 17 (3) The Minister may make a declaration only if he or she is satisfied
18 that:
19 (a) assessment of an action in the specified manner will include
20 assessment of the impacts the action:
21 (i) has or will have; or
22 (ii) is likely to have;
23 on each matter protected by a provision of Part 3; and
24 (b) the specified manner of assessment meets the standards (if
25 any) prescribed by the regulations; and
26 (c) if the taking of an action assessed in the specified manner
27 must be approved under Part 9, he or she will receive a report
28 including, or accompanied by, enough information about the
29 relevant impacts of the action to let him or her make an
30 informed decision whether or not to approve under Part 9 (for

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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) an accredited assessment process;

10

(b) an assessment on preliminary documentation;

11

(c) a public environment report;

12

(d) an environmental impact statement;

13

(e) a public inquiry.

14

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

15

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

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 an accredited assessment 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; and
6 (e) the guidelines (if any) published under subsection (6).

7 *Accredited assessment process*

- 8 (4) The Minister may decide on an assessment by an accredited
9 assessment process only if the Minister is satisfied that:
10 (a) the process is to be carried out under a law of the
11 Commonwealth, a State or a self-governing Territory; and
12 (b) the process and the law meet the standards (if any) prescribed
13 by the regulations; and
14 (c) the process will ensure that the relevant impacts of the action
15 are adequately assessed; and
16 (d) he or she will receive a report of the outcome of the process
17 that will provide enough information on the relevant impacts
18 of the action to let him or her make an informed decision
19 whether or not to approve under Part 9 (for the purposes of
20 each controlling provision) the taking of the action.

21 *Assessment on preliminary documentation*

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

28 *Guidelines for choosing assessment approach*

- 29 (6) The Minister may publish in the *Gazette* guidelines setting out
30 criteria for deciding which approach must be used for assessing the
31 relevant impacts of an action.

Section 88

1 **88 Timing of decision on assessment approach**

2 *Initial decision*

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

7 (a) the day the Minister decides under Division 2 of Part 7 that
8 the action is a controlled action;

9 (b) the day the Minister is given information relating to the
10 action as required by section 86.

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

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

13 (2) However, subsection (1) has effect as if it referred to 30 business
14 days (instead of 20 business days) if the Minister believes that
15 information provided in response to an invitation under subsection
16 87(2) cannot be considered adequately to make the decision in the
17 time allowed by subsection (1) apart from this subsection.

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

19 (3) To avoid doubt, subsection (2) does not require the Minister to
20 delay making a decision:

21 (a) until information is received in response to an invitation
22 under subsection 87(2); or

23 (b) until 20 business days after the Minister is given information
24 relating to the action under section 86.

25 *Time does not run while further information sought*

26 (4) If the Minister has requested more information under section 89 for
27 the purposes of deciding on the approach to be used for assessment
28 of the relevant impacts of the action, a day is not to be counted as a
29 business day for the purposes of subsection (1) if it is:

- 1 (a) on or after the day the Minister requested the information;
2 and
3 (b) on or before the day on which the Minister receives the last
4 of the information requested.

5 *Running of time may be suspended by agreement*

- 6 (5) The Minister and the designated proponent of the action may agree
7 in writing that days within a period worked out in accordance with
8 the agreement are not to be counted as business days for the
9 purposes of subsection (1). If the agreement is made, those days
10 are not to be counted for the purposes of that subsection.

11 **89 Minister may request more information for making decision**

12 If the Minister believes on reasonable grounds that the information
13 given to the Minister in relation to an action is not enough to allow
14 the Minister to make an informed decision on the approach to be
15 used for assessment of the relevant impacts of the action, the
16 Minister may request the designated proponent to provide specified
17 information relevant to making the decision.

18 **90 Directing an inquiry after starting an assessment**

19 *Application*

- 20 (1) This section applies if:
21 (a) the Minister has made a decision (the *first decision*) under
22 section 87 that the relevant impacts of an action must be
23 assessed by:
24 (i) assessment by public environment report under Division
25 5; or
26 (ii) assessment by environmental impact statement under
27 Division 6; and
28 (b) the designated proponent publishes:
29 (i) a draft report under section 98 (about public
30 environment reports); or
-

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- 1 (ii) a draft statement under section 103 (about
2 environmental impact statements).

3 *Revoking and substituting decision*

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

8 *Effect of revocation and substitution*

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

15 **91 Notice of decision on assessment approach**

- 16 (1) Within 10 business days after making a decision on the approach to
17 be used for assessment of the relevant impacts of an action, the
18 Minister must:
19 (a) give written notice of the decision to:
20 (i) the designated proponent of the action; and
21 (ii) if the action is to be taken in a State or self-governing
22 Territory and a controlling provision for the action is in
23 Division 1 of Part 3 (which deals with matters of
24 national environmental significance)—the appropriate
25 Minister of the State or Territory; and
26 (b) publish notice of the decision in accordance with the
27 regulations.

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

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

- 1 (2) If the Minister decided that the relevant impacts of the action are to
2 be assessed by an accredited assessment process, the written notice
3 and the published notice must specify the process.

Section 92

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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) Within 10 business days of the decision, the Minister must give the
10 designated proponent a written direction:

11 (a) to publish within 10 business days in accordance with the
12 regulations:

13 (i) specified information included in the referral to the
14 Minister of the proposal to take the action; and

15 (ii) specified information that was given to the Minister
16 under section 86; and

17 (iii) specified information relating to the action that was
18 given to the Minister after the referral but before the
19 Minister made the decision under section 87; and

20 (iv) an invitation for anyone to give the designated
21 proponent comments relating to the information or the
22 action within a period of the length specified in the
23 direction; and

24 (b) to give to the Minister a copy and summary of any comments
25 received within the period specified in the invitation.

26 (2) The designated proponent must comply with the direction.

27 **94 Revised documentation**

28 (1) After the period for comment, the designated proponent must give
29 the Minister:

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

12 **95 Assessment report**

13 *Preparation*

- 14 (1) The Secretary must prepare, and give to the Minister, a report
15 relating to the action within 20 business days after:
16 (b) if the designated proponent has received comments in
17 response to an invitation under section 93—the day the
18 Minister accepted from the designated proponent the
19 document described in paragraph 94(1)(a); or
20 (c) if the designated proponent has not received any comments
21 in response to an invitation under section 93—the day the
22 designated proponent gave the Minister the statement to that
23 effect under paragraph 94(1)(b).

24 *Publication*

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

28 *Discretion not to publish*

- 29 (3) However, the Secretary may refuse to provide a copy of so much
30 of the report as:

Section 95

- 1 (a) is an exempt document under the *Freedom of Information*
2 *Act 1982* on the grounds of the security of the
3 Commonwealth or its providing advice to the Minister; or
4 (b) the Secretary is satisfied is commercial-in-confidence.

5 *Commercial-in-confidence*

- 6 (4) The Secretary must not be satisfied that a part of the report is
7 commercial-in-confidence unless a person demonstrates to the
8 Secretary that:
9 (a) release of the information in that part would cause
10 competitive detriment to the person; and
11 (b) the information in that part is not in the public domain; and
12 (c) the information is not required to be disclosed under another
13 law of the Commonwealth, a State or a Territory; and
14 (d) the information is not readily discoverable.

1

2 **Division 5—Public environment reports**

3 **96 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 a public environment report under this
7 Division.

8 **97 Minister must prepare guidelines for draft public environment**
9 **report**

- 10 (1) The Minister must prepare written guidelines for the content of a
11 draft report about the relevant impacts of the action. The Minister
12 must do so:
- 13 (a) within 20 business days of the decision that the relevant
14 impacts of the action must be assessed by a public
15 environment report under this Division; or
 - 16 (b) if the Minister invites a person to comment on a draft of the
17 guidelines within a period specified by the Minister—within
18 20 business days after the end of that period (or the latest of
19 those periods, if there is more than one).
- 20 (2) In preparing the guidelines, the Minister must seek to ensure that
21 the draft report will:
- 22 (a) contain enough information about the action and its relevant
23 impacts to allow the Minister to make an informed decision
24 whether or not to approve under Part 9 (for the purposes of
25 each controlling provision) the taking of the action; and
 - 26 (b) address the matters (if any) prescribed by the regulations.
- 27 (3) The guidelines may also provide for the draft report to include
28 information about other certain and likely impacts of the action if:
- 29 (a) the action is to be taken in a State or self-governing
30 Territory; and

Section 98

- 1 (b) the appropriate Minister of the State or Territory has asked
2 the Minister administering this section to ensure that the draft
3 report includes information about those other impacts to help
4 the State or Territory, or an agency of the State or Territory,
5 make decisions about the action; and
- 6 (c) the action:
- 7 (i) is to be taken by any person for the purposes of trade or
8 commerce between Australia and another country,
9 between 2 States, between a State and a Territory or
10 between 2 Territories or by a constitutional corporation;
11 or
- 12 (ii) is an action whose regulation is appropriate and adapted
13 to give effect to Australia's obligations under an
14 agreement with one or more other countries.
- 15 Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore
16 from a State or the Northern Territory. See section 157.
- 17 (4) Division 2 does not limit:
- 18 (a) subsection (3); or
- 19 (b) section 98 so far as it relates to guidelines prepared in
20 reliance on that subsection.
- 21 (5) In preparing the guidelines, the Minister may:
- 22 (a) invite anyone to comment on a draft of the guidelines within
23 a period specified by the Minister; and
- 24 (b) take account of the comments received (if any).

25 **98 Designated proponent must invite comment on draft public**
26 **environment report**

27 *Designated proponent's obligations*

- 28 (1) The designated proponent of the action must:
- 29 (a) prepare a draft report about the relevant impacts of the action
30 (and any other impacts mentioned under subsection 97(3) in
31 the guidelines for the content of the draft report); and

- 1 (b) obtain the Minister's approval for publication of the draft
2 report; and
3 (c) publish in accordance with the regulations:
4 (i) the draft report; and
5 (ii) an invitation for anyone to give the designated
6 proponent comments relating to the draft report or the
7 action within the period specified in the invitation; and
8 (d) give the Minister a copy and summary of the comments (if
9 any) received within the period specified in the invitation.

10 *Approval of publication of draft report*

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

14 *Period for comment*

- 15 (3) The period specified in the invitation to comment must be the
16 period specified in writing given by the Minister to the designated
17 proponent. The Minister must not specify a period of less than 20
18 business days.

19 **99 Finalising public environment report**

20 *Designated proponent must finalise report*

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

25 *Form of finalised report*

- 26 (2) The designated proponent may give the finalised report to the
27 Minister in the form of:
28 (a) a revised version of the draft report; or
29 (b) the draft report and a supplement to the draft report.
-

Section 100

1 *Refusal to accept finalised report*

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

7 *Publication of finalised report*

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

10 **100 Assessment report**

11 *Preparation*

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

16 *Publication*

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

20 *Discretion not to publish*

- 21 (3) However, the Secretary may refuse to provide a copy of so much
22 of the report as:
23 (a) is an exempt document under the *Freedom of Information*
24 *Act 1982* on the grounds of the security of the
25 Commonwealth or its providing advice to the Minister; or
26 (b) the Secretary is satisfied is commercial-in-confidence.

1

Commercial-in-confidence

2

(4) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:

3

4

5

(a) release of the information in that part would cause competitive detriment to the person; and

6

7

(b) the information in that part is not in the public domain; and

8

9

(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

10

(d) the information is not readily discoverable.

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
5 decided under section 87 that the relevant impacts of the action
6 must be assessed by an environmental impact statement under this
7 Division.

8 **102 Minister must prepare guidelines for draft environmental**
9 **impact statement**

- 10 (1) The Minister must prepare written guidelines for the content of a
11 draft statement about the action and its relevant impacts. The
12 Minister must do so:
- 13 (a) within 20 business days of the decision that the relevant
14 impacts of the decision must be assessed by an
15 environmental impact statement under this Division; or
 - 16 (b) if the Minister invites a person to comment on a draft of the
17 guidelines within a period specified by the Minister—within
18 20 business days after the end of that period (or the latest of
19 those periods, if there is more than one).
- 20 (2) In preparing the guidelines, the Minister must seek to ensure that
21 the draft statement will:
- 22 (a) contain enough information about the action and its relevant
23 impacts to allow the Minister to make an informed decision
24 whether or not to approve under Part 9 (for the purposes of
25 each controlling provision) the taking of the action; and
 - 26 (b) address any matters specified by the regulations.
- 27 (3) The guidelines may also provide for the draft statement to include
28 information about other certain and likely impacts of an action if:
- 29 (a) the action is to be taken in a State or self-governing
30 Territory; and

- 1 (b) the appropriate Minister of the State or Territory has asked
2 the Minister administering this section to ensure that the draft
3 statement includes information about those other impacts to
4 help the State or Territory, or an agency of the State or
5 Territory, make decisions about the action; and
6 (c) the action:
7 (i) is to be taken by any person for the purposes of trade or
8 commerce between Australia and another country,
9 between 2 States, between a State and a Territory or
10 between 2 Territories or by a constitutional corporation;
11 or
12 (ii) is an action whose regulation is appropriate and adapted
13 to give effect to Australia's obligations under an
14 agreement with one or more other countries.
- 15 Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore
16 from a State or the Northern Territory. See section 157.
- 17 (4) Division 2 does not limit:
18 (a) subsection (3); or
19 (b) section 103 so far as it relates to guidelines prepared in
20 reliance on that subsection.
- 21 (5) In preparing the guidelines, the Minister may:
22 (a) invite anyone to comment on a draft of the guidelines within
23 a period specified by the Minister; and
24 (b) take account of the comments (if any) received.

25 **103 Designated proponent must invite comment on draft** 26 **environmental impact statement**

27 *Designated proponent's obligations*

- 28 (1) The designated proponent of the action must:
29 (a) prepare a draft statement about the relevant impacts of the
30 action (and any other impacts mentioned under subsection
31 102(3) in the guidelines for the content of the draft
32 statement); and
-

Section 104

- 1 (b) obtain the Minister's approval for publication of the draft
2 statement; and
3 (c) publish in accordance with the regulations:
4 (i) the draft statement; and
5 (ii) an invitation for anyone to give the designated
6 proponent comments relating to the draft statement or
7 the action within the period specified in the invitation;
8 and
9 (d) give the Minister a copy and summary of the comments (if
10 any) received within the period specified in the invitation.

11 *Approval of publication of draft statement*

- 12 (2) The Minister may only approve the publication of the draft
13 statement if he or she is satisfied that the draft statement
14 adequately addresses the guidelines for the content of the draft
15 statement.

16 *Period for comment*

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

21 **104 Finalising draft environmental impact statement**

22 *Designated proponent must finalise statement*

- 23 (1) After the period specified in the invitation to comment under
24 section 103, the designated proponent must:
25 (a) finalise the draft statement, taking account of the comments
26 (if any) received in response to the invitation; and
27 (b) give the finalised statement to the Minister.

1 *Form of finalised statement*

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

6 *Refusal to accept finalised statement*

- 7 (3) The Minister may refuse to accept the finalised statement if he or
8 she is satisfied on reasonable grounds that it is inadequate for the
9 purposes of making an informed decision on approving under Part
10 9 (for the purposes of each controlling provision) the taking of the
11 action.

12 *Publication of finalised statement*

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

16 **105 Assessment report**

17 *Preparation*

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

22 *Publication*

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

Section 105

1

Discretion not to publish

2

- (3) However, the Secretary may refuse to provide a copy of so much of the report as:

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4

- (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of the security of the

5

6

Commonwealth or its providing advice to the Minister; or

7

- (b) the Secretary is satisfied is commercial-in-confidence.

8

Commercial-in-confidence

9

- (4) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:

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11

12

- (a) release of the information in that part would cause competitive detriment to the person; and

13

14

- (b) the information in that part is not in the public domain; and

15

16

- (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

17

- (d) the information is not readily discoverable.

1

2 **Division 7—Inquiries**

2

3 **Subdivision A—Preliminary**

3

4 **106 Simplified outline**

4

5 The following is a simplified outline of this Division:

5

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

6

7

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

8

9

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

10

11

12 **Subdivision B—Establishment of inquiries**

12

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

13

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:

14

15

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

16

17

18

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

19

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

20

21

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

22

23

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*.

24

25

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

26

27

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; and
12 (b) the appropriate Minister of the State or Territory has asked
13 the Minister administering this section to ensure that the
14 inquiry reports on those other impacts to help the State or
15 Territory, or an agency of the State or Territory, make
16 decisions about the action; and
17 (c) the action:
18 (i) is to be taken by any person for the purposes of trade or
19 commerce between Australia and another country,
20 between 2 States, between a State and a Territory or
21 between 2 Territories or by a constitutional corporation;
22 or
23 (ii) is an action whose regulation is appropriate and adapted
24 to give effect to Australia's obligations under an
25 agreement with one or more other countries.
- 26 Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore
27 from a State or the Northern Territory. See section 157.
- 28 (5) The Minister may also specify in the terms of reference the manner
29 in which the commission is to carry out the inquiry.

108 Publicising inquiry

- 30
31 (1) As soon as practicable, the commission must publish in accordance
32 with the regulations and in any other way it thinks fit:
-

- 1 (a) the terms of reference; and
2 (b) the information relating to the action given to the Minister
3 under this Chapter before the Minister made the decision
4 under Division 3 to use an inquiry to assess the relevant
5 impacts of the action.
- 6 (2) The commission need not publish the information described in
7 paragraph (1)(b) if, before the Minister appointed the commission,
8 the designated proponent of the action published:
9 (a) a draft report under section 98 (which deals with draft public
10 environment reports); or
11 (b) a draft statement under section 103 (which deals with draft
12 environmental impact statements).
- 13 However, in this case the commission must publish as described in
14 subsection (1) notice of the fact that the draft report or draft
15 statement has already been published.

16 **Subdivision C—Conduct of inquiries**

17 **109 Procedure of inquiries**

- 18 (1) A commission must comply with the terms of reference in
19 conducting its inquiry.
- 20 (2) Subject to this Division, a commission:
21 (a) may determine the procedure to be followed in its inquiry;
22 and
23 (b) is not subject to any directions by an employee of the
24 Commonwealth or by a Commonwealth agency; and
25 (c) is not bound by the rules of evidence.

26 **110 Inquiry to be public**

- 27 (1) A hearing held as part of an inquiry must be conducted in public,
28 except so far as the commission directs otherwise.

Section 111

- 1 (2) The commission must make publicly available (in any way the
2 commission thinks fit) the content of any submission or evidence
3 given to the commission in writing, except so far as the
4 commission directs otherwise.
- 5 (3) If the commission believes that it is desirable in the public interest,
6 the commission may:
- 7 (a) give directions that all or part of the inquiry be held in
8 private, specifying the persons who may be present; and
9 (b) give directions prohibiting or restricting the publication of all
10 or specified passages of submissions or evidence given to the
11 commission orally or in writing.

12 **111 Calling witnesses**

13 *Summoning witnesses*

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

18 *Failure of witness to attend*

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

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

1 *Offence*

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

5 *Allowances for witnesses*

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

10 **112 Dealing with witnesses**

11 *Power to administer oath or affirmation*

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

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

17 *Refusal to be sworn or to answer questions*

18 (2) A person appearing as a witness at an inquiry by a commission
19 must not:

20 (a) refuse or fail to be sworn or to make an affirmation; or

21 (b) refuse or fail to answer a question that the person is required
22 to answer by the commissioner (or the commissioner
23 presiding at the inquiry if there is more than one
24 commissioner for the inquiry); or

25 (c) refuse or fail to produce a document that the person was
26 required to produce by a summons served on the person.

Section 112

1

Offence

2

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

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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.

8

No privilege against self-incrimination

9

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

10

11

12

13

Answers and documents cannot be used in criminal proceedings

14

- (5) However, none of the following is admissible in evidence in criminal proceedings against the individual (except proceedings under section 491):

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16

17

(a) the answer to the question;

18

(b) the production of the document;

19

(c) any information, document or thing obtained as a direct or indirect consequence of answering the question or producing the document.

20

21

22

Sworn witnesses may also give written evidence on oath

23

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

24

25

26

1 **113 Dealing with documents given to commission**

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

- 3 (1) A commissioner, or a person assisting a commission and
4 authorised by a commissioner to do so, may:
5 (a) inspect a document produced or given to the commission;
6 and
7 (b) make a copy of, or take an extract from, the document.

8 *Keeping documents produced or given at inquiry*

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

11 **114 Inspections of land, buildings and places**

- 12 (1) If a commissioner, or a person authorised by a commissioner,
13 enters any land, building or place by consent as described in
14 section 115 or under a warrant issued under section 116, the
15 commissioner or person may:

- 16 (a) inspect the land, building or place; and
17 (b) inspect any material on the land, or on or in the building or
18 place.

- 19 (2) However, the commissioner or authorised person may not make the
20 inspection if:

- 21 (a) the person occupying or in charge of the land, building or
22 place asks the commissioner or authorised person to produce
23 his or her identity card or other written evidence of his or her
24 identity; and
25 (b) the commissioner or person does not produce it.

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

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

Section 115

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

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

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

10 **115 Entering premises by consent**

11 (1) A commissioner, or a person authorised by a commissioner, may
12 enter land, a building or a place at any reasonable time for any
13 reasonable purpose of an inquiry, if the person (the *occupant*)
14 occupying or in charge of the land, building or place consents.

15 (2) Before obtaining the consent, the commissioner or authorised
16 person must inform the occupant that the occupant may refuse to
17 give consent.

18 (3) The commissioner or authorised person may not enter the land,
19 building or place if:

20 (a) the occupant asks the commissioner or authorised person to
21 produce his or her identity card or other written evidence of
22 his or her identity; and

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

24 (4) An entry by a commissioner or authorised person with the
25 occupant's consent is not lawful if the occupant's consent was not
26 voluntary.

27 **116 Entering premises under warrant**

28 (1) A commissioner may apply to a magistrate for a warrant
29 authorising the commissioner or a person authorised by the
30 commissioner to enter any land, building or place if the
31 commissioner has reason to believe that it is necessary or desirable

Section 117

1 for the purposes of an inquiry for the commissioner or person to
2 enter the land, building or place for the purposes of the inquiry.

3 Note: Section 117 allows applications for warrants to be made by telephone.

4 (2) If the magistrate is satisfied by information on oath or affirmation
5 that the issue of the warrant is reasonably required for the purposes
6 of the inquiry, he or she may grant a warrant authorising the person
7 named in the warrant to enter the land, building or place for the
8 purposes specified in the warrant.

9 (3) The magistrate must specify in the warrant the date after which the
10 warrant ceases to have effect.

11 (4) The person named in a warrant may not enter the land, building or
12 place if:

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

17 (b) the person named in the warrant does not produce it.

18 **117 Warrants by telephone or other electronic means**

19 *Application*

20 (1) A commissioner may apply to a magistrate for a warrant by
21 telephone, telex, facsimile or other electronic means:

22 (a) in an urgent case; or

23 (b) if the delay that would occur if an application were made in
24 person would frustrate the effective execution of the warrant.

25 *Voice communication*

26 (2) The magistrate may require communication by voice to the extent
27 that is practicable in the circumstances.

Section 117

1 *Information*

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

6 *Issue of warrant*

- 7 (4) The magistrate may complete and sign the same form of warrant
8 that would be issued under section 116 if, after considering the
9 information and having received and considered any further
10 information he or she required, the magistrate is satisfied that:
11 (a) a warrant in the terms of the application should be issued
12 urgently; or
13 (b) the delay that would occur if an application were made in
14 person would frustrate the effective execution of the warrant.

15 *Notification*

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

20 *Form of warrant*

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

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

- 26 (7) The applicant must, not later than the day after the day of expiry of
27 the warrant or the day after the day on which the warrant was
28 executed, whichever is the earlier, give or transmit to the
29 magistrate:
30 (a) the form of warrant completed by the applicant; and
-

Section 118

1 (b) if the information referred to in subsection (3) was not sworn
2 or affirmed—that information duly sworn or affirmed.

3 *Attachment*

4 (8) The magistrate must 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 **118 Identity cards**

16 (1) The Minister may cause to be issued to a commissioner or a person
17 authorised by a commissioner an identity card:
18 (a) in a form approved by the Minister; and
19 (b) containing a recent photograph of the person to whom it is
20 issued.

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

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

26 Penalty: 1 penalty unit.

Section 119

1 **119 Contempt**

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

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

6 (b) the person knows the other person is a commissioner
7 exercising the powers or performing the functions or duties
8 of a commissioner.

9 (2) A person is guilty of an offence punishable on conviction by a fine
10 of not more than 30 penalty units if:

11 (a) the person creates a disturbance, or takes part in creating or
12 continuing a disturbance, in or near a place; and

13 (b) the person knows the place is a place where a commission is
14 holding an inquiry.

15 (3) A person must not:

16 (a) interrupt an inquiry by a commission; or

17 (b) do any other act or thing that would, if a commission were a
18 court of record, constitute a contempt of that court.

19 Penalty: 30 penalty units.

20 **120 Protection of commissioners and witnesses**

21 *Protection of commissioners*

22 (1) In performing his or her duties as a commissioner, a commissioner
23 has the same protection and immunity as a Justice of the High
24 Court.

25 *Rights and obligations of witnesses*

26 (2) A person appearing before a commission as a witness at an inquiry:

27 (a) has the same protection as a witness in proceedings in the
28 High Court; and

Section 120

1 (b) is subject to the same liabilities in any civil or criminal
2 proceedings as such a witness (in addition to the penalties
3 provided by this Division).

4 *Interfering with witness is an offence*

- 5 (3) A person must not:
6 (a) use violence to or inflict injury on; or
7 (b) cause or procure violence, damage, loss or disadvantage to;
8 or
9 (c) cause or procure the punishment of;
10 another person (the *witness*) because the witness will appear or did
11 appear as a witness at an inquiry or because of any submission or
12 evidence the witness gave to a commission.

13 *Interference with a witness' employment*

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

18 *Interference with employee who proposes to give evidence*

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

23 *Offences*

- 24 (6) A person who contravenes subsection (3), (4) or (5) is guilty of an
25 offence punishable on conviction by imprisonment for not more
26 than 6 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.

Section 121

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Burden of proof in proceedings relating to witness

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(7) In proceedings arising out of subsection (4), the employer has the burden of proving that the employee was not dismissed or prejudiced because the employee appeared as a witness or gave a submission or evidence at an inquiry by a commission, if it is established that:

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(a) the employee was dismissed from, or prejudiced in, his or her employment; and

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

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Burden of proof in proceedings relating to employee proposing to give evidence

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

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(a) the employee was dismissed, prejudiced or threatened; and

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(b) the employee made the proposal before the employee was dismissed, prejudiced or threatened.

23

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

24

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

25

Subdivision D—Inquiry reports

26

121 Timing of report

27

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

28

1 **122 Publication of report**

- 2 (1) After reporting to the Minister, the commission must publish the
3 report in accordance with the regulations.
- 4 (2) However, the commission must not publish the report so far as it
5 sets out any submission or evidence whose publication the
6 commission prohibited or restricted by a direction under paragraph
7 110(3)(b).

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

9 **123 Basis of appointment**

- 10 (1) A commissioner is to be appointed on a full-time basis or a
11 part-time basis.
- 12 (2) A commissioner appointed on a full-time basis must not engage in
13 paid employment outside the duties of the commissioner’s office
14 without the Minister’s approval.
- 15 (3) A commissioner appointed on a part-time basis must not engage in
16 any paid employment that, in the Minister’s opinion, conflicts or
17 may conflict with the proper performance of the commissioner’s
18 duties.

19 **124 Remuneration**

- 20 (1) A commissioner who is not appointed or employed under the
21 *Public Service Act 1922* is to be paid the remuneration that is
22 determined by the Remuneration Tribunal. If no determination of
23 that remuneration is in operation, the commissioner is to be paid
24 the remuneration that is prescribed.
- 25 (2) A commissioner is to be paid the allowances that are prescribed.
- 26 (3) This section has effect subject to the *Remuneration Tribunal Act*
27 *1973*.

Section 125

1 **125 Leave of absence**

- 2 (1) Subject to section 87E of the *Public Service Act 1922*, a
3 commissioner appointed on a full-time basis has the recreation
4 leave entitlements that are determined by the Remuneration
5 Tribunal.
- 6 (2) The Minister may grant a commissioner appointed on a full-time
7 basis leave of absence, other than recreation leave, on the terms
8 and conditions as to remuneration or otherwise that the Minister
9 determines.
- 10 (3) The commissioner (the *presiding commissioner*) appointed to
11 preside at an inquiry may grant leave of absence to any other
12 commissioner for the inquiry on the terms and conditions that the
13 presiding commissioner determines, if the other commissioner has
14 been appointed on a part-time basis.

15 **126 Resignation**

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

18 **127 Termination of appointment**

- 19 (1) The Minister may terminate a commissioner's appointment for
20 misbehaviour or physical or mental incapacity.
- 21 (2) The Minister must terminate the appointment of a commissioner if:
22 (a) the commissioner:
23 (i) becomes bankrupt; or
24 (ii) applies to take the benefit of any law for the relief of
25 bankrupt or insolvent debtors; or
26 (iii) compounds with his or her creditors; or
27 (iv) makes an assignment of his or her remuneration for the
28 benefit of his or her creditors; or
29 (b) the commissioner fails, without reasonable excuse, to comply
30 with section 128 (about disclosure of interests); or
-

Section 128

- 1 (c) the Minister becomes aware that the commissioner has a
2 pecuniary or other interest in the subject-matter of the inquiry
3 and the Minister considers that the commissioner should not
4 continue to participate in the conduct of the inquiry.
- 5 (3) The Minister must terminate the appointment of a commissioner on
6 a full-time basis if:
- 7 (a) the commissioner is absent, except on leave of absence, for
8 14 consecutive days or for 28 days in any 12 months; or
9 (b) the commissioner engages, except with the Minister's
10 approval, in paid employment outside the duties of his or her
11 office.
- 12 (4) The Minister must terminate the appointment of a commissioner on
13 a part-time basis if:
- 14 (a) the commissioner is absent, except on leave of absence, from
15 3 consecutive meetings of his or her commission (if it
16 consists of 2 or more commissioners); or
17 (b) the commissioner engages in paid employment that, in the
18 Minister's opinion, conflicts or could conflict with the proper
19 performance of the duties of his or her office.

20 **128 Disclosure of interests**

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

Section 129

1 **129 Other terms and conditions**

2 A commissioner holds office on the terms and conditions (if any)
3 in relation to matters not covered by this Act that are determined
4 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) Within whichever of the following periods is relevant, the Minister
8 must decide for the purposes of each controlling provision whether
9 or not to approve the taking of a controlled action:

10 (a) 30 business days, or such longer period as the Minister
11 specifies in writing, if the action is the subject of an
12 assessment report;

13 (b) 40 business days, or such longer period as the Minister
14 specifies in writing, if a commission has conducted an
15 inquiry relating to the action.

16 *Start of period—basic rule*

17 (1A) The relevant period starts on the first business day after the day the
18 Minister receives the assessment report or the report of the
19 commission (as appropriate).

20 *Start of period—certain actions in States and Territories*

21 (1B) However, if the action is to be taken in a State or self-governing
22 Territory and is covered by subsection (1C), the relevant period
23 starts on the later of the following days:

24 (a) the day worked out under subsection (1A);

25 (b) the first business day after the day the Minister receives from
26 the State or self-governing Territory a notice:

27 (i) stating that the certain and likely impacts of the action
28 on things other than matters protected by the controlling

Section 130

1 provisions for the action have been assessed to the
2 greatest extent practicable; and

3 (ii) explaining how they have been assessed.

4 Note 1: This means that the Minister cannot grant an approval until he or she
5 has received notice from a State or Territory as described in paragraph
6 (1B)(b).

7 Note 2: Subsection (1B) also applies in relation to actions to be taken in an
8 area offshore from a State or the Northern Territory. See section 157.

9 *Actions to which subsection (1B) applies*

10 (1C) Subsection (1B) applies to an action only if it:

11 (a) is to be taken by any person for the purposes of trade or
12 commerce between Australia and another country, between 2
13 States, between a State and a Territory or between 2
14 Territories or by a constitutional corporation; or

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

18 *Start of period—actions in 2 or more jurisdictions*

19 (1D) If the action is to be taken in more than one State or self-governing
20 Territory, the relevant period does not start until after the last day
21 on which the Minister receives from one of those States or
22 Territories a notice described in paragraph (1B)(b).

23 *Exception for certain actions*

24 (1E) Subsection (1B) does not apply if:

25 (a) the action:

26 (i) is a nuclear action; or

27 (ii) is to be taken in a Commonwealth marine area; or

28 (iii) is to be taken on Commonwealth land; or

29 (iv) is to be taken by the Commonwealth or a
30 Commonwealth agency; and

- 1 (b) the relevant impacts of the action have been assessed under
2 Part 8.

3 *What is an assessment report?*

- 4 (2) An **assessment report** is a report given to the Minister as described
5 in:
6 (a) subsection 47(4) (about assessments under a bilateral
7 agreement); or
8 (b) subsection 84(3) (about assessments in a manner specified in
9 a declaration); or
10 (c) subsection 87(4) (about assessments by accredited
11 assessment processes); or
12 (d) subsection 95(1) (about assessments on preliminary
13 documentation); or
14 (e) subsection 100(1) (about public environment reports); or
15 (f) subsection 105(1) (about environmental impact statements).

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

- 17 (3) The Minister may specify a longer period for the purposes of
18 paragraph (1)(a) or (b) only if:
19 (a) the Minister has received comments about a proposed
20 decision from another Minister in accordance with an
21 invitation under section 131; and
22 (b) the Minister is satisfied that it would not be practicable to
23 consider them adequately and make a decision within the
24 period that would apply if the longer period were not
25 specified.

26 *Notice of extension of time*

- 27 (4) If the Minister specifies a longer period for the purposes of
28 paragraph (1)(a) or (b), he or she must:
29 (a) give a copy of the specification to the person proposing to
30 take the action; and
31 (b) publish the specification in accordance with the regulations.
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1 *Time does not run while further information is sought*

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

6 (a) on or after the day the Minister requested the information;
7 and

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

10 **131 Inviting comments from other Ministers before decision**

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

14 (a) inform any other Minister whom the Environment Minister
15 believes has administrative responsibilities relating to the
16 action of the decision the Environment Minister proposes to
17 make; and

18 (b) invite the other Minister to give the Environment Minister
19 comments on the proposed decision within 10 business days.

20 (2) A Minister invited to comment may make comments that:

21 (a) relate to economic and social matters relating to the action;
22 and

23 (b) may be considered by the Environment Minister consistently
24 with the principles of ecologically sustainable development.

25 This does not limit the comments such a Minister may give.

26 **132 Requesting further information for approval decision**

27 If the Minister believes on reasonable grounds that he or she does
28 not have enough information to make an informed decision
29 whether or not to approve for the purposes of a controlling
30 provision the taking of an action, the Minister may request any of

1 the following to provide specified information relevant to making
2 the decision:

- 3 (a) the person proposing to take the action;
4 (b) the designated proponent of the action;
5 (c) if a commission has conducted an inquiry under Division 7 of
6 Part 8 relating to the action—the commission.

7 **133 Grant of approval**

8 *Approval*

- 9 (1) After receiving an assessment report relating to a controlled action,
10 or the report of a commission that has conducted an inquiry
11 relating to a controlled action, the Minister may approve for the
12 purposes of a controlling provision the taking of the action by a
13 person.

14 *Content of approval*

- 15 (2) An approval must:
16 (a) be in writing; and
17 (b) specify the action that may be taken; and
18 (c) name the person who may take the action; and
19 (d) specify each provision of Part 3 for which the approval has
20 effect; and
21 (e) specify the period for which the approval has effect; and
22 (f) set out any conditions attached to the approval.

23 *Notice of approval*

- 24 (3) The Minister must:
25 (a) give a copy of the approval to the person; and
26 (b) provide a copy of the approval to a person who asks for it
27 (either free or for a reasonable charge determined by the
28 Minister).

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1 *Limit on publication of approval*

2 (4) However, the Minister must not provide under subsection (3) a
3 copy of so much of the approval as:

- 4 (a) is an exempt document under the *Freedom of Information*
5 *Act 1982* on the grounds of commercial confidence; or
6 (b) the Minister believes it is in the national interest not to
7 provide.

8 The Minister may consider the defence or security of the
9 Commonwealth when determining what is in the national interest.
10 This does not limit the matters the Minister may consider.

11 *Circumstances in which approval must not be granted*

12 (5) The Minister must not approve for the purposes of a provision of
13 Part 3 the taking in a State or self-governing Territory of an action
14 that is covered by subsection (6) before the Minister receives from
15 the State or Territory a notice described in paragraph 130(1B)(b).
16 This does not apply if:

- 17 (a) the action:
18 (i) is a nuclear action; or
19 (ii) is to be taken in a Commonwealth marine area; or
20 (iii) is to be taken on Commonwealth land; or
21 (iv) is to be taken by the Commonwealth or a
22 Commonwealth agency; and
23 (b) the relevant impacts of the action have been assessed under
24 Part 8.

25 Note: Subsection (5) also applies in relation to actions to be taken in an area
26 offshore from a State or the Northern Territory. See section 157.

27 *Actions to which subsection (5) applies*

- 28 (6) Subsection (5) applies to an action only if it:
29 (a) is to be taken by any person for the purposes of trade or
30 commerce between Australia and another country, between 2
31 States, between a State and a Territory or between 2
32 Territories or by a constitutional corporation; or
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- 1 (b) is an action whose regulation is appropriate and adapted to
2 give effect to Australia's obligations under an agreement
3 with one or more other countries.

4 *Notice of refusal of approval*

- 5 (7) If the Minister refuses to approve for the purposes of a controlling
6 provision the taking of an action by the person who proposed to
7 take the action, the Minister must give the person notice of the
8 refusal.

9 Note: Under section 13 of the *Administrative Decisions (Judicial Review)*
10 *Act 1977*, the person may request reasons for the refusal, and the
11 Minister must give them.

12 **134 Attaching conditions to approval**

13 *Generally*

- 14 (1) The Minister may attach a condition to the approval of the action if
15 he or she is satisfied that the condition is necessary or convenient
16 for:
17 (a) protecting a matter protected by a provision of Part 3 for
18 which the approval has effect; or
19 (b) repairing or mitigating damage to a matter protected by a
20 provision of Part 3 for which the approval has effect (whether
21 or not the damage has been, will be or is likely to be caused
22 by the action).

23 *Conditions to protect matters from the approved action*

- 24 (2) The Minister may attach a condition to the approval of the action if
25 he or she is satisfied that the condition is necessary or convenient
26 for:
27 (a) protecting from the action any matter protected by a
28 provision of Part 3 for which the approval has effect; or
29 (b) repairing or mitigating damage that may or will be, or has
30 been, caused by the action to any matter protected by a
31 provision of Part 3 for which the approval has effect.
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This subsection does not limit subsection (1).

Other conditions that may be attached to approval

- (3) The conditions that may be attached to an approval include:
- (a) conditions relating to any security to be given by the person by bond, guarantee or cash deposit:
 - (i) to comply with this Act and the regulations; and
 - (ii) not to contravene a condition attached to the approval; and
 - (iii) to meet any liability of the person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and
 - (b) conditions requiring the person to insure against any specified liability of the person to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
 - (c) conditions requiring the person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and
 - (d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from the person whose taking of the action is approved; and
 - (e) conditions requiring the preparation, submission for approval by the Minister, and implementation of a plan for managing the impacts of the approved action on a matter protected by a provision of Part 3 for which the approval has effect such as a plan for conserving habitat of a species or ecological community; and

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- 1 (f) conditions requiring specified environmental monitoring or
2 testing to be carried out; and
3 (g) conditions requiring compliance with a specified industry
4 standard or code of practice.
5 This subsection does not limit the kinds of conditions that may be
6 attached to an approval.

7 *Considerations in deciding on condition*

- 8 (4) In deciding whether to attach a condition to an approval, the
9 Minister must consider:
10 (a) any relevant conditions that have been imposed under a law
11 of a State or self-governing Territory or another law of the
12 Commonwealth on the taking of the action; and
13 (aa) information provided by the person proposing to take the
14 action or by the designated proponent of the action; and
15 (b) the desirability of ensuring as far as practicable that the
16 condition is a cost-effective means for the Commonwealth
17 and the person taking the action to achieve the object of the
18 condition.

19 *Validity of decision*

- 20 (5) A failure to consider information as required by paragraph (4)(aa)
21 does not invalidate a decision about attaching a condition to the
22 approval.

23 **135 Certain approvals and conditions must not give preference**

- 24 (1) This section deals with the approval:
25 (a) for the purposes of section 21 or 22A of a nuclear action:
26 (i) by a person for the purposes of trade or commerce
27 between Australia and another country or between 2
28 States; or
29 (ii) by a constitutional corporation; or
30 (b) for the purposes of section 25 of an action that is prescribed
31 for the purposes of subsection 25(1) and is taken:
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- 1 (i) by a person for the purposes of trade or commerce
2 between Australia and another country or between 2
3 States; or
4 (ii) by a constitutional corporation.
- 5 (2) The Minister must not grant the approval, or attach a condition to
6 the approval, that has the effect of giving preference (within the
7 meaning of section 99 of the Constitution) to one State or part of a
8 State over another State or part of a State.

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

10 **136 General considerations**

11 *Mandatory considerations*

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

20 *Factors to be taken into account*

- 21 (2) In considering those matters, the Minister must take into account:
22 (a) the principles of ecologically sustainable development; and
23 (b) the assessment report relating to the action; and
24 (c) if the action was assessed under Division 5 or 6 of Part 8
25 (which deal with public environment reports and
26 environmental impact statements)—the report or statement
27 about the action finalised by the designated proponent; and
28 (d) if an inquiry was conducted under Division 7 of Part 8 in
29 relation to the action—the report of the commissioners; and

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- 1 (e) any other information the Minister has on the relevant
2 impacts of the action (including information in a report on
3 the impacts of actions taken under a policy, plan or program
4 under which the action is to be taken that was given to the
5 Minister under an agreement under Part 10 (about strategic
6 assessments)); and
7 (f) any relevant comments given to the Minister by another
8 Minister in accordance with an invitation under section 131.

9 *Person's environmental history*

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

15 *Minister not to consider other matters*

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

20 **137 Requirements for decisions about World Heritage**

21 In deciding whether or not to approve for the purposes of section
22 12 or 15A the taking of an action, and what conditions to attach to
23 such an approval, the Minister must not act inconsistently with
24 Australia's obligations under the World Heritage Convention.

25 **138 Requirements for decisions about Ramsar wetlands**

26 In deciding whether or not to approve for the purposes of section
27 16 or 17B the taking of an action, and what conditions to attach to
28 such an approval, the Minister must not act inconsistently with
29 Australia's obligations under the Ramsar Convention.

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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.

13 **142A Offence of breaching conditions on approval**

- 14 (1) A person whose taking of an action has been approved under this
15 Part is guilty of an offence if:
16 (a) the person takes an action or omits to take an action; and
17 (b) the action or omission contravenes a condition attached to the
18 approval and the person is reckless as to that fact; and
19 (c) the action or omission results or will result in a significant
20 impact on a matter protected by a provision of Part 3.

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

23 (2) Strict liability applies to paragraph (1)(c).

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

- 25 (3) A person whose taking of an action has been approved under this
26 Part is guilty of an offence if:
27 (a) the person takes an action or omits to take an action; and
28 (b) the action or omission contravenes a condition attached to the
29 approval and the person is reckless as to that fact; and
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Part 9 Approval of actions

Division 2 Requirement to comply with conditions

Section 142A

1 (c) the action or omission is likely to have a significant impact
2 on a matter protected by a provision of Part 3 and the person
3 is reckless as to that fact.

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

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

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

12 Note 2: An executive officer of a body corporate convicted of an offence
13 against this section may also be guilty of an offence against section
14 495.

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.

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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 Note: If the person is not satisfied with changed conditions attached to the
13 approval of the person's action, he or she can ask the Minister to
14 reverse the change by making another change to the conditions under
15 this section.

16 (6) However, the Minister must not publish so much of the instrument
17 as:

18 (a) is an exempt document under the *Freedom of Information*
19 *Act 1982* on the grounds of commercial confidence; or

20 (b) the Minister believes it is in the national interest not to
21 publish.

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

25 **144 Suspension of approval**

26 (1) The Minister may, by written instrument, suspend the effect of an
27 approval under this Part for the purposes of a specified provision of
28 Part 3 for a specified period (which must not start before the day
29 on which the instrument is made) if the Minister believes on
30 reasonable grounds that:

31 (a) a significant impact on the matter protected by the provision
32 has occurred because of the contravention of a condition
33 attached to the approval; or

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

19 **145 Revocation of approval**

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

Section 145A

- 1 (b) the approval would not have been granted if information that
2 the Minister has about that impact had been available when
3 the decision to approve the action was made.
- 4 (2A) The Minister may, by written instrument, revoke an approval under
5 this Part of an action for the purposes of a specified provision of
6 Part 3 if he or she believes that:
- 7 (a) the impacts that the action has had, will have or is likely to
8 have were not accurately identified in information available
9 to the Minister when the approval was given; and
- 10 (b) the information did not accurately identify those impacts
11 because of negligence or a deliberate act or omission by the
12 person proposing to take the action or the designated
13 proponent of the action.
- 14 (3) In deciding whether or not to revoke an approval of the taking of
15 an action by a person, the Minister may have regard to the person's
16 history in relation to environmental matters.
- 17 (4) The revocation takes effect on the day specified in the instrument.
18 The Minister must not specify a day earlier than the day the
19 instrument is made.
- 20 (5) As soon as possible after making the instrument, the Minister must:
- 21 (a) give a copy of it to the person to whose action the approval
22 related; and
- 23 (b) publish the instrument in accordance with the regulations.

145A Reinstating suspended or revoked approval

Application

- 25
- 26 (1) This section applies if the Minister has, by written instrument:
- 27 (a) suspended an approval under this Part of the taking of an
28 action by a person; or
- 29 (b) revoked an approval under this Part of the taking of an action
30 by a person.
-

Section 145A

1 *Requesting reinstatement of approval*

- 2 (2) Within 2 months after receiving a copy of the instrument under this
3 Division, the person may request the Minister to reinstate the
4 approval.

5 *Deciding whether to reinstate approval*

- 6 (3) Within 20 business days of receiving the request, the Minister must
7 decide whether or not to reinstate the approval.

8 *Considerations for decision*

- 9 (4) Subdivision B of Division 1 applies to the decision whether or not
10 to reinstate the approval in the same way as it applies to a decision
11 whether or not to approve the taking of an action.

12 *Extra time for decision*

- 13 (5) A day is not to be counted for the purposes of subsection (3) if:
14 (a) the Minister and the person agree in writing that it should not
15 be counted; or
16 (b) the Minister has requested the person to provide information
17 under subsection (6) and the day is on or before the day on
18 which the Minister receives the last of the information
19 requested.

20 *Requesting information for decision*

- 21 (6) If the Minister believes on reasonable grounds that he or she does
22 not have enough information to make an informed decision
23 whether or not to reinstate the approval, the Minister may request
24 the person to provide specified information relevant to making the
25 decision.

26 *Reversal of decision to suspend or revoke approval*

- 27 (7) If the Minister decides to reinstate the approval, it and any
28 conditions attached to it immediately before the suspension or

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Section 145A

1 revocation have effect on and after the day of the decision (subject
2 to any future suspension or revocation under this Division).

3 *Notice of decision about reversal*

4 (8) The Minister must:

- 5 (a) give the person written notice of the Minister's decision; and
6 (b) publish notice of the decision in accordance with the
7 regulations.

1

2 **Division 4—Transfer of approvals**

3 **145B Transfer with Minister's consent**

4 *Transfer by written agreement*

- 5 (1) A person (the *transferor*) whose taking of an action has been
6 approved under this Part for the purposes of a provision of Part 3
7 may transfer the approval to another person (the *transferee*) by
8 written agreement, subject to the Minister's consent.

9 *Transfer ineffective until Minister consents*

- 10 (2) The transfer does not have effect for the purposes of this Act until
11 the Minister consents in writing to the transfer. To avoid doubt, the
12 Minister's consent to a transfer cannot take effect before the
13 Minister gives the consent.

14 *Effect of consent*

- 15 (3) If the Minister consents to the transfer:
16 (a) this Act (except Division 3) operates in relation to the
17 transferor as if the Minister had revoked the approval when
18 the Minister's consent took effect; and
19 (b) this Act operates in relation to the transferee as if, when the
20 Minister's consent to the transfer took effect, he or she:
21 (i) had approved under this Part for the purposes of the
22 provision of Part 3 the taking of the action by the
23 transferee; and
24 (ii) had attached to the approval the conditions that were
25 attached to the approval of the taking of the action by
26 the transferor.

27 *Considerations in deciding whether to consent*

- 28 (4) In deciding whether or not to consent to the transfer, the Minister
29 may consider:
-

Chapter 4 Environmental assessments and approvals

Division 4 Transfer of approvals

Division 3 Variation of conditions and suspension and revocation of approvals

Section 145B

- 1 (a) whether the transferee would be a suitable person to be
2 granted the approval, having regard to the transferee's history
3 in relation to environmental matters; and
4 (b) whether the transferee can comply with the conditions
5 attached to the approval.

6 *Giving copies of consents to transferor and transferee*

- 7 (5) The Minister must give the transferor and the transferee a copy of
8 the consent each.

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 (1A) The agreement may also provide for the assessment of other certain
11 and likely impacts of actions under the policy, plan or program if:

12 (a) the actions are to be taken in a State or self-governing
13 Territory; and

14 (b) the appropriate Minister of the State or Territory has asked
15 the Minister administering this section to ensure that the
16 assessment deal with those other impacts to help the State or
17 Territory, or an agency of the State or Territory, make
18 decisions about the actions; and

19 (c) the actions:

20 (i) are to be taken by any person for the purposes of trade
21 or commerce between Australia and another country,
22 between 2 States, between a State and a Territory or
23 between 2 Territories or by a constitutional corporation;
24 or

25 (ii) are actions whose regulation is appropriate and adapted
26 to give effect to Australia's obligation under an
27 agreement with one or more other countries.

28 Note: Paragraph (1A)(a) also applies to actions to be taken in an area
29 offshore from a State or the Northern Territory. See section 157.

30 (2) The agreement must provide for:

Chapter 4 Environmental assessments and approvals

Part 10 Strategic assessments

Division 1 Strategic assessments generally

Section 146

- 1 (aa) the preparation of draft terms of reference for a report on the
2 impacts to which the agreement relates; and
- 3 (ab) the publication of the draft terms of reference for public
4 comment for a period of at least 28 days that is specified by
5 the Minister; and
- 6 (ac) the finalisation of the terms of reference, to the Minister's
7 satisfaction, taking into account the comments (if any)
8 received on the draft terms of reference; and
- 9 (a) the preparation of a draft of a report on the impacts to which
10 the agreement relates; and
- 11 (b) the publication of the draft report for public comment for a
12 period of at least 28 days that is specified by the Minister;
13 and
- 14 (c) the finalisation of the report, taking into account the
15 comments (if any) received after publication of the draft
16 report; and
- 17 (d) the provision of the report to the Minister; and
- 18 (e) the making of recommendations by the Minister to the person
19 about the policy, plan or program (including
20 recommendations for modification of the policy, plan or
21 program); and
- 22 (f) the endorsement of the policy, plan or program by the
23 Minister if he or she is satisfied that:
- 24 (i) the report adequately addresses the impacts to which the
25 agreement relates; and
- 26 (ii) either the recommended modifications of the policy,
27 plan or program (if any) have been made or any
28 modifications having the same effect have been made;
29 and
- 30 (g) any other matter prescribed by the regulations.
- 31 Note 1: If the relevant impacts of actions under a policy, plan or program are
32 assessed under an agreement under this Part, the Minister may decide
33 on a less onerous approach for an assessment relating to an individual
34 action under the policy, plan or program. See section 87.
- 35 Note 2: If the Minister endorses a policy, plan or program embodied in a
36 management plan in force under a law, he or she may declare under
-

- 1 section 33, or make a bilateral agreement declaring, that actions
2 approved in accordance with the management plan do not need
3 approval for the purposes of a specified provision of Part 3.
- 4 (3) If the agreement relates to actions to be taken in a State or
5 self-governing Territory, the Minister must tell the appropriate
6 Minister of the State or Territory:
- 7 (a) that the agreement has been made; and
8 (b) what those actions are (in general terms).

Section 147

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 or 24A (which protect the
26 marine environment).

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.

Section 150

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.

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

Section 153

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

- 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:

- 6 (a) make a declaration under section 33 that actions approved in
7 accordance with the accredited management plan consisting
8 of the endorsed plan or policies do not require an approval
9 under Part 9 for the purposes of subsection 23(1), (2) or (3)
10 or subsection 24A(1), (2), (3), (4), (5) or (6); and
11 (b) accredit under section 33 the endorsed plan or policies as an
12 accredited management plan for the purposes of the
13 declaration.

14 Note: The declaration and accreditation will allow actions that would
15 otherwise be prohibited by sections 23 and 24A to be taken without
16 approval if they are taken in accordance with the accredited
17 management plan. See section 32.

18 **154 This Division does not limit Division 1**

19 This Division does not limit Division 1.

Section 155

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.

1 **156 General rules about time limits**

2 (1) If this Chapter specifies a time limit in business days in relation to
3 a controlled action (or an action that the Minister believes may be
4 or is a controlled action), the limit is to be worked out by reference
5 to what is a business day in the place where the action is to be
6 taken.

7 (2) A day is not to be counted as a business day for the purposes of
8 subsection (1) if it is not a business day in all the places in which
9 the action is to be taken.

10 (3) Failure to comply with a time limit set in this Chapter does not
11 affect the validity of:

12 (a) a decision under this Chapter; or

13 (b) an assessment or approval under this Chapter.

14 Note: The Minister must make a statement to Parliament about some failures
15 to comply with time limits. See section 518.

Section 157

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2 **Division 2—Actions in area offshore from a State or the**
3 **Northern Territory**

4 **157 Actions treated as though they were in a State or the Northern**
5 **Territory**

6 (1) A provision of this Chapter that is expressed to apply in relation to
7 actions taken or to be taken in a State also applies in the same way
8 to actions taken or to be taken on, under or over the seabed vested
9 in the State by section 4 of the *Coastal Waters (State Title) Act*
10 *1980*.

11 (2) So far as a provision of this Chapter that is expressed to apply in
12 relation to actions taken or to be taken in a self-governing Territory
13 relates to the Northern Territory, the provision also applies in the
14 same way to actions taken or to be taken on, under or over the
15 seabed vested in the Northern Territory by section 4 of the *Coastal*
16 *Waters (Northern Territory Title) Act 1980*.

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.

Section 159

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

3

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Subdivision A—Minister’s advice on authorising actions

5

159 Simplified outline of this Subdivision

6

The following is a simplified outline of this Subdivision:

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

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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:

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(a) a specially accredited process;

22

(b) an assessment on preliminary documentation under Division 4 of Part 8;

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- (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**

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Requirement

- (1) Before a Commonwealth agency or employee of the Commonwealth gives an authorisation (however described) of an action described in subsection (2), the agency or employee must obtain and consider advice from the Minister in accordance with this Subdivision.

Note: The giving of an authorisation for an action may be constituted by the renewal of an authorisation of the action or the variation of an authorisation for a different action.

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Relevant actions

- (2) Subsection (1) applies in relation to:
- (a) the entry by the Commonwealth, under Australia's foreign aid program, into a contract, agreement or arrangement for the implementation of a project that has, will have or is likely to have a significant impact on the environment anywhere in the world; and
 - (b) the adoption or implementation of a plan for aviation airspace management involving aircraft operations that have, will have or are likely to have a significant impact on the environment; and

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

Section 160

- 1 (c) the adoption or implementation of a major development plan
2 (as defined in the *Airports Act 1996*); and
3 (d) any other action prescribed by the regulations for the
4 purposes of this paragraph.

5 (2A) Regulations may prescribe an action for the purposes of paragraph
6 (2)(d):

- 7 (a) partly by reference to the action's having, or being likely to
8 have, a significant impact on the environment; or
9 (b) partly by reference to a specified person believing that the
10 action has, will have or is likely to have a significant impact
11 on the environment; or
12 (c) wholly or partly by reference to legislation under which the
13 authorisation of the action is to be granted.

14 This does not limit the ways in which regulations may prescribe an
15 action.

16 *This section does not apply to actions like those already assessed*

- 17 (3) Subsection (1) does not apply in relation to a particular
18 authorisation (the *later authorisation*) if the agency or employee
19 has complied with, or is complying with, this Subdivision in
20 relation to another authorisation or proposed authorisation and is
21 satisfied of one or both of the matters in subsection (4).

22 *Which actions are like actions?*

- 23 (4) For the purposes of subsection (3), the agency or employee must be
24 satisfied that:
25 (a) the Minister's advice relating to the other authorisation deals
26 or will deal with all the impacts that the action to which the
27 later authorisation relates has, will have or is likely to have
28 on the environment; or
29 (b) the impacts that the action to which the later authorisation
30 relates has, will have or is likely to have on the environment:
31 (i) are an extension of the corresponding impacts of the
32 action to which the other authorisation relates; and
-

- 1 (ii) are not significantly different in nature from those
2 corresponding impacts; and
3 (iii) do not significantly add to those corresponding impacts.

4 *State law excluded in relation to aviation*

- 5 (5) A law of a State or Territory does not apply in relation to the
6 assessment of the certain or likely environmental impacts of an
7 action described in paragraph (2)(b) if subsection (1) applies in
8 relation to authorisation of the action, or would apply apart from
9 subsection (3).

10 **161 Seeking the Minister's advice**

11 *Requirement for referral*

- 12 (1) If a Commonwealth agency or employee of the Commonwealth
13 proposing to give an authorisation (however described) of an
14 action thinks the agency or employee is required by section 160 to
15 obtain and consider the Minister's advice before giving the
16 authorisation, the agency or employee must:
17 (a) refer the proposal to the Minister; and
18 (b) nominate a person to act as designated proponent of the
19 action.

20 *Minister may request referral*

- 21 (2) The Minister may request a Commonwealth agency or employee of
22 the Commonwealth to:
23 (a) refer to the Minister a proposal to give an authorisation
24 (however described) of an action; and
25 (b) nominate a person to act as designated proponent of the
26 action;
27 if the Minister thinks the agency or employee is required by section
28 160 to obtain and consider the Minister's advice before giving the
29 authorisation.

Section 162

1 *Complying with Minister's request*

2 (3) The Commonwealth agency or employee must comply with the
3 Minister's request.

4 *Content of referral*

5 (4) A referral must include the information prescribed by the
6 regulations.

7 **162 Assessment of the action**

8 Part 8 (except sections 82, 83 and 84) and the other provisions of
9 this Act (so far as they relate to that Part) apply in relation to the
10 action proposed to be authorised as if:

- 11 (a) the referral of the proposal to give the authorisation were a
12 referral of a proposal to take the action; and
13 (b) the Minister had decided under Division 2 of Part 7 that the
14 action was a controlled action when the proposal to give the
15 authorisation was referred to the Minister; and
16 (c) the person nominated to act as the designated proponent had
17 been designated as the proponent of the action by the
18 Minister under section 75; and
19 (d) a reference in Part 8 or those provisions to the relevant
20 impacts of the action were a reference to the impact that the
21 action has, will have or is likely to have on the environment;
22 and
23 (e) a reference in Part 8 or those provisions to making an
24 informed decision on approving under Part 9 (for the
25 purposes of each controlling provision) the taking of the
26 action were a reference to giving informed advice about the
27 proposal to give an authorisation of the action.

1 **163 Providing advice**

- 2 (1) The Minister must give advice on the following matters to the
3 Commonwealth agency or employee of the Commonwealth who
4 referred the proposal to give an authorisation of the action:
5 (a) whether the agency or employee should give the
6 authorisation;
7 (b) what conditions (if any) should be attached to the
8 authorisation (if possible) to protect the environment;
9 (c) any other matter relating to protection of the environment
10 from the action.
- 11 (2) The Minister must give the advice within 30 days of receiving:
12 (a) a report mentioned in subsection 84(3) or section 95, 100 or
13 105 (as applied by section 162); or
14 (b) a report of an inquiry under Division 7 of Part 8 (as applied
15 by section 162) relating to the action.

16 **164 Reporting on response to advice**

- 17 As soon as practicable after considering the Minister's advice, the
18 Commonwealth agency or employee of the Commonwealth must
19 give the Minister a report stating:
20 (a) what action has been taken in relation to the Minister's
21 advice; and
22 (b) if the agency or employee did not give effect to some or all
23 of the Minister's advice—why the agency or employee did
24 not do so.

Section 165

1 **Subdivision B—Assessment of applications for permits relating**
2 **to whales, dolphins and porpoises**

3 **165 Assessment of applications for permits relating to whales,**
4 **dolphins and porpoises**

5 *Overview*

- 6 (1) This section provides for the assessment of an action for which a
7 person is applying for a permit under Division 3 of Part 13 (about
8 whales and other cetaceans).

9 *Application of Part 8*

- 10 (2) Part 8 (except sections 82, 83 and 84) and the other provisions of
11 this Act (so far as they relate to that Part) apply in relation to the
12 action proposed to be authorised by the permit as if:
13 (a) the application for the permit were a referral of a proposal to
14 take the action; and
15 (b) the Minister had decided under Division 2 of Part 7 that the
16 action was a controlled action when the application was
17 made; and
18 (c) the person applying for the permit had been designated as the
19 proponent of the action by the Minister under section 75; and
20 (d) a reference in Part 8 or those provisions to the relevant
21 impacts of the action were a reference to the impact that the
22 action has, will have or is likely to have on cetaceans; and
23 (e) a reference in Part 8 or those provisions to making an
24 informed decision on approving under Part 9 (for the
25 purposes of each controlling provision) the taking of the
26 action were a reference to making an informed decision
27 about whether or not to issue the permit.

28 *Assessment report must be considered in decision on permit*

- 29 (5) The Minister must consider the assessment report relating to the
30 action when deciding whether to grant the permit for the action.
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1 **Subdivision C—Assessment under agreement with State or**
2 **Territory**

3 **166 This Subdivision applies if Ministers agree it should**

- 4 (1) This Subdivision applies if the Minister and a Minister of a State or
5 self-governing Territory agree that it should apply in relation to an
6 action that:
- 7 (a) is to be taken in the State or Territory by a constitutional
8 corporation; or
 - 9 (b) if the agreement is with a Minister of a Territory—is to be
10 taken in the Territory; or
 - 11 (c) is to be taken in the State or Territory by a person for the
12 purposes of trade or commerce:
 - 13 (i) between Australia and another country; or
 - 14 (ii) between 2 States; or
 - 15 (iii) between a State and a Territory; or
 - 16 (iv) between 2 Territories; or
 - 17 (d) is to be taken in the State or Territory and is an action whose
18 assessment under this Subdivision is an appropriate means of
19 giving effect to Australia's obligations under an agreement
20 with one or more other countries.
- 21 (2) This section applies to the adoption or implementation of a policy,
22 plan or program in the same way as it applies to any other action.
- 23 (3) Despite subsection (1), this Subdivision does not apply in relation
24 to an action to be taken in 2 or more States or self-governing
25 Territories unless there is an agreement between the Minister and a
26 Minister of each of those States and Territories that this
27 Subdivision should apply in relation to the action.

Section 167

1 **167 Making an agreement**

2 *Power to make agreement*

- 3 (1) The Minister may make a written agreement with a Minister of a
4 State or self-governing Territory to apply this Subdivision in
5 relation to an action to be taken in the State or Territory.

6 *Prerequisites for making agreement*

- 7 (2) The Minister may agree only if he or she is satisfied that the action
8 is not a controlled action.

9 *Minister must not make an agreement that gives preference*

- 10 (3) The Minister must not enter into an agreement that has the effect of
11 giving preference (within the meaning of section 99 of the
12 Constitution) to one State or part of a State over another State or
13 part of a State, in relation to the taking of the action:
14 (a) by a constitutional corporation; or
15 (b) by a person for the purposes of trade or commerce between
16 Australia and another country or between 2 States.

17 **168 Content of an agreement**

18 *Generally*

- 19 (1) An agreement to apply this Subdivision in relation to an action
20 must:
21 (a) either specify that one of Divisions 4, 5, 6 and 7 of Part 8 is
22 to apply in relation to the action or specify that Division 1 of
23 Part 10 is to apply in relation to the action; and
24 (b) if it specifies that one of Divisions 4, 5 and 6 of Part 8 is to
25 apply—specify the person who is taken to be the designated
26 proponent of the action for the purposes of that Division.

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Agreement applying Division 4 of Part 8

- (2) An agreement that specifies that Division 4 of Part 8 (about assessment on preliminary documentation) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 94 to refuse to accept a document.

Agreement applying Division 5 of Part 8

- (3) An agreement that specifies that Division 5 of Part 8 (about public environment reports) is to apply in relation to an action may deal with how the Minister will exercise his or her power:
- (a) under section 97 to prepare guidelines for the content of a draft report; or
 - (b) under section 98 to approve publication of a draft report or specify a period for comment; or
 - (c) under section 99 to refuse a finalised report.

Agreement applying Division 6 of Part 8

- (4) An agreement that specifies that Division 6 of Part 8 (about environmental impact statements) is to apply in relation to an action may deal with how the Minister will exercise his or her power:
- (a) under section 102 to prepare guidelines for the content of a draft statement; or
 - (b) under section 103 to approve publication of a draft statement or specify a period for comment; or
 - (c) under section 104 to refuse a finalised statement.

Agreement applying Division 7 of Part 8

- (5) An agreement that specifies that Division 7 of Part 8 (about inquiries) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 107:
- (a) to appoint one or more persons as commissioners, and to appoint a person to preside; or

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Section 169

- 1 (b) to specify the matters relating to the action that are to be the
2 subject of the inquiry and report; or
3 (c) to specify the time within which the commission must report
4 to the Minister; or
5 (d) to specify the manner in which the commission is to carry out
6 the inquiry.

7 *Agreement applying Part 10*

- 8 (6) An agreement that specifies that Division 1 of Part 10 is to apply
9 may:
10 (a) be in the same document as an agreement mentioned in that
11 Division; or
12 (b) specify the manner in which an agreement the Minister
13 makes under that Division is to provide for matters that that
14 Division requires that agreement to provide for.

15 **169 Application of a Division of Part 8**

16 *Provisions that apply*

- 17 (1) If the agreement states that a particular Division of Part 8 is to
18 apply in relation to the assessment of an action, the following
19 provisions of this Act (the *applied provisions*) apply in relation to
20 the action as set out in subsection (2):
21 (a) that Division;
22 (b) the other provisions of this Act (except Part 9), so far as they
23 relate to that Division.

24 *Modification of applied provisions*

- 25 (2) The applied provisions apply in relation to the action as if:
26 (a) the Minister had decided under Division 2 of Part 7 that the
27 action was a controlled action; and
28 (b) the Minister had decided that the relevant impacts of the
29 action must be assessed under the Division specified in the
30 agreement applying the Division; and
-

- 1 (c) the person specified in the agreement as the person who is
2 taken to be the designated proponent of the action for the
3 purposes of that Division had been designated as the
4 proponent of the action by the Minister under section 75; and
5 (d) a reference in the applied provisions to the relevant impacts
6 of the action were a reference to the impact that the action
7 has, will have or is likely to have on the environment; and
8 (e) a reference in the applied provisions to making an informed
9 decision on approving under Part 9 (for the purposes of each
10 controlling provision) the taking of the action were a
11 reference to making an informed report and
12 recommendations relating to the action.

13 *Modification of section 93*

- 14 (3) Also, if the agreement states that Division 4 of Part 8 is to apply in
15 relation to the assessment of an action, that Division applies in
16 relation to the action as if subparagraphs 93(1)(a)(i), (ii) and (iii)
17 merely referred to specified information relating to the action.

18 *Minister must give copy of report to State or Territory Minister*

- 19 (4) The Minister must give a copy of the report he or she receives from
20 the Secretary or commission of inquiry under the applied
21 provisions in relation to the action to each Minister of a State or
22 Territory who is party to the agreement.

23 **170 Application of Division 1 of Part 10**

24 If an agreement to apply this Subdivision states that Division 1 of
25 Part 10 is to apply:

- 26 (a) that Division applies as if:
27 (i) the reference in subsection 146(1) to relevant impacts of
28 actions were a reference to the impacts the actions have,
29 will have or are likely to have on the environment; and
30 (ii) paragraph 146(2)(f) were omitted; and

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- 1 (b) the Minister must give a copy of the report provided to the
2 Minister under the agreement made under section 146, and of
3 any recommendations made by the Minister under the
4 agreement, to each Minister of a State or Territory who is
5 party to the agreement to apply this Subdivision.

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2 **Division 5—Publication of information relating to**
3 **assessments**

4 **170A Publication of information relating to assessments**

5 The Secretary must publish on the Internet every week notice of
6 the following:

- 7 (a) the publication in the immediately preceding week by the
8 Minister under section 45 of a notice of the Minister's
9 intention to develop a draft bilateral agreement;
- 10 (b) each referral (if any) of an action received by the Minister
11 under Division 1 of Part 7 in the immediately preceding
12 week;
- 13 (c) each decision (if any) in the immediately preceding week
14 under Division 2 of Part 7 that an action is a controlled
15 action;
- 16 (d) each decision (if any) in the immediately preceding week
17 under Division 3 of Part 8 about which approach is to be used
18 for assessment of the relevant impacts of an action;
- 19 (e) the information and invitations (if any) published in the
20 immediately preceding week under Division 4 of Part 8
21 (about assessment on preliminary documentation);
- 22 (f) each set of guidelines (if any) prepared in the immediately
23 preceding week by the Minister under Division 5 or 6 of Part
24 8 for a report or statement;
- 25 (g) each public invitation (if any) issued in the immediately
26 preceding week by the Minister to comment on a draft of
27 guidelines under Division 5 or 6 of Part 8 for a report or
28 statement;
- 29 (h) each draft or finalised report or statement published in the
30 immediately preceding week under Division 5 or 6 of Part 8
31 by a designated proponent;

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Section 170A

- 1 (i) the availability of each assessment report given to the
2 Minister under Division 4, 5 or 6 of Part 8 in the immediately
3 preceding week;
4 (j) any other matter prescribed by the regulations.

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.

Section 176

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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. In preparing the plan, the Minister
6 must carry out public consultation on a draft of the plan in
7 accordance with the regulations.

8 (2) The Minister may, on behalf of the Commonwealth, co-operate
9 with a State or a self-governing Territory, an agency of a State or
10 of a self-governing Territory, or any other person in the preparation
11 of a bioregional plan for a bioregion that is not wholly within a
12 Commonwealth area.

13 (3) The co-operation may include giving financial or other assistance.

14 (4) A bioregional plan may include provisions about all or any of the
15 following:

16 (a) the components of biodiversity, their distribution and
17 conservation status;

18 (b) important economic and social values;

19 (c) objectives relating to biodiversity and other values;

20 (d) priorities, strategies and actions to achieve the objectives;

21 (e) mechanisms for community involvement in implementing the
22 plan;

23 (f) measures for monitoring and reviewing the plan.

24 (5) Subject to this Act, the Minister must have regard to a bioregional
25 plan in making any decision under this Act to which the plan is
26 relevant.

1 **177 Obligations under this Act unaffected by lack of bioregional**
2 **plans**

3 Obligations imposed by this Act are not affected, in their
4 application in relation to Commonwealth areas, by a lack of
5 bioregional plans for those areas.

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Part 13—Species and communities

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Division 1—Listed threatened species and ecological communities

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Subdivision A—Listing

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178 Listing of threatened species

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(1) The Minister must, by instrument published in the *Gazette*, establish a list of threatened species divided into the following categories:

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(a) extinct;

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(b) extinct in the wild;

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(c) critically endangered;

13

(d) endangered;

14

(e) vulnerable;

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(f) conservation dependent.

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(2) The list, as first established, must contain only the species contained in Schedule 1 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

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(3) The Minister must include:

21

(a) in the extinct category of the list, as first established, only the species mentioned in subsection (2) that were listed as presumed extinct; and

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(b) in the endangered category of the list, as first established, only the native species mentioned in subsection (2) that were listed as endangered; and

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(c) in the vulnerable category of the list, as first established, only the species mentioned in subsection (2) that were listed as vulnerable.

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- 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.
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- 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

- 1 eligible to be included in that category when the list is first
2 published.
- 3 (3) The list, as first established, must contain only the ecological
4 communities listed in Schedule 2 to the *Endangered Species*
5 *Protection Act 1992* immediately before the commencement of this
6 Act, and they must be listed in the endangered category.
- 7 (4) If the Minister is satisfied that an ecological community included
8 in the endangered category of the list, as first established under
9 subsection (3), is not eligible to be included in that or any other
10 category, or is eligible to be included in another category, the
11 Minister must, within 6 months after the commencement of this
12 Act, amend the list accordingly in accordance with this
13 Subdivision.
- 14 (5) An instrument (other than an instrument establishing the list
15 mentioned in subsection (3)) is a disallowable instrument for the
16 purposes of section 46A of the *Acts Interpretation Act 1901*.

17 **182 Critically endangered, endangered and vulnerable communities**

- 18 (1) An ecological community is eligible to be included in the ***critically***
19 ***endangered*** category at a particular time if, at that time, it is facing
20 an extremely high risk of extinction in the wild in the immediate
21 future, as determined in accordance with the prescribed criteria.
- 22 (2) An ecological community is eligible to be included in the
23 ***endangered*** category at a particular time if, at that time:
24 (a) it is not critically endangered; and
25 (b) it is facing a very high risk of extinction in the wild in the
26 near future, as determined in accordance with the prescribed
27 criteria.
- 28 (3) An ecological community is eligible to be included in the
29 ***vulnerable*** category at a particular time if, at that time:
30 (a) it is not critically endangered nor endangered; and

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- 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.

- 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 (1) 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 (2) The Minister must decide whether to amend the list referred to in
27 section 181 to include an ecological community that is described as
28 critically endangered, endangered or vulnerable in a list that is:
- 29 (a) kept by:
- 30 (i) a State; or
31 (ii) a self-governing Territory; or
32 (iii) the body known as the Australian and New Zealand
33 Environment and Conservation Council; and
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- 1 (b) identified by the Minister by a notice published in the
2 *Gazette*.

3 **186 Amending list of threatened native species**

- 4 (1) Subject to subsections (3), (4) and (5), the Minister must not:
5 (a) include (whether as a result of a transfer or otherwise) a
6 native species in a particular category; or
7 (b) delete (whether as a result of a transfer or otherwise) a native
8 species from a particular category;
9 unless satisfied that the native species is eligible, or is no longer
10 eligible, as the case requires, to be included in that category.
- 11 (2) In deciding whether to include a native species in, or delete a
12 native species from, a particular category (whether as a result of a
13 transfer or otherwise), the Minister must not consider any matter
14 that does not relate to the survival of the native species concerned.
- 15 (3) The Minister may include a native species in the critically
16 endangered category if satisfied that:
17 (a) it so closely resembles in appearance, at any stage of its
18 biological development, a species that is eligible to be
19 included in that category (see subsection 179(3)) that it is
20 difficult to differentiate between the 2 species; and
21 (b) this difficulty poses an additional threat to the last-mentioned
22 species; and
23 (c) it would substantially promote the objects of this Act if the
24 first-mentioned species were regarded as critically
25 endangered.
- 26 (4) The Minister may include a native species in the endangered
27 category if satisfied that:
28 (a) it so closely resembles in appearance, at any stage of its
29 biological development, a species that is eligible to be
30 included in that category (see subsection 179(4)) that it is
31 difficult to differentiate between the 2 species; and

- 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 endangered.
- 5 (5) The Minister may include a native species in the vulnerable
6 category if satisfied that:
7 (a) it so closely resembles in appearance, at any stage of its
8 biological development, a species that is eligible to be
9 included in that category (see subsection 179(5)) that it is
10 difficult to differentiate between the 2 species; and
11 (b) this difficulty poses an additional threat to the last-mentioned
12 species; and
13 (c) it would substantially promote the objects of this Act if the
14 first-mentioned species were regarded as vulnerable.

15 **187 Amending list of ecological communities**

- 16 (1) The Minister must not:
17 (a) include (whether as a result of a transfer or otherwise) an
18 ecological community in a particular category of the list; or
19 (b) delete (whether as a result of a transfer or otherwise) an
20 ecological community from a particular category;
21 unless satisfied that the ecological community is eligible, or is no
22 longer eligible, as the case requires, to be included in that category.
- 23 (2) In deciding whether to include an ecological community in, or
24 delete an ecological community from, a particular category
25 (whether as a result of a transfer or otherwise), the Minister must
26 not consider any matter that does not relate to the survival of the
27 ecological community concerned.

28 **188 Amending list of key threatening processes**

- 29 (1) The Minister must not add a threatening process to the list unless
30 satisfied that it is eligible to be treated as a key threatening process.

Section 189

- 1 (2) The Minister must not delete a threatening process from the list
2 unless satisfied that it is no longer eligible to be treated as a key
3 threatening process.
- 4 (3) A process is a *threatening process* if it threatens, or may threaten,
5 the survival, abundance or evolutionary development of a native
6 species or ecological community.
- 7 (4) A threatening process is eligible to be treated as a key threatening
8 process if:
- 9 (a) it could cause a native species or an ecological community to
10 become eligible for listing in any category, other than
11 conservation dependent; or
- 12 (b) it could cause a listed threatened species or a listed
13 threatened ecological community to become eligible to be
14 listed in another category representing a higher degree of
15 endangerment; or
- 16 (c) it adversely affects 2 or more listed threatened species (other
17 than conservation dependent species) or 2 or more listed
18 threatened ecological communities.

19 **189 Minister must consider advice from Scientific Committee**

- 20 (1) Subject to section 192, in deciding whether to amend:
21 (a) the list referred to in section 178 or 181; or
22 (b) the list referred to in section 183;
23 the Minister must, in accordance with the regulations (if any),
24 obtain and consider advice from the Scientific Committee on the
25 proposed amendment.
- 26 (2) In preparing advice under subsection (1), the Scientific Committee
27 may obtain advice from a person with expertise relevant to the
28 subject matter of the proposed amendment.
- 29 (3) In preparing advice for a proposed amendment of a list referred to
30 in paragraph (1)(a), the Scientific Committee must not consider
31 any matter that does not relate to the survival of the native species
32 or ecological community concerned.
-

- 1 (4) If a native species, ecological community or threatening process
2 has been nominated under section 191 to be listed, the Scientific
3 Committee must give its advice to the Minister within 12 months,
4 or such longer period as the Minister specifies, after the Scientific
5 Committee receives the nomination from the Minister under that
6 section.
- 7 (5) The Minister must:
8 (a) decide whether to amend the list; and
9 (b) if the Minister decides to amend the list—cause the necessary
10 instrument to be published in the *Gazette*;
11 within 90 days after receiving the Scientific Committee’s advice on
12 the amendment.
- 13 (6) 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 amendment of a list to which the advice relates—occurred
20 after the publication.

21 **190 Scientific Committee may provide advice about species or**
22 **communities becoming threatened**

- 23 (1) If the Scientific Committee is of the opinion that a native species or
24 ecological community is not eligible to be included in any category
25 of the list mentioned in section 178 or 181, the Committee may
26 give advice to the Minister concerning any action that is necessary
27 to prevent the species or community becoming threatened.
- 28 (2) The Minister is to have regard to any advice given under
29 subsection (1) in performing any function, or exercising any
30 power, under this Act relevant to the species or community.

Section 191

1 **191 Nomination of threatened species etc.**

- 2 (1) A person may, in accordance with the regulations (if any),
3 nominate to the Minister:
- 4 (a) a native species to be included in a particular category of the
5 list referred to in section 178; or
6 (b) an ecological community to be included in a particular
7 category of the list referred to in section 181; or
8 (c) a threatening process to be included in the list referred to in
9 section 183.
- 10 (2) The Minister must forward a nomination to the Scientific
11 Committee within 10 business days of receiving the nomination.
12 However, the Minister need not forward a nomination that the
13 Minister rejects under subsection (6).
- 14 (3) If the Minister decides that a nominated native species or
15 ecological community is not eligible to be included in the
16 nominated category, the Minister must, in accordance with the
17 regulations (if any):
18 (a) advise the person who made the nomination of the Minister's
19 decision; and
20 (b) give to that person a statement of reasons why the native
21 species or ecological community is not eligible to be
22 included in the nominated category.
- 23 (4) If the Minister decides that a threatening process is not eligible to
24 be listed, the Minister must, in accordance with the regulations (if
25 any):
26 (a) advise the person who made the nomination of the Minister's
27 decision; and
28 (b) give to that person a statement of reasons why the threatening
29 process is not eligible to be listed.
- 30 (5) The Minister may, at any time, request a person who has made a
31 nomination to provide additional information about the subject of
32 the nomination within such period as the Minister specifies.

- 1 (6) The Minister may reject a nomination if satisfied that it is
2 vexatious, frivolous or not made in good faith.

3 **192 Rediscovery of threatened species that were extinct**

- 4 (1) If the Minister is satisfied that a native species that is listed in the
5 extinct category has been definitely located in nature since it was
6 last listed as extinct, the Minister may, under section 184, transfer
7 the species from the extinct category to another category without
8 considering advice from the Scientific Committee.

- 9 (2) Subsection (1) does not prevent the Minister from making such an
10 amendment after having considered advice from the Scientific
11 Committee.

12 **193 Species posing a serious threat to human health**

- 13 (1) If the Minister is satisfied that a native species poses a serious
14 threat to human health, the Minister may, by instrument published
15 in the *Gazette*, determine that the species is not appropriate for
16 inclusion in any of the categories of the list referred to in section
17 178.

- 18 (2) While the determination is in force, the species is not to be added
19 to that list.

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

- 22 (4) The Minister must cause a notice summarising the information
23 contained in an instrument to be published in accordance with the
24 regulations (if any).

25 **194 Minister to make lists available to the public**

- 26 The Minister must, in accordance with the regulations (if any),
27 make copies of up-to-date lists available for purchase, for a
28 reasonable price, at a prescribed place in each State and
29 self-governing Territory.
-

Section 195

1 **Subdivision B—Permit system**

2 **195 Subdivision does not apply to cetaceans**

3 This Subdivision does not apply to a member of a listed threatened
4 species that is a cetacean.

5 **196 Recklessly killing or injuring member of listed threatened**
6 **species or community**

- 7 (1) A person is guilty of an offence if:
8 (a) the person takes an action; and
9 (b) the action results in the death or injury of a member of a
10 native species or a member of an ecological community; and
11 (c) the member is a member of a listed threatened species
12 (except a conservation dependent species) or of a listed
13 threatened ecological community; and
14 (d) the member is in or on a Commonwealth area.

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

17 Note 2: This section does not apply in the circumstances described in section
18 197. A defendant bears an evidential burden in relation to those
19 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 20 (2) Strict liability applies to paragraph (1)(d).

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

- 22 (3) The offence is punishable on conviction by imprisonment for not
23 more than 2 years or a fine not exceeding 1,000 penalty units, or
24 both.

25 **196A Strict liability for killing or injuring member of listed**
26 **threatened species or community**

- 27 (1) A person is guilty of an offence if:
28 (a) the person takes an action; and

Section 196B

- 1 (b) the action results in the death or injury of a member of a
2 native species or a member of an ecological community; and
3 (c) the member is a member of a listed threatened species
4 (except a conservation dependent species) or of a listed
5 threatened ecological community; and
6 (d) the member is in or on a Commonwealth area.

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

9 Note 2: This section does not apply in the circumstances described in section
10 197. A defendant bears an evidential burden in relation to those
11 circumstances. See subsection 13.3(3) of the *Criminal Code*.

12 (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

14 (3) The offence is punishable on conviction by a fine not exceeding
15 500 penalty units.

16 **196B Recklessly taking etc. member of listed threatened species or**
17 **community**

18 (1) A person is guilty of an offence if:

- 19 (a) the person takes, trades, keeps or moves a member of a
20 native species or a member of an ecological community; and
21 (b) the member is a member of a listed threatened species
22 (except a conservation dependent species) or a listed
23 threatened ecological community; and
24 (c) the member is in or on a Commonwealth area.

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

27 Note 2: This section does not apply in the circumstances described in section
28 197. A defendant bears an evidential burden in relation to those
29 circumstances. See subsection 13.3(3) of the *Criminal Code*.

30 (2) Strict liability applies to paragraph (1)(c).

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

Section 196C

- 1 (3) The offence is punishable on conviction by imprisonment for not
2 more than 2 years or a fine not exceeding 1,000 penalty units, or
3 both.

4 **196C Strict liability for taking etc. member of listed threatened**
5 **species or community**

- 6 (1) A person is guilty of an offence if:
7 (a) the person takes, trades, keeps or moves a member of a
8 native species or a member of an ecological community; and
9 (b) the member is a member of a listed threatened species
10 (except a conservation dependent species) or a listed
11 threatened ecological community; and
12 (c) the member is in or on a Commonwealth area.

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

15 Note 2: This section does not apply in the circumstances described in section
16 197. A defendant bears an evidential burden in relation to those
17 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 18 (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- 20 (3) The offence is punishable on conviction by a fine not exceeding
21 500 penalty units.

22 **196D Trading etc. member of listed threatened species or**
23 **community taken in Commonwealth area**

- 24 (1) A person is guilty of an offence if:
25 (a) the person trades, keeps or moves a member of a native
26 species or a member of an ecological community; and
27 (b) the member is a member of a listed threatened species
28 (except a conservation dependent species) or a listed
29 threatened ecological community; and
30 (c) the member has been taken in or on a Commonwealth area.

Section 196E

- 1 Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of
2 criminal responsibility.
- 3 Note 2: This section does not apply in the circumstances described in section
4 197. A defendant bears an evidential burden in relation to those
5 circumstances. See subsection 13.3(3) of the *Criminal Code*.
- 6 (2) Strict liability applies to paragraph (1)(c).
- 7 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 8 (3) The offence is punishable on conviction by imprisonment for not
9 more than 2 years or a fine not exceeding 1,000 penalty units, or
10 both.

11 **196E Strict liability for trading etc. member of listed threatened**
12 **species or community taken in Commonwealth area**

- 13 (1) A person is guilty of an offence if:
- 14 (a) the person trades, keeps or moves a member of a native
15 species or a member of an ecological community; and
16 (b) the member is a member of a listed threatened species
17 (except a conservation dependent species) or a listed
18 threatened ecological community; and
19 (c) the member has been taken in or on a Commonwealth area.
- 20 Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of
21 criminal responsibility.
- 22 Note 2: This section does not apply in the circumstances described in section
23 197. A defendant bears an evidential burden in relation to those
24 circumstances. See subsection 13.3(3) of the *Criminal Code*.
- 25 (2) Strict liability applies to paragraphs (1)(a), (b) and (c).
- 26 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 27 (3) The offence is punishable on conviction by a fine not exceeding
28 500 penalty units.

29 **197 Certain actions are not offences**

- 30 Sections 196, 196A, 196B, 196C, 196D, 196E and 207B do not
31 apply to:
-

Chapter 5 Conservation of biodiversity

Part 13 Species and communities

Division 1 Listed threatened species and ecological communities

Section 197

- 1 (a) an action authorised by a permit that was issued under
2 section 201 and is in force; or
3 (b) an action provided for by, and done in accordance with, a
4 recovery plan in force under Division 5; or
5 (c) an action that is covered by an approval in operation under
6 Part 9 for the purposes of a subsection of section 18 or of
7 section 18A; 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 section 18 or 18A; and
12 (ii) is taken in accordance with a management plan that is
13 an accredited management plan for the purposes of the
14 declaration; or
15 (e) an action that is taken in a humane manner and is reasonably
16 necessary to relieve or prevent suffering by a member of a
17 listed threatened species or listed threatened ecological
18 community; or
19 (f) an action that is reasonably necessary to prevent a risk to
20 human health; or
21 (g) an action by a Commonwealth agency, or an agency of a
22 State or of a self-governing Territory, that is reasonably
23 necessary for the purposes of law enforcement; or
24 (h) an action that is reasonably necessary to deal with an
25 emergency involving a serious threat to human life or
26 property; or
27 (i) an action that occurs as a result of an unavoidable accident,
28 other than an accident caused by negligent or reckless
29 behaviour; or
30 (j) an action that is taken in accordance with a permit issued
31 under regulations made under the *Great Barrier Reef Marine*
32 *Park Act 1975* and in force.

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

1 **198 Operation of sections 18 and 18A not affected**

2 To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E and
3 197 do not affect the operation of section 18 or 18A.

4 **199 Failing to notify taking of listed threatened species or listed**
5 **ecological community**

- 6 (1) This section applies to an action taken by a person if all of the
7 following conditions are met:
- 8 (a) the person's action either:
 - 9 (i) results in the death or injury of a member of a listed
10 threatened species (except a conservation dependent
11 species), or a member of a listed threatened ecological
12 community, that is in or on a Commonwealth area; or
 - 13 (ii) consists of, or involves, trading, taking, keeping or
14 moving a member of a listed threatened species (except
15 a conservation dependent species), or a member of a
16 listed threatened ecological community, that is in or on
17 a Commonwealth area;
 - 18 (b) the person's action does not constitute an offence against
19 section 196, 196A, 196B, 196C, 196D or 196E;
 - 20 (c) the person's action is not an action that the person was
21 authorised by a permit to take.

22 Note 1: Section 197 sets out most of the circumstances in which an action
23 described in paragraph (1)(a) will not be an offence against section
24 196, 196A, 196B, 196C, 196D or 196E.

25 Note 2: A person is authorised by a permit to take an action if the person is the
26 holder of the permit or the person is given an authority under section
27 204 by the holder of the permit to take the action.

28 Note 3: The conditions of a permit may require the holder of the permit to
29 give certain notices.

- 30 (2) Within 7 days of becoming aware of the action, the person must
31 notify the Secretary in writing, by telephone or by use of any other
32 electronic equipment:
- 33 (a) that the action was taken; and

Section 200

- 1 (b) of other particulars (if any) about the action that are
2 prescribed by the regulations.
- 3 (3) An example of the particulars about the action that the regulations
4 may prescribe is the time and place of taking the action. This does
5 not limit the particulars the regulations may prescribe.
- 6 (4) Subsection (2) does not apply to the person if he or she, or any
7 other person or body, is required by or under a law of the
8 Commonwealth to notify the Secretary of the action.
- 9 (5) A person is guilty of an offence punishable on conviction by a fine
10 not exceeding 100 penalty units if the person:
11 (a) fails to do an act; and
12 (b) the failing to do the act results in a contravention of
13 subsection (2).
- 14 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
15 criminal responsibility.

200 Application for permits

- 16
- 17 (1) A person may, in accordance with the regulations, apply to the
18 Minister for a permit to be issued under section 201.
- 19 (2) The application must be accompanied by the fee prescribed by the
20 regulations (if any).
- 21 (3) As soon as practicable after receiving the application, the Minister
22 must cause notice of the application to be given to each person and
23 body registered under section 266A (about registration for
24 consultation on permit applications).
- 25 (4) The notice must:
26 (a) state that an application for a permit has been made; and
27 (b) set out details of the application; and
28 (c) invite persons and bodies to make written submissions to the
29 Minister about whether a permit should be issued; and
30 (d) specify:
-

- 1 (i) an address for lodgment of submissions; and
2 (ii) a day by which submissions must be lodged.
- 3 (5) The day specified must not be a day occurring within 5 days after
4 the last day on which the notice was given.

5 **201 Minister may issue permits**

- 6 (1) Subject to subsection (3), the Minister may, on application by a
7 person under section 200, issue a permit to the person.
- 8 (2) A permit authorises its holder to take an action specified in the
9 permit without breaching section 196, 196A, 196B, 196C, 196D,
10 196E or 207B.
- 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 threatened species or listed
14 threatened ecological community concerned; or
- 15 (b) the impact of the specified action on a member of the listed
16 threatened species or listed threatened ecological community
17 concerned is incidental to, and not the purpose of, the taking
18 of the action and:
- 19 (i) the taking of the action will not adversely affect the
20 survival or recovery in nature of that species or
21 ecological community; and
- 22 (ii) the taking of the action is not inconsistent with a
23 recovery plan that is in force for that species or
24 ecological community; and
- 25 (iii) the holder of the permit will take all reasonable steps to
26 minimise the impact of the action on that species or
27 ecological community; or
- 28 (c) the specified action is of particular significance to indigenous
29 tradition and will not adversely affect the survival or
30 recovery in nature of the listed threatened species or listed
31 threatened ecological community concerned; or

Section 202

1 (d) the specified action is necessary in order to control pathogens
2 and is conducted in a way that will, so far as is practicable,
3 keep to a minimum any impact on the listed threatened
4 species or listed threatened ecological community concerned.

5 (4) In this Act:

6 *indigenous tradition* means the body of traditions, observances,
7 customs and beliefs of indigenous persons generally or of a
8 particular group of indigenous persons.

9 (5) In making a decision on the application, the Minister must consider
10 all written submissions made by persons or bodies registered under
11 section 266A (about registration for consultation on permit
12 applications) to the Minister on or before the day, and at the
13 address for lodgment, specified in the notice under section 200.

14 **202 Conditions of permits**

15 (1) A permit is subject to such conditions as are specified in the permit
16 or as are imposed under subsection (2).

17 (2) The Minister may, in accordance with the regulations:

- 18 (a) vary or revoke a condition of a permit; or
19 (b) impose further conditions of a permit.

20 (3) Without limiting subsections (1) and (2), conditions of a permit
21 may include conditions stating the period within which the action
22 specified in the permit may be taken.

23 **203 Contravening conditions of a permit**

24 The holder of a permit is guilty of an offence punishable on
25 conviction by a fine not exceeding 300 penalty units if:

- 26 (a) he or she does, or fails to do, an act or thing; and
27 (b) doing, or failing to do, the act or thing results in a
28 contravention of a condition of the permit.

1 **204 Authorities under permits**

2 (1) Subject to subsection (2), the holder of a permit may give to a
3 person written authority to take for or on behalf of the holder any
4 action authorised by the permit. The authority may be given
5 generally or as otherwise provided by the instrument of authority.

6 (2) The holder of a permit must not give an authority unless:
7 (a) the permit contains a condition permitting the holder to do
8 so; and
9 (b) the authority is given in accordance with any requirements
10 set out in the condition.

11 (3) A permit is, for the purposes of this Act, taken to authorise the
12 taking of a particular action by a person if the taking of that action
13 by the person is authorised by an authority given by the holder of
14 the permit.

15 (4) The giving of an authority does not prevent the taking of any action
16 by the holder of the permit.

17 (5) Except as provided in this section, a permit does not authorise the
18 taking of any action by a person for or on behalf of the holder of
19 the permit.

20 (6) A person who gives an authority must give to the Minister written
21 notice of it within 14 days after giving the authority.

22 **205 Transfer of permits**

23 On the application, in accordance with the regulations, of the
24 holder of a permit, the Minister may, in accordance with the
25 regulations, transfer the permit to another person.

26 **206 Suspension or cancellation of permits**

27 The Minister may, in accordance with the regulations:

- 28 (a) suspend a permit for a specified period; or
29 (b) cancel a permit.
-

Section 206A

1 **206A Review of decisions about permits**

- 2 An application may be made to the Administrative Appeals
3 Tribunal for review of a decision:
- 4 (a) to issue or refuse a permit; or
 - 5 (b) to specify, vary or revoke a condition of a permit; or
 - 6 (c) to impose a further condition of a permit; or
 - 7 (d) to transfer or refuse to transfer a permit; or
 - 8 (e) to suspend or cancel a permit.

9 **207 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 BA—Protecting critical habitat**

16 **207A Register of critical habitat**

- 17 (1) The Minister must cause to be kept in accordance with the
18 regulations (if any) a register in which the Minister may list habitat
19 identified by the Minister in accordance with the regulations as
20 being critical to the survival of a listed threatened species or listed
21 threatened ecological community.
- 22 (2) The regulations must require the Minister to consider scientific
23 advice in identifying the habitat.
- 24 (3) The register must be made available for public inspection in
25 accordance with the regulations (if any).
- 26 (4) Habitat listed in the register in relation to a species or ecological
27 community is *critical habitat* for the species or ecological
28 community.

1 **207B Offence of knowingly damaging critical habitat**

- 2 (1) A person is guilty of an offence if:
3 (a) the person takes an action; and
4 (b) the person knows that the action significantly damages or
5 will significantly damage critical habitat for a listed
6 threatened species (except a conservation dependent species)
7 or of a listed threatened ecological community; and
8 (c) the habitat is in or on a Commonwealth area.

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

11 Note 2: This section does not apply in the circumstances described in section
12 197. A defendant bears an evidential burden in relation to those
13 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 14 (2) Strict liability applies to paragraph (1)(c).

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

- 16 (3) The offence is punishable on conviction by imprisonment for not
17 more than 2 years or a fine not exceeding 1,000 penalty units, or
18 both.

- 19 (4) To avoid doubt, this section does not affect the operation of
20 Division 2, 3 or 4.

21 **207C Sale or lease of Commonwealth land containing critical**
22 **habitat**

- 23 (1) This section applies to a Commonwealth agency that executes a
24 contract for the sale or lease to someone else of Commonwealth
25 land that includes critical habitat for a listed threatened species or
26 listed threatened ecological community. It does not matter whether
27 the Commonwealth agency executes the contract for the
28 Commonwealth or on its own behalf.
- 29 (2) The Commonwealth agency must ensure that the contract includes
30 a covenant the effect of which is to protect the critical habitat.

Section 208

- 1 (3) The Commonwealth agency must take reasonable steps to ensure
2 as far as practicable that the covenant binds the successors in title
3 of the buyer or lessee (as appropriate).

4 **Subdivision C—Miscellaneous**

5 **208 Regulations**

6 The regulations may:

- 7 (a) provide for the transportation, treatment and disposal of
8 members of listed threatened species or listed threatened
9 ecological communities killed, injured or taken in
10 contravention of this Division; and
11 (b) provide for the methods or equipment by which members of
12 listed threatened species or listed threatened ecological
13 communities may be killed or taken otherwise than in
14 contravention of this Division; and
15 (c) provide for the gathering and dissemination of information
16 relating to listed threatened species or listed threatened
17 ecological communities; and
18 (d) provide for the protection and conservation of listed
19 threatened species or listed threatened ecological
20 communities; and
21 (e) provide for any matter incidental to or connected with any of
22 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 Recklessly killing or injuring member of listed migratory**
10 **species**

- 11 (1) A person is guilty of an offence if:
12 (a) the person takes an action; and
13 (b) the action results in the death or injury of a member of a
14 migratory species; and
15 (c) the member is a member of a listed migratory species; and
16 (d) the member is in or on a Commonwealth area.

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

19 Note 2: This section does not apply in the circumstances described in section
20 212. A defendant bears an evidential burden in relation to those
21 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 22 (2) Strict liability applies to paragraph (1)(d).

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

- 24 (3) The offence is punishable on conviction by imprisonment for not
25 more than 2 years or a fine not exceeding 1,000 penalty units, or
26 both.

27 **211A Strict liability for killing or injuring member of listed**
28 **migratory species**

- 29 (1) A person is guilty of an offence if:
-

Section 211B

- 1 (a) the person takes an action; and
2 (b) the action results in the death or injury of a member of a
3 migratory species; and
4 (c) the member is a member of a listed migratory species; and
5 (d) the member is in or on a Commonwealth area.

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

8 Note 2: This section does not apply in the circumstances described in section
9 212. A defendant bears an evidential burden in relation to those
10 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 11 (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

- 13 (3) The offence is punishable on conviction by a fine not exceeding
14 500 penalty units.

15 **211B Recklessly taking etc. member of listed migratory species**

- 16 (1) A person is guilty of an offence if:

- 17 (a) the person takes, trades, keeps or moves a member of a
18 migratory species; and
19 (b) the member is a member of a listed migratory species; and
20 (c) the member is in or on a Commonwealth area.

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

23 Note 2: This section does not apply in the circumstances described in section
24 212. A defendant bears an evidential burden in relation to those
25 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 26 (2) Strict liability applies to paragraph (1)(c).

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

- 28 (3) The offence is punishable on conviction by imprisonment for not
29 more than 2 years or a fine not exceeding 1,000 penalty units, or
30 both.

Section 211C

1 **211C Strict liability for taking etc. member of listed migratory**
2 **species**

- 3 (1) A person is guilty of an offence if:
4 (a) the person takes, trades, keeps or moves a member of a
5 migratory species; and
6 (b) the member is a member of a listed migratory species; and
7 (c) the member is in or on a Commonwealth area.

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

10 Note 2: This section does not apply in the circumstances described in section
11 212. A defendant bears an evidential burden in relation to those
12 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 13 (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- 15 (3) The offence is punishable on conviction by a fine not exceeding
16 500 penalty units.

17 **211D Trading etc. member of listed migratory species taken in**
18 **Commonwealth area**

- 19 (1) A person is guilty of an offence if:
20 (a) the person trades, keeps or moves a member of a migratory
21 species; and
22 (b) the member is a member of a listed migratory species; and
23 (c) the member has been taken in or on a Commonwealth area.

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

26 Note 2: This section does not apply in the circumstances described in section
27 212. A defendant bears an evidential burden in relation to those
28 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 29 (2) Strict liability applies to paragraph (1)(c).

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

Section 211E

- 1 (3) The offence is punishable on conviction by imprisonment for not
2 more than 2 years or a fine not exceeding 1,000 penalty units, or
3 both.

4 **211E Strict liability for trading etc. member of listed migratory**
5 **species taken in Commonwealth area**

- 6 (1) A person is guilty of an offence if:
7 (a) the person trades, keeps or moves a member of a migratory
8 species; and
9 (b) the member is a member of a listed migratory species; and
10 (c) the member has been taken in or on a Commonwealth area.

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

13 Note 2: This section does not apply in the circumstances described in section
14 212. A defendant bears an evidential burden in relation to those
15 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 16 (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- 18 (3) The offence is punishable on conviction by a fine not exceeding
19 500 penalty units.

20 **212 Certain actions are not offences**

21 Sections 211, 211A, 211B, 211C, 211D and 211E do not apply to:

- 22 (a) an action authorised by a permit that was issued under
23 section 216 and is in force; or
24 (b) an action provided for by, and taken in accordance with, a
25 wildlife conservation plan made or adopted under Division 5
26 and in force; or
27 (c) an action that is covered by an approval in operation under
28 Part 9 for the purposes of subsection 20(1) or section 20A; or
29 (d) an action that:

Section 213

- 1 (i) is one of a class of actions declared by the Minister
2 under section 33 not to require an approval under Part 9
3 for the purposes of section 20 or 20A; and
4 (ii) is taken in accordance with a management plan that is
5 an accredited management plan for the purposes of the
6 declaration; or
7 (e) an action that is taken in a humane manner and is reasonably
8 necessary to relieve or prevent suffering by a member of a
9 listed migratory species; or
10 (f) an action that is reasonably necessary to prevent a risk to
11 human health; or
12 (g) an action by a Commonwealth agency, or an agency of a
13 State or of a self-governing Territory, that is reasonably
14 necessary for the purposes of law enforcement; or
15 (h) an action that is reasonably necessary to deal with an
16 emergency involving a serious threat to human life or
17 property; or
18 (i) an action that occurs as a result of an unavoidable accident,
19 other than an accident caused by negligent or reckless
20 behaviour; or
21 (j) an action that is taken in accordance with a permit issued
22 under regulations made under the *Great Barrier Reef Marine*
23 *Park Act 1975* and in force.

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

26 **213 Operation of sections 20 and 20A not affected**

27 To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E and
28 212 do not affect the operation of section 20 or 20A.

29 **214 Failing to notify taking etc. of listed migratory species**

- 30 (1) This section applies to an action taken by a person if all of the
31 following conditions are met:
32 (a) the person's action either:
-

Section 214

- 1 (i) results in the death or injury of a member of a listed
2 migratory species that is in or on a Commonwealth area;
3 or
4 (ii) consists of, or involves, trading, taking, keeping or
5 moving a member of a listed migratory species that is in
6 or on a Commonwealth area;
- 7 (b) the person's action does not constitute an offence against
8 section 211, 211A, 211B, 211C, 211D or 211E;
- 9 (c) the person's action is not an action that the person was
10 authorised by a permit to take.
- 11 Note 1: Section 212 sets out most of the circumstances in which an action
12 described in paragraph (1)(a) will not be an offence against section
13 211, 211A, 211B, 211C, 211D or 211E.
- 14 Note 2: A person is authorised by a permit to take an action if the person is the
15 holder of the permit or the person is given an authority under section
16 219 by the holder of the permit to take the action.
- 17 Note 3: The conditions of a permit may require the holder of the permit to
18 give certain notices.
- 19 (2) Within 7 days of becoming aware of the action, the person must
20 notify the Secretary in writing, by telephone or by use of any other
21 electronic equipment:
22 (a) that the action was taken; and
23 (b) of other particulars (if any) about the action that are
24 prescribed by the regulations.
- 25 (3) An example of the particulars about the action that the regulations
26 may prescribe is the time and place of taking the action. This does
27 not limit the particulars the regulations may prescribe.
- 28 (4) Subsection (2) does not apply to the person if he or she, or any
29 other person or body, is required by or under a law of the
30 Commonwealth to notify the Secretary of the action.
- 31 (5) A person is guilty of an offence punishable on conviction by a fine
32 not exceeding 100 penalty units if the person:
33 (a) fails to do an act; and

Section 215

- 1 (b) the failing to do the act results in a contravention of
2 subsection (2).

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

5 **215 Application for permits**

- 6 (1) A person may, in accordance with the regulations, apply to the
7 Minister for a permit to be issued under section 216.
- 8 (2) The application must be accompanied by the fee prescribed by the
9 regulations (if any).
- 10 (3) As soon as practicable after receiving the application, the Minister
11 must cause notice of the application to be given to each person and
12 body registered under section 266A (about registration for
13 consultation on permit applications).
- 14 (4) The notice must:
- 15 (a) state that an application for a permit has been made; and
16 (b) set out details of the application; and
17 (c) invite persons and bodies to make written submissions to the
18 Minister about whether a permit should be issued; and
19 (d) specify:
- 20 (i) an address for lodgment of submissions; and
21 (ii) a day by which submissions must be lodged.
- 22 (5) The day specified must not be a day occurring within 5 days after
23 the last day on which the notice was given.

24 **216 Minister may issue permits**

- 25 (1) Subject to subsection (3), the Minister may, on application by a
26 person under section 215, issue a permit to the person.
- 27 (2) A permit authorises its holder to take an action specified in the
28 permit without breaching section 211, 211A, 211B, 211C, 211D or
29 211E.

- 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 the listed migratory species concerned or
4 other listed migratory species; or
5 (b) the impact of the specified action on a member of the listed
6 migratory species concerned is incidental to, and not the
7 purpose of, the taking of the action and:
8 (i) the taking of the action will not adversely affect the
9 conservation status of that species or a population of
10 that species; and
11 (ii) the taking of the action is not inconsistent with a
12 wildlife conservation plan for that species that is in
13 force; 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 (c) the specified action is of particular significance to indigenous
17 tradition and will not adversely affect the conservation status
18 of the listed migratory species concerned, or a population of
19 that species; or
20 (d) the specified action is necessary in order to control pathogens
21 and is conducted in a way that will, so far as is practicable,
22 keep to a minimum any impact on the listed migratory
23 species concerned.
- 24 (4) In making a decision on the application, the Minister must consider
25 all written submissions made by persons or bodies registered under
26 section 266A (about registration for consultation on permit
27 applications) to the Minister on or before the day, and at the
28 address for lodgment, specified in the notice under section 215.

29 **217 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:
33 (a) vary or revoke a condition of a permit; or
-

Section 218

1 (b) impose further conditions of a permit.

2 **218 Contravening conditions of a permit**

3 The holder of a permit is guilty of an offence punishable on
4 conviction by a fine not exceeding 300 penalty units if:

- 5 (a) he or she does, or fails to do, an act or thing; and
6 (b) doing, or failing to do, the act or thing results in a
7 contravention of a condition of the permit.

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

10 **219 Authorities under permits**

11 (1) Subject to subsection (2), the holder of a permit may give to a
12 person written authority to take for or on behalf of the holder any
13 action authorised by the permit. The authority may be given
14 generally or as otherwise provided by the instrument of authority.

15 (2) The holder of a permit must not give an authority unless:
16 (a) the permit contains a condition permitting the holder to do
17 so; and
18 (b) the authority is given in accordance with any requirements
19 set out in the condition.

20 (3) A permit is, for the purposes of this Act, taken to authorise the
21 taking of a particular action by a person if the taking of that action
22 by the person is authorised by an authority given by the holder of
23 the permit.

24 (4) The giving of an authority does not prevent the taking of any action
25 by the holder of the permit.

26 (5) Except as provided in this section, a permit does not authorise the
27 taking of any action by a person for or on behalf of the holder of
28 the permit.

- 1 (6) A person who gives an authority must give to the Minister written
2 notice of it within 14 days after giving the authority.

3 **220 Transfer of permits**

4 On the application, in accordance with the regulations, of the
5 holder of a permit, the Minister may, in accordance with the
6 regulations, transfer the permit to another person.

7 **221 Suspension or cancellation of permits**

8 The Minister may, in accordance with the regulations:
9 (a) suspend a permit for a specified period; or
10 (b) cancel a permit.

11 **221A Review of decisions about permits**

12 An application may be made to the Administrative Appeals
13 Tribunal for review of a decision:
14 (a) to issue or refuse a permit; or
15 (b) to specify, vary or revoke a condition of a permit; or
16 (c) to impose a further condition of a permit; or
17 (d) to transfer or refuse to transfer a permit; or
18 (e) to suspend or cancel a permit.

19 **222 Fees**

20 Such fees as are prescribed (if any) are payable in respect of the
21 following:
22 (a) the grant or the transfer of a permit;
23 (b) the variation or revocation of a condition of a permit;
24 (c) the imposition of a further condition of a permit.

1 **Subdivision C—Miscellaneous**

2 **223 Regulations**

3 The regulations may:

- 4 (a) provide for the transportation, treatment and disposal of
5 members of listed migratory species killed, injured or taken
6 in contravention of this Division; and
- 7 (b) provide for the methods or equipment by which members of
8 listed migratory species may be killed or taken otherwise
9 than in contravention of this Division; and
- 10 (c) provide for the gathering and dissemination of information
11 relating to listed migratory species; and
- 12 (d) provide for the protection and conservation of listed
13 migratory species; and
- 14 (e) provide for any matter incidental to or connected with any of
15 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 Jervis 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 Recklessly killing or injuring a cetacean**

- 22 (1) A person is guilty of an offence if:
23 (a) the person takes an action; and
24 (b) the action results in the death or injury of a cetacean; and
25 (c) the cetacean is in:
26 (i) the Australian Whale Sanctuary (but not the coastal
27 waters, or a part of the coastal waters, of a State or the
28 Northern Territory for which a declaration under section
29 228 is in force); or

Section 229A

1 (ii) waters beyond the outer limits of the Australian Whale
2 Sanctuary.

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

5 Note 2: This section does not apply in the circumstances described in section
6 231. A defendant bears an evidential burden in relation to those
7 circumstances. See subsection 13.3(3) of the *Criminal Code*.

8 (2) The offence is punishable on conviction by imprisonment for not
9 more than 2 years or a fine not exceeding 1,000 penalty units, or
10 both.

11 **229A Strict liability for killing or injuring a cetacean**

12 (1) A person is guilty of an offence if:

13 (a) the person takes an action; and

14 (b) the action results in the death or injury of a cetacean; and

15 (c) the cetacean is in:

16 (i) the Australian Whale Sanctuary (but not the coastal
17 waters, or a part of the coastal waters, of a State or the
18 Northern Territory for which a declaration under section
19 228 is in force); or

20 (ii) waters beyond the outer limits of the Australian Whale
21 Sanctuary.

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

24 Note 2: This section does not apply in the circumstances described in section
25 231. A defendant bears an evidential burden in relation to those
26 circumstances. See subsection 13.3(3) of the *Criminal Code*.

27 (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

29 (3) The offence is punishable on conviction by a fine not exceeding
30 500 penalty units.

1 **229B Intentionally taking etc. a cetacean**

2 (1) A person is guilty of an offence if:

3 (a) the person takes, trades, keeps, moves or interferes with a
4 cetacean; and

5 (b) the cetacean is in:

6 (i) the Australian Whale Sanctuary (but not the coastal
7 waters, or a part of the coastal waters, of a State or the
8 Northern Territory for which a declaration under section
9 228 is in force); or

10 (ii) waters beyond the outer limits of the Australian Whale
11 Sanctuary.

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

14 Note 2: This section does not apply in the circumstances described in section
15 231. A defendant bears an evidential burden in relation to those
16 circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

19 (3) The offence is punishable on conviction by imprisonment for not
20 more than 2 years or a fine not exceeding 1,000 penalty units, or
21 both.

22 (4) In this Act:

23 *interfere* with a cetacean includes harass, chase, herd, tag, mark or
24 brand the cetacean.

25 **229C Strict liability for taking etc. a cetacean**

26 (1) A person is guilty of an offence if:

27 (a) the person takes, trades, keeps, moves or interferes with a
28 cetacean; and

29 (b) the cetacean is in:

30 (i) the Australian Whale Sanctuary (but not the coastal
31 waters, or a part of the coastal waters, of a State or the

Section 229D

1 Northern Territory for which a declaration under section
2 228 is in force); or

3 (ii) waters beyond the outer limits of the Australian Whale
4 Sanctuary.

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

7 Note 2: This section does not apply in the circumstances described in section
8 231. A defendant bears an evidential burden in relation to those
9 circumstances. See subsection 13.3(3) of the *Criminal Code*.

10 (2) Strict liability applies to paragraphs (1)(a) and (b).

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

12 (3) The offence is punishable on conviction by a fine not exceeding
13 500 penalty units.

14 **229D Treating an illegally killed or taken cetacean**

15 (1) A person is guilty of an offence if:

16 (a) the person treats a cetacean; and

17 (b) the cetacean has been:

18 (i) killed in contravention of section 229 or 229A; or

19 (ii) taken in contravention of section 229B or 229C.

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

22 Note 2: This section does not apply in the circumstances described in section
23 231. A defendant bears an evidential burden in relation to those
24 circumstances. See subsection 13.3(3) of the *Criminal Code*.

25 (2) The offence is punishable on conviction by imprisonment for not
26 more than 2 years or a fine not exceeding 1,000 penalty units, or
27 both.

28 (3) In this Act:

29 *treat* a cetacean means divide or cut up, or extract any product
30 from, the cetacean.

1 **230 Possession of cetaceans**

2 (1) Subject to section 231, a person is guilty of an offence if:

3 (a) the person has in his or her possession:

4 (i) a cetacean; or

5 (ii) a part of a cetacean; or

6 (iii) a product derived from a cetacean; and

7 (b) the cetacean has been:

8 (i) killed in contravention of section 229 or 229A; or

9 (ii) taken in contravention of section 229B or 229C.

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

12 (2) An offence against this section is punishable on conviction by
13 imprisonment for not more than 2 years or a fine not exceeding
14 1,000 penalty units, or both.

15 **231 Certain actions are not offences**

16 Sections 229, 229A, 229B, 229C, 229D and 230 do not apply to:

17 (a) an action authorised by a permit that was issued under
18 section 238 and is in force; or

19 (b) an action provided for by, and taken in accordance with, a
20 recovery plan, or a wildlife conservation plan, made or
21 adopted under Division 5 and in force; or

22 (c) an action that is taken in a humane manner and is reasonably
23 necessary to relieve or prevent suffering of a cetacean; or

24 (d) an action that is reasonably necessary to prevent a risk to
25 human health; or

26 (e) an action by a Commonwealth agency, or an agency of a
27 State or of a self-governing Territory, that is reasonably
28 necessary for the purposes of law enforcement; or

29 (f) an action that is reasonably necessary to deal with an
30 emergency involving a serious threat to human life or
31 property; or

Section 232

- 1 (g) an action that occurs as a result of an unavoidable accident,
2 other than an accident caused by negligent or reckless
3 behaviour; or
4 (h) in the case of an action taken in relation to a cetacean that is
5 not a member of a listed threatened species—the action was
6 provided for by, and taken in accordance with, a plan of
7 management that is accredited under section 245.

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

10 **232 Action to be taken on killing etc. cetaceans**

- 11 (1) This section applies to an action taken by a person if all of the
12 following conditions are met:
13 (a) the person's action:
14 (i) results in the injury or death of a cetacean, or consists of
15 taking a cetacean, in the Australian Whale Sanctuary
16 (but not the coastal waters, or a part of the coastal
17 waters of a State or the Northern Territory for which a
18 declaration under section 228 is in force) or in waters
19 beyond the outer limits of the Australian Whale
20 Sanctuary; or
21 (ii) consists of treating a cetacean killed, injured or taken in
22 contravention of section 229, 229A, 229B or 229C;
23 (b) the person's action does not constitute an offence against
24 section 229, 229A, 229B, 229C or 229D;
25 (c) the person's action is not an action that the person was
26 authorised by a permit to take.

27 Note 1: Section 231 sets out most of the circumstances in which an action
28 described in paragraph (1)(a) will not be an offence against section
29 229, 229A, 229B, 229C or 229D.

30 Note 2: A person is authorised by a permit to take an action if the person is the
31 holder of the permit or the person is given an authority under section
32 241 by the holder of the permit to take the action.

33 Note 3: The conditions of a permit may require the holder of the permit to
34 give certain notices.

- 1 (2) Within 7 days of becoming aware of the action, the person must
2 notify the Secretary in writing, by telephone or by use of any other
3 electronic equipment:
4 (a) that the action was taken; and
5 (b) of other particulars (if any) about the action that are
6 prescribed by the regulations.
- 7 (3) An example of the particulars about the action that the regulations
8 may prescribe is the time and place of taking the action. This does
9 not limit the particulars the regulations may prescribe.
- 10 (4) Subsection (2) does not apply to the person if he or she, or any
11 other person or body, is required by or under a law of the
12 Commonwealth to notify the Secretary of the action.
- 13 (5) A person is guilty of an offence punishable on conviction by a fine
14 not exceeding 100 penalty units if the person:
15 (a) fails to do an act; and
16 (b) the failing to do the act results in a contravention of
17 subsection (2).
- 18 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
19 criminal responsibility.

20 **Subdivision D—Offences relating to unlawful importation**

21 **233 Possession of unlawfully imported cetaceans**

- 22 (1) Subject to section 235, 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 unlawfully imported.
- 28 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
29 criminal responsibility.

Section 234

- 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 **234 Treating unlawfully imported cetaceans**

- 5 (1) Subject to section 235, a person is guilty of an offence if:
6 (a) the person treats a cetacean; and
7 (b) the cetacean has been unlawfully imported.

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

- 10 (2) An offence against this section is punishable on conviction by
11 imprisonment for not more than 2 years or a fine not exceeding
12 1000 penalty units, or both.

13 **235 Sections 233 and 234 do not apply to certain actions**

14 Sections 233 and 234 do not apply to:

- 15 (a) an action authorised by a permit that was issued under
16 section 238 and is in force; or
17 (b) an action provided for by, and taken in accordance with, a
18 recovery plan, or a wildlife conservation plan, made or
19 adopted under Division 5 and that is in force; or
20 (c) an action that is taken in a humane manner and is reasonably
21 necessary to relieve or prevent suffering by a cetacean; or
22 (d) an action that is reasonably necessary to prevent a risk to
23 human health; or
24 (e) an action by a Commonwealth agency, or an agency of a
25 State or of a self-governing Territory, that is reasonably
26 necessary for the purposes of law enforcement; or
27 (f) an action that is reasonably necessary to deal with an
28 emergency involving a serious threat to human life or
29 property; or

- 1 (g) an action that occurs as a result of an unavoidable accident,
2 other than an accident caused by negligent or reckless
3 behaviour.

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

6 **Subdivision E—Miscellaneous offences**

7 **236 Offences relating to foreign whaling vessels**

- 8 (1) The master of a foreign whaling vessel is guilty of an offence if the
9 vessel is brought into a port in Australia or an external Territory
10 and the master has not obtained the written permission of the
11 Minister for the vessel to be brought into the port.

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

- 14 (2) Subsection (1) is an offence of strict liability.

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

- 16 (3) An offence against subsection (1) is punishable on conviction by a
17 fine not exceeding 500 penalty units.

- 18 (4) Subsection (1) does not apply if:

- 19 (a) the vessel is brought into the port in accordance with a
20 prescribed agreement between Australia and any other
21 country or countries; or
22 (b) the vessel is brought into the port under the direction of a
23 person exercising powers under a law of the Commonwealth
24 or of a State; or
25 (c) an unforeseen emergency renders it necessary to bring the
26 vessel into the port in order to secure the safety of the vessel
27 or human life.

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

- 30 (5) In this Act:
-

Section 237

1 **foreign whaling vessel** means a vessel, other than an Australian
2 vessel, designed, equipped or used for:

- 3 (a) killing, taking, treating or carrying whales; or
4 (b) supporting the operations of a vessel or vessels designed,
5 equipped or used for killing, taking, treating or carrying
6 whales.

7 **master**, in relation to a foreign whaling vessel, means the person
8 (other than a ship's pilot) in charge or command of the vessel.

9 **Subdivision F—Permit system**

10 **237 Application for permits**

11 (1) A person may, in accordance with the regulations, apply to the
12 Minister for a permit to be issued under section 238.

13 Note: The action to be covered by the permit will undergo assessment under
14 Part 8 as it applies because of section 165.

15 (2) The application must be accompanied by the fee prescribed by the
16 regulations (if any).

17 (3) As soon as practicable after receiving the application, the Minister
18 must cause notice of the application to be given to each person and
19 body registered under section 266A (about registration for
20 consultation on permit applications).

21 (4) The notice must:

- 22 (a) state that an application for a permit has been made; and
23 (b) set out details of the application; and
24 (c) invite persons and bodies to make written submissions to the
25 Minister about whether a permit should be issued; and
26 (d) specify:
27 (i) an address for lodgment of submissions; and
28 (ii) a day by which submissions must be lodged.

29 (5) The day specified must not be a day occurring within 5 days after
30 the last day on which the notice was given.

1 **238 Minister may issue permits**

2 (1) Subject to subsections (3) and (4), the Minister may, on application
3 by a person under section 237, issue a permit to the person.

4 (2) A permit authorises its holder to take an action specified in the
5 permit without breaching sections 229, 229A, 229B, 229C, 229D,
6 230, 233 and 234.

7 (3) The Minister must not issue the permit unless satisfied that:

8 (a) the specified action will contribute significantly to the
9 conservation of cetaceans; or

10 (b) if the specified action will interfere with cetaceans, the
11 interference is incidental to, and not the purpose of, the
12 taking of the action and:

13 (i) the taking of the action will not adversely affect the
14 conservation status of a species of cetacean or a
15 population of that species; and

16 (ii) the taking of the action is not inconsistent with a
17 recovery plan or wildlife conservation plan that is in
18 force for a species of cetacean; and

19 (iii) the holder of the permit will take all reasonable steps to
20 minimise the interference with cetaceans; or

21 (c) the specified action is whale watching and is carried out in
22 accordance with the regulations (if any) made for the
23 purposes of this section.

24 Note: In deciding whether to issue the permit, the Minister must consider the
25 assessment report that relates to the action to be covered by the permit
26 and was prepared as a result of Part 8 applying because of section 165.

27 (3A) In making a decision on the application, the Minister must consider
28 all written submissions made by persons or bodies registered under
29 section 266A (about registration for consultation on permit
30 applications) to the Minister on or before the day, and at the
31 address for lodgment, specified in the notice under section 237.

32 (4) The Minister must not grant a permit authorising its holder to kill a
33 cetacean or to take a cetacean for live display.

Section 239

1 (5) In this Act:

2 *whale watching* means any activity conducted for the purpose of
3 observing a whale, including but not limited to being in the water
4 for the purposes of observing or swimming with a whale, or
5 otherwise interacting with a whale.

6 **239 Conditions of permits**

7 (1) A permit is subject to such conditions as are specified in the permit
8 or as are imposed under subsection (2).

9 (2) The Minister may, in accordance with the regulations:

- 10 (a) vary or revoke a condition of a permit; or
11 (b) impose further conditions of a permit.

12 **240 Contravening conditions of a permit**

13 The holder of a permit is guilty of an offence punishable upon
14 conviction by a fine not exceeding 300 penalty units if:

- 15 (a) he or she does, or fails to do, an act or thing; and
16 (b) doing, or failing to do, the act or thing results in a
17 contravention of a condition of the permit.

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

20 **241 Authorities under permits**

21 (1) Subject to subsection (2), the holder of a permit may give to a
22 person written authority to take for or on behalf of the holder any
23 action authorised by the permit. The authority may be given
24 generally or as otherwise provided by the instrument of authority.

25 (2) The holder of a permit must not give an authority unless:

- 26 (a) the permit contains a condition permitting the holder to do
27 so; and
28 (b) the authority is given in accordance with any requirements
29 set out in the condition.
-

- 1 (3) A permit is, for the purposes of this Act, taken to authorise the
2 taking of a particular action by a person if the taking of that action
3 by the person is authorised by an authority given by the holder of
4 the permit.
- 5 (4) The giving of an authority does not prevent the taking of any action
6 by the holder of the permit.
- 7 (5) Except as provided in this section, a permit does not authorise the
8 taking of any action by a person for or on behalf of the holder of
9 the permit.
- 10 (6) A person who gives an authority must give to the Minister written
11 notice of it within 14 days after giving the authority.

12 **242 Transfer of permits**

13 On the application, in accordance with the regulations, of the
14 holder of a permit, the Minister may, in accordance with the
15 regulations, transfer the permit to another person.

16 **243 Suspension or cancellation of permits**

17 The Minister may, in accordance with the regulations:
18 (a) suspend a permit for a specified period; or
19 (b) cancel a permit.

20 **243A Review of decisions about permits**

21 An application may be made to the Administrative Appeals
22 Tribunal for review of a decision:
23 (a) to issue or refuse a permit; or
24 (b) to specify, vary or revoke a condition of a permit; or
25 (c) to impose a further condition of a permit; or
26 (d) to transfer or refuse to transfer a permit; or
27 (e) to suspend or cancel a permit.

Section 244

1 **244 Fees**

2 Such fees as are prescribed (if any) are payable in respect of the
3 following:

- 4 (a) the grant or the transfer of a permit;
5 (b) the variation or revocation of a condition of a permit;
6 (c) the imposition of a further condition of a permit.

7 **Subdivision G—Miscellaneous**

8 **245 Minister may accredit plans of management**

9 The Minister may, by instrument in writing, accredit for the
10 purposes of this Division:

- 11 (a) a plan of management within the meaning of section 17 of
12 the *Fisheries Management Act 1991*; or
13 (b) a plan of management for a fishery made by a State or
14 self-governing Territory and that is in force in the State or
15 Territory;

16 if satisfied that:

- 17 (c) the plan requires persons engaged in fishing under the plan to
18 take all reasonable steps to ensure that cetaceans are not
19 killed or injured as a result of the fishing; and
20 (d) the fishery to which the plan relates does not, or is not likely
21 to, adversely affect the conservation status of a species of
22 cetacean or a population of that species.

23 **246 Vesting of whales in Commonwealth**

24 (1) If:

- 25 (a) a 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

- 1 (ii) in waters beyond the outer limits of the Australian
2 Whale Sanctuary; and
3 (a) a person kills, injures or takes the cetacean, whether or not in
4 contravention of this Division;
5 the cetacean vests, by force of this section, in the Commonwealth.
6 (2) The Commonwealth is not liable in any action, suit or proceedings
7 in respect of any matter relating to a cetacean at any time before
8 the taking of possession of the cetacean by the Commonwealth.

9 **247 Regulations**

10 The regulations may:

- 11 (a) provide for the transportation, treatment and disposal of
12 cetaceans killed, injured or taken in contravention of this
13 Division; and
14 (b) provide for the methods or equipment by which cetaceans
15 may be killed, taken or interfered with otherwise than in
16 contravention of this Division; and
17 (c) provide for the gathering and dissemination of information
18 relating to cetaceans; and
19 (d) provide for the protection and conservation of cetaceans; and
20 (e) provide for any matter incidental to or connected with any of
21 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 species in the Family Hydrophiidae (sea-snakes);
9 (b) all species in the Family Laticaudidae (sea-snakes);
10 (c) all species in the Family Otariidae (eared seals);
11 (d) all species in the Family Phocidae (“true” seals);
12 (e) all species in the Genus *Crocodylus* (crocodiles);
13 (f) all species in the Genus *Dugong* (dugong);
14 (g) all species in the Family Cheloniidae (marine turtles);
15 (h) the species *Dermochelys coriacea* (leatherback turtles);
16 (i) all species in the Family Syngnathidae (seahorses,
17 sea-dragons and pipefish);
18 (j) all species in the Family Solenostomidae (ghost pipefish);
19 (k) all species in the Class Aves (birds) that occur naturally in
20 Commonwealth marine areas.
- 21 (3) The Minister must establish the list within 30 days after the
22 commencement of this Act.
- 23 (4) The Minister must cause a notice summarising the information
24 contained in the instrument to be published in accordance with the
25 regulations (if any).

26 **249 Minister may amend list**

- 27 (1) Subject to this Subdivision, the Minister may, by instrument
28 published in the *Gazette*, amend the list:

Section 250

- 1 (a) by including items in the list; or
2 (b) by deleting items from the list; or
3 (c) by correcting an inaccuracy or updating the name of a marine
4 species.
- 5 (2) An instrument mentioned in paragraph (1)(a) or (b) is a
6 disallowable instrument for the purposes of section 46A of the *Acts*
7 *Interpretation Act 1901*.
- 8 (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies
9 in relation to an instrument because of section 46A of that Act,
10 amendments of a list that delete items from the list take effect on
11 the first day on which they are no longer liable to be disallowed, or
12 to be taken to have been disallowed, under section 48 of that Act as
13 it so applies.
- 14 (4) When an instrument is laid before each House of the Parliament in
15 accordance with section 48 of the *Acts Interpretation Act 1901*, the
16 Minister must cause a statement to be laid before each House with
17 the instrument explaining:
18 (a) in the case of an item that has been included in the list by the
19 instrument—why the item was so included; or
20 (b) in the case of an item that has been deleted from the list by
21 the instrument—why the item was so deleted.
- 22 (5) The Minister must cause a notice summarising the information
23 contained in an instrument to be published in accordance with the
24 regulations (if any).

25 **250 Adding marine species to the list**

- 26 (1) The Minister must not add a marine species to the list unless:
27 (a) the Minister is satisfied that it is necessary to include the
28 species in the list in order to ensure the long-term
29 conservation of the species; and
30 (b) the species occurs naturally in a Commonwealth marine area.

Section 251

- 1 (2) Before adding a marine species to the list, the Minister must
2 consult with each Minister who has an interest in a Commonwealth
3 marine area where the species occurs naturally.

4 **251 Minister must consider advice from Scientific Committee**

- 5 (1) In deciding whether to add an item to, or delete an item from, the
6 list, the Minister must, in accordance with the regulations (if any),
7 obtain and consider advice from the Scientific Committee on the
8 scientific aspects of the addition or deletion of the item concerned.
- 9 (2) The Minister must:
- 10 (a) decide whether to add an item to, or delete an item from, the
11 list; and
- 12 (b) if the Minister decides to add or delete the item—cause the
13 necessary instrument to be published in the *Gazette*;
14 within 90 days after receiving the Scientific Committee's advice on
15 the addition or deletion of the item.
- 16 (3) A member of the Scientific Committee has a duty not to disclose to
17 any other person the advice, or any information relating to the
18 advice, before the end of that period of 90 days unless the
19 disclosure:
- 20 (a) is for the official purposes of the Scientific Committee; or
21 (b) if an instrument is published in the *Gazette* relating to an
22 addition or deletion to which the advice relates—occurred
23 after the publication.

24 **252 Minister to make lists available to the public**

25 The Minister must, in accordance with the regulations (if any),
26 make copies of up-to-date lists available for purchase, for a
27 reasonable price, at a prescribed place in each State and
28 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 Recklessly killing or injuring member of listed marine species**

- 8 (1) A person is guilty of an offence if:
9 (a) the person takes an action; and
10 (b) the action results in the death or injury of a member of a
11 marine species; and
12 (c) the member is a member of a listed marine species; and
13 (d) the member is in or on a Commonwealth area.

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

16 Note 2: This section does not apply in the circumstances described in section
17 255. A defendant bears an evidential burden in relation to those
18 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 19 (2) Strict liability applies to paragraph (1)(d).

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

- 21 (3) The offence is punishable on conviction by imprisonment for not
22 more than 2 years or a fine not exceeding 1,000 penalty units, or
23 both.

24 **254A Strict liability for killing or injuring member of listed marine**
25 **species**

- 26 (1) A person is guilty of an offence if:
27 (a) the person takes an action; and
28 (b) the action results in the death or injury of a member of a
29 marine species; and
-

Section 254B

- 1 (c) the member is a member of a listed marine species; and
2 (d) the member is in or on a Commonwealth area.

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

5 Note 2: This section does not apply in the circumstances described in section
6 255. A defendant bears an evidential burden in relation to those
7 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 8 (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

- 10 (3) The offence is punishable on conviction by a fine not exceeding
11 500 penalty units.

12 **254B Recklessly taking etc. member of listed marine species**

- 13 (1) A person is guilty of an offence if:

14 (a) the person takes, trades, keeps or moves a member of a
15 marine species; and

16 (b) the member is a member of a listed marine species; and

17 (c) the member is in or on a Commonwealth area.

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

20 Note 2: This section does not apply in the circumstances described in section
21 255. A defendant bears an evidential burden in relation to those
22 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 23 (2) Strict liability applies to paragraph (1)(c).

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

- 25 (3) The offence is punishable on conviction by imprisonment for not
26 more than 2 years or a fine not exceeding 1,000 penalty units, or
27 both.

28 **254C Strict liability for taking etc. member of listed marine species**

- 29 (1) A person is guilty of an offence if:
-

Section 254D

- 1 (a) the person takes, trades, keeps or moves a member of a
2 marine species; and
3 (b) the member is a member of a listed marine species; and
4 (c) the member is in or on a Commonwealth area.

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

7 Note 2: This section does not apply in the circumstances described in section
8 255. A defendant bears an evidential burden in relation to those
9 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 10 (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- 12 (3) The offence is punishable on conviction by a fine not exceeding
13 500 penalty units.

14 **254D Trading etc. member of listed marine species taken in**
15 **Commonwealth area**

- 16 (1) A person is guilty of an offence if:

- 17 (a) the person trades, keeps or moves a member of a marine
18 species; and
19 (b) the member is a member of a listed marine species; and
20 (c) the member has been taken in or on a Commonwealth area.

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

23 Note 2: This section does not apply in the circumstances described in section
24 255. A defendant bears an evidential burden in relation to those
25 circumstances. See subsection 13.3(3) of the *Criminal Code*.

- 26 (2) Strict liability applies to paragraph (1)(c).

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

- 28 (3) The offence is punishable on conviction by imprisonment for not
29 more than 2 years or a fine not exceeding 1,000 penalty units, or
30 both.

Section 254E

1 **254E Strict liability for trading etc. member of listed marine species**
2 **taken in Commonwealth area**

3 (1) A person is guilty of an offence if:

- 4 (a) the person trades, keeps or moves a member of a marine
5 species; and
6 (b) the member is a member of a listed marine species; and
7 (c) the member has been taken in or on a Commonwealth area.

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

10 Note 2: This section does not apply in the circumstances described in section
11 255. A defendant bears an evidential burden in relation to those
12 circumstances. See subsection 13.3(3) of the *Criminal Code*.

13 (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

15 (3) The offence is punishable on conviction by a fine not exceeding
16 500 penalty units.

17 **255 Certain actions are not offences**

18 Sections 254, 254A, 254B, 254C, 254D and 254E do not apply to:

- 19 (a) an action authorised by a permit that was issued under
20 section 258 and is in force; or
21 (b) an action provided for by, and taken in accordance with, a
22 wildlife conservation plan made under Division 5 and in
23 force; or
24 (c) an action that is covered by an approval in operation under
25 Part 9 for the purposes of subsection 23(1) or (2), 24A(1),
26 (2), (3) or (4), 26(1) or (2) or 27A(1), (2), (3) or (4); or
27 (d) an action that:
28 (i) is one of a class of actions declared by the Minister
29 under section 33 not to require an approval under Part 9
30 for the purposes of subsection 23(1) or (2), 24A(1), (2),
31 (3) or (4), 26(1) or (2) or 27A(1), (2), (3) or (4); and

- 1 (ii) is taken in accordance with a management plan that is
2 an accredited management plan for the purposes of the
3 declaration; or
4 (e) an action that is taken in a humane manner and is reasonably
5 necessary to relieve or prevent suffering by an animal; or
6 (f) an action that is reasonably necessary to prevent a risk to
7 human health; or
8 (g) an action by a Commonwealth agency, or an agency of a
9 State or of a self-governing Territory, that is reasonably
10 necessary for the purposes of law enforcement; or
11 (h) an action that is reasonably necessary to deal with an
12 emergency involving a serious threat to human life or
13 property; or
14 (i) an action that occurs as a result of an unavoidable accident,
15 other than an accident caused by negligent or reckless
16 behaviour; or
17 (j) an action taken in accordance with a permit issued under
18 regulations made under the *Great Barrier Reef Marine Park*
19 *Act 1975* and in force; or
20 (k) an action provided for by, and taken in accordance with, a
21 plan of management that is accredited under section 265.

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

24 **256 Failing to notify taking etc. of listed marine wildlife**

- 25 (1) This section applies to an action taken by a person if all of the
26 following conditions are met:
27 (a) the person's action either:
28 (i) results in the death or injury of a member of a listed
29 marine species that is in or on a Commonwealth area; or
30 (ii) consists of, or involves, trading, taking, keeping or
31 moving a member of a listed marine species that is in or
32 on a Commonwealth area;
33 (b) the person's action does not constitute an offence against
34 section 254, 254A, 254B, 254C, 254D or 254E;
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Section 257

1 (c) the person's action is not an action that the person was
2 authorised by a permit to take.

3 Note 1: Section 255 sets out most of the circumstances in which an action
4 described in paragraph (1)(a) will not be an offence against section
5 254, 254A, 254B, 254C, 254D or 254E.

6 Note 2: A person is authorised by a permit to take an action if the person is the
7 holder of the permit or the person is given an authority under section
8 261 by the holder of the permit to take the action.

9 Note 3: The conditions of a permit may require the holder of the permit to
10 give certain notices.

11 (2) Within 7 days of becoming aware of the action, the person must
12 notify the Secretary in writing, by telephone or by use of any other
13 electronic equipment:

14 (a) that the action was taken; and

15 (b) of other particulars (if any) about the action that are
16 prescribed by the regulations.

17 (3) An example of the particulars about the action that the regulations
18 may prescribe is the time and place of taking the action. This does
19 not limit the particulars the regulations may prescribe.

20 (4) Subsection (2) does not apply to the person if he or she, or any
21 other person or body, is required by or under a law of the
22 Commonwealth to notify the Secretary of the action.

23 (5) A person is guilty of an offence punishable on conviction by a fine
24 not exceeding 100 penalty units if a person:

25 (a) fails to do an act; and

26 (b) the failing to do the act results in a contravention of
27 subsection (2).

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

30 **257 Application for permits**

31 (1) A person may, in accordance with the regulations, apply to the
32 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 (3) As soon as practicable after receiving the application, the Minister
4 must cause notice of the application to be given to each person and
5 body registered under section 266A (about registration for
6 consultation on permit applications).
- 7 (4) The notice must:
- 8 (a) state that an application for a permit has been made; and
9 (b) set out details of the application; and
10 (c) invite persons and bodies to make written submissions to the
11 Minister about whether a permit should be issued; and
12 (d) specify:
- 13 (i) an address for lodgment of submissions; and
14 (ii) a day by which submissions must be lodged.
- 15 (5) The day specified must not be a day occurring within 5 days after
16 the last day on which the notice was given.

17 **258 Minister may issue permits**

- 18 (1) Subject to subsection (3), the Minister may, on application by a
19 person under section 257, issue a permit to the person.
- 20 (2) A permit authorises its holder to take the actions specified in the
21 permit without breaching section 254, 254A, 254B, 254C, 254D or
22 254E.
- 23 (3) The Minister must not issue the permit unless satisfied that:
- 24 (a) the specified action will significantly contribute to the
25 conservation of the listed marine species concerned or other
26 listed marine species; or
27 (b) the impact of the specified action on a member of the listed
28 marine species concerned is incidental to, and not the
29 purpose of, the taking of the action and:

Section 259

- 1 (i) the taking of the action will not adversely affect the
2 conservation status of that species or a population of
3 that species; and
4 (ii) the taking of the action is not inconsistent with a
5 wildlife conservation plan for that species that is in
6 force; and
7 (iii) the holder of the permit will take all reasonable steps to
8 minimise the impact of the action on that species; or
9 (c) the specified action is of particular significance to indigenous
10 tradition and will not adversely affect the conservation status
11 of the listed marine species concerned; or
12 (d) the specified action is necessary in order to control pathogens
13 and are conducted in a way that will, so far as is practicable,
14 keep to a minimum any impact on the listed marine species
15 concerned.
- 16 (4) In making a decision on the application, the Minister must consider
17 all written submissions made by persons or bodies registered under
18 section 266A (about registration for consultation on permit
19 applications) to the Minister on or before the day, and at the
20 address for lodgment, specified in the notice under section 257.

21 **259 Conditions of permits**

- 22 (1) A permit is subject to such conditions as are specified in the permit
23 or as are imposed under subsection (2).
- 24 (2) The Minister may, in accordance with the regulations:
25 (a) vary or revoke a condition of a permit; or
26 (b) impose further conditions of a permit.

27 **260 Contravening conditions of a permit**

- 28 The holder of a permit is guilty of an offence punishable upon
29 conviction by a fine not exceeding 300 penalty units if:
30 (a) he or she does, or fails to do, an act or thing; and

- 1 (b) doing, or failing to do, the act or thing results in a
2 contravention of a condition of the permit.

3 **261 Authorities under permits**

- 4 (1) Subject to subsection (2), the holder of a permit may give to a
5 person written authority to take for or on behalf of the holder any
6 action authorised by the permit. The authority may be given
7 generally or as otherwise provided by the instrument of authority.
- 8 (2) The holder of a permit must not give an authority unless:
9 (a) the permit contains a condition permitting the holder to do
10 so; and
11 (b) the authority is given in accordance with any requirements
12 set out in the condition.
- 13 (3) A permit is, for the purposes of this Act, taken to authorise the
14 taking of a particular action by a person if the taking of that action
15 by the person is authorised by an authority given by the holder of
16 the permit.
- 17 (4) The giving of an authority does not prevent the taking of any action
18 by the holder of the permit.
- 19 (5) Except as provided in this section, a permit does not authorise the
20 taking of any action by a person for or on behalf of the holder of
21 the permit.
- 22 (6) A person who gives an authority must give to the Minister written
23 notice of it within 14 days after giving the authority.

24 **262 Transfer of permits**

25 On the application, in accordance with the regulations, of the
26 holder of a permit, the Minister may, in accordance with the
27 regulations, transfer the permit to another person.

Section 263

1 **263 Suspension or cancellation of permits**

2 The Minister may, in accordance with the regulations:

- 3 (a) suspend a permit for a specified period; or
4 (b) cancel a permit.

5 **263A Review of decisions about permits**

6 An application may be made to the Administrative Appeals
7 Tribunal for review of a decision:

- 8 (a) to issue or refuse a permit; or
9 (b) to specify, vary or revoke a condition of a permit; or
10 (c) to impose a further condition of a permit; or
11 (d) to transfer or refuse to transfer a permit; or
12 (e) to suspend or cancel a permit.

13 **264 Fees**

14 Such fees as are prescribed (if any) are payable in respect of the
15 following:

- 16 (a) the grant or the transfer of a permit;
17 (b) the variation or revocation of a condition of a permit;
18 (c) the imposition of a further condition of a permit.

19 **Subdivision C—Miscellaneous**

20 **265 Minister may accredit plans of management**

21 The Minister may, by instrument in writing, accredit for the
22 purposes of this Division:

- 23 (a) a plan of management within the meaning of section 17 of
24 the *Fisheries Management Act 1991*; or
25 (b) a plan of management for a fishery made by a State or
26 self-governing Territory and that is in force in the State or
27 Territory;
28 if satisfied that:
-

- 1 (c) the plan requires persons engaged in fishing under the plan to
2 take all reasonable steps to ensure that members of listed
3 marine species are not killed or injured as a result of the
4 fishing; and
5 (d) the fishery to which the plan relates does not, or is not likely
6 to, adversely affect the conservation status of a listed marine
7 species or a population of that species.

8 **266 Regulations**

9 The regulations may:

- 10 (a) provide for the transportation, treatment and disposal of
11 members of listed marine species killed, injured or taken in
12 contravention of this Division; and
13 (b) provide for the methods or equipment by which members of
14 listed marine species may be killed or taken otherwise than in
15 contravention of this Division; and
16 (c) provide for the gathering and dissemination of information
17 relating to listed marine species; and
18 (d) provide for the protection and conservation of listed marine
19 species; and
20 (e) provide for any matter incidental to or connected with any of
21 the above paragraphs.

Section 266A

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2 **Division 4A—Register for consultations about permits**

3 **266A Register for consultation about permit applications**

- 4 (1) At intervals of not more than 12 months, the Minister must cause
5 to be published a notice inviting applications from persons or
6 bodies wishing to be registered for a specified period of at least 12
7 months to be told of each application for a permit under Division 1,
8 2, 3 or 4. The notice must be published:
9 (a) in the *Gazette*; and
10 (b) in a daily newspaper that circulates generally in each State
11 and self-governing Territory; and
12 (c) in any other way required by the regulations (if any).
- 13 (2) The Minister must register any person or body that applies in
14 writing for registration.
- 15 (3) Registration has effect for the period specified in the notice.

1

2 **Division 5—Plans**

3 **Subdivision A—Recovery plans and threat abatement plans**

4 **267 Simplified outline of this Subdivision**

5 The following is a simplified outline of this Subdivision:

6

Recovery plans for listed threatened species and ecological communities and threat abatement plans for key threatening processes bind the Commonwealth and Commonwealth agencies.

7

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9

The Minister must ensure that a recovery plan is in force for each listed threatened species and ecological community.

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11

The Minister need ensure a threat abatement plan is in force for a key threatening process only if the Minister decides that a plan is a feasible, effective and efficient way of abating the process. The Minister must consult before making such a decision.

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A recovery plan or threat abatement plan can be made by the Minister alone or jointly with relevant States and Territories, or the Minister can adopt a State or Territory plan. There must be public consultation and advice from the Scientific Committee about the plan, regardless of how it is made or adopted.

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20 **268 Compliance with recovery plans and threat abatement plans**

21

A Commonwealth agency must not take any action that contravenes a recovery plan or a threat abatement plan.

22

23 **269 Implementing recovery and threat abatement plans**

24

- (1) Subject to subsection (2), the Commonwealth must implement a recovery plan or threat abatement plan to the extent to which it applies in Commonwealth areas.

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Section 269A

- 1 (2) If a recovery plan or a threat abatement plan applies outside
2 Commonwealth areas in a particular State or self-governing
3 Territory, the Commonwealth must seek the co-operation of the
4 State or Territory with a view to implementing the plan jointly with
5 the State or Territory to the extent to which the plan applies in the
6 State or Territory.

7 **269A Making or adopting a recovery plan**

8 *Ensuring recovery plan is always in force*

- 9 (1) The Minister must exercise his or her powers under this section to
10 ensure that there is always in force a recovery plan for:
11 (a) each listed threatened species (except one that is extinct or is
12 a conservation dependent species); and
13 (b) each listed threatened ecological community;
14 once the first recovery plan for the species or community has come
15 into force.

16 *Making a plan*

- 17 (2) The Minister may make a written recovery plan for the purposes of
18 the protection, conservation and management of:
19 (a) a listed threatened species (except one that is extinct or is a
20 conservation dependent species); or
21 (b) a listed threatened ecological community.

22 Note: Section 273 requires recovery plans to be made and in force by certain
23 deadlines.

24 *Making a plan jointly with a State or Territory*

- 25 (3) The Minister may make a written recovery plan for the purposes of
26 the protection, conservation and management of a listed threatened
27 species (except one that is extinct or is a conservation dependent
28 species) or a listed threatened ecological community jointly with
29 the States and self-governing Territories in which the species or
30 community occurs, or with agencies of those States and Territories.

1 *Content of a plan*

- 2 (4) The Minister must not make a recovery plan under subsection (2)
3 or (3) unless the plan meets the requirements of section 270.

4 *Prerequisites to making a plan*

- 5 (5) Before making a recovery plan under subsection (2) or (3) for a
6 listed threatened species or listed threatened ecological community,
7 the Minister must:

- 8 (a) consult the appropriate Minister of each State and
9 self-governing Territory in which the species or community
10 occurs, with a view to:
11 (i) taking the views of each of those States and Territories
12 into account in making the plan under subsection (2); or
13 (ii) making the plan jointly under subsection (3);
14 unless the species or community occurs only in a
15 Commonwealth area; and
16 (b) consider the advice of the Scientific Committee given under
17 section 274; and
18 (c) consult about the plan and consider comments in accordance
19 with sections 275 and 276.

20 *Limits on making a plan*

- 21 (6) The Minister must not make a recovery plan under subsection (2)
22 for a species or ecological community that occurs wholly or partly
23 outside a Commonwealth area unless the Minister is satisfied that it
24 is not reasonably practicable to make the plan under subsection (3):
25 (a) with each of the States and self-governing Territories in
26 which the species or community occurs; and
27 (b) in the case of a species or ecological community that occurs
28 partly inside and partly outside a Commonwealth area—
29 within the time required by subsection 273(2).

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1 *Adopting a State or Territory plan*

2 (7) The Minister may, by instrument in writing, adopt as a recovery
3 plan a plan made by a State, a self-governing Territory or an
4 agency of a State or self-governing Territory (whether or not the
5 plan is in force in the State or Territory). The Minister may adopt
6 the plan with such modifications as are specified in the instrument.
7 This subsection has effect subject to section 277.

8 Note: Section 277 requires that:

- 9 (a) an adopted plan have the content required for a recovery plan by
10 section 270; and
11 (b) there has been adequate consultation in making the plan adopted;
12 and
13 (c) the Minister consult the Scientific Committee about the content
14 of the plan.

15 *Effect of adopting a plan*

16 (8) A plan adopted under subsection (7) has effect as if it had been
17 made under subsection (2) (whether it was adopted with
18 modifications or not).

19 **270 Content of recovery plans**

20 (1) A recovery plan must provide for the research and management
21 actions necessary to stop the decline of, and support the recovery
22 of, the listed threatened species or listed threatened ecological
23 community concerned so that its chances of long-term survival in
24 nature are maximised.

25 (2) In particular, a recovery plan must:

- 26 (a) state the objectives to be achieved (for example, removing a
27 species or community from a list, or indefinite protection of
28 existing populations of a species or community); and
29 (b) state criteria against which achievement of the objectives is
30 to be measured (for example, a specified number and
31 distribution of viable populations of a species or community,
32 or the abatement of threats to a species or community); and
-

- 1 (c) specify the actions needed to achieve the objectives; and
2 (ca) identify threats to the species or community; and
3 (d) identify the habitats that are critical to the survival of the
4 species or community concerned and the actions needed to
5 protect those habitats; and
6 (e) identify any populations of the species or community
7 concerned that are under particular pressure of survival and
8 the actions needed to protect those populations; and
9 (f) state the estimated duration and cost of the recovery process;
10 and
11 (g) identify:
12 (i) interests that will be affected by the plan's
13 implementation; and
14 (ii) organisations or persons who will be involved in
15 evaluating the performance of the recovery plan; and
16 (h) specify any major benefits to native species or ecological
17 communities (other than those to which the plan relates) that
18 will be affected by the plan's implementation; and
19 (j) meet prescribed criteria (if any) and contain provisions of a
20 prescribed kind (if any).
- 21 (3) In making a recovery plan, regard must be had to:
22 (a) the objects of this Act; and
23 (b) the most efficient and effective use of the resources that are
24 allocated for the conservation of species and ecological
25 communities; and
26 (c) minimising any significant adverse social and economic
27 impacts, consistently with the principles of ecologically
28 sustainable development; and
29 (d) meeting Australia's obligations under international
30 agreements between Australia and one or more countries
31 relevant to the species or ecological community to which the
32 plan relates; and
33 (e) the role and interests of indigenous people in the
34 conservation of Australia's biodiversity.
-

1 **270A Decision whether to have a threat abatement plan**

2 *Decision*

- 3 (1) The Minister may at any time decide whether to have a threat
4 abatement plan for a threatening process in the list of key
5 threatening processes established under section 183. The Minister
6 must do so:
- 7 (a) within 90 days of the threatening process being included in
8 the list; and
 - 9 (b) within 5 years of the last decision whether to have a threat
10 abatement plan for the process, if that decision was not to
11 have a threat abatement plan for the process.

12 *Basis for decision*

- 13 (2) The Minister must decide to have a threat abatement plan for the
14 process if he or she believes that having and implementing a threat
15 abatement plan is a feasible, effective and efficient way to abate
16 the process. The Minister must decide not to have a threat
17 abatement plan if he or she does not believe that.

18 *Consultation before making a decision*

- 19 (3) Before making a decision under this section, the Minister must:
- 20 (a) request the Scientific Committee to give advice within a
21 specified period; and
 - 22 (b) take reasonable steps to request any Commonwealth agency,
23 any State, any self-governing Territory, and any agency of a
24 State or self-governing Territory, that would be affected by
25 or interested in abatement of the process to give advice
26 within a specified period;
- 27 on the feasibility, effectiveness or efficiency of having and
28 implementing a threat abatement plan to abate the process.

1 *Consulting others*

- 2 (4) Subsection (3) does not prevent the Minister from requesting any
3 other person or body to give advice within a specified period on the
4 feasibility, effectiveness or efficiency of having and implementing
5 a threat abatement plan to abate the process.

6 *Request may be made before listing*

- 7 (5) A request for advice on the feasibility, effectiveness or efficiency
8 of having and implementing a threat abatement plan to abate the
9 process may be made before or after the process is included in the
10 list of key threatening processes established under section 183.

11 *Time for giving advice*

- 12 (6) The Minister must not make a decision whether to have a threat
13 abatement plan for the process before the end of the period within
14 which he or she has requested a person or body to give advice on
15 the feasibility, effectiveness or efficiency of having and
16 implementing a threat abatement plan to abate the process.

17 *Considering views expressed in consultation*

- 18 (7) When the Minister is making a decision under this section, he or
19 she must consider the advice that a person or body gave on request
20 within the period specified in the request.

21 *Publishing decision and reasons*

- 22 (8) The Minister must publish in accordance with the regulations (if
23 any):
24 (a) a decision whether or not to have a threat abatement plan for
25 a key threatening process; and
26 (b) the Minister's reasons for the decision.

Section 270B

1 *Special rules for processes included in original list*

2 (9) Subsections (3), (4), (5), (6) and (7) do not apply in relation to a
3 decision about a process included in the list under section 183 as
4 first established.

5 **270B Making or adopting a threat abatement plan**

6 *Application*

7 (1) This section applies only if the Minister's most recent decision
8 under section 270A in relation to a key threatening process is to
9 have a threat abatement plan for the process.

10 Note: Section 273 sets a deadline of 3 years from the decision for ensuring
11 that a threat abatement plan is in force for the process.

12 *Making a plan*

13 (2) The Minister may make a written threat abatement plan for the
14 purposes of reducing the effect of the process.

15 *Making a plan jointly with a State or Territory*

16 (3) The Minister may make a written threat abatement plan for the
17 purposes of reducing the effect of the process, jointly with the
18 States and self-governing Territories in which the process occurs or
19 with agencies of those States and Territories.

20 *Content of a plan*

21 (4) The Minister must not make a threat abatement plan under
22 subsection (2) or (3) unless the plan meets the requirements of
23 section 271.

24 *Prerequisites to making a plan*

25 (5) Before making a threat abatement plan for the process under
26 subsection (2) or (3), the Minister must:

Section 270B

- 1 (a) consult the appropriate Minister of each State and
2 self-governing Territory in which the process occurs, with a
3 view to:
4 (i) taking the views of each of those States and Territories
5 into account in making the plan under subsection (2); or
6 (ii) making the plan jointly under subsection (3);
7 unless the process occurs only in a Commonwealth area; and
8 (b) consider the advice of the Scientific Committee given under
9 section 274; and
10 (c) consult about the plan and consider comments in accordance
11 with sections 275 and 276.

12 *Limits on making a plan*

- 13 (6) The Minister must not make a threat abatement plan under
14 subsection (2) for a process that occurs wholly or partly outside a
15 Commonwealth area unless the Minister is satisfied that it is not
16 reasonably practicable to make the plan:
17 (a) jointly with each of the States and self-governing Territories
18 in which the process occurs; and
19 (b) within 3 years of the decision to have the plan.

20 *Adopting a State or Territory plan*

- 21 (7) The Minister may, by instrument in writing, adopt as a threat
22 abatement plan for the process a plan made by a State, a
23 self-governing Territory or an agency of a State or self-governing
24 Territory (whether or not the plan is in force in the State or
25 Territory). The Minister may adopt the plan with such
26 modifications as are specified in the instrument. This subsection
27 has effect subject to section 277.

28 Note: Section 277 requires that:

- 29 (a) an adopted plan have the content required for a threat abatement
30 plan by section 271; and
31 (b) there has been adequate consultation in making the plan adopted;
32 and

Section 271

- 1 (c) the Minister consult the Scientific Committee about the content
2 of the plan.

3 *Effect of adopting a plan*

- 4 (8) A plan adopted under subsection (7) has effect as if it had been
5 made under subsection (2), whether it was adopted with
6 modifications or not.

7 **271 Content of threat abatement plans**

- 8 (1) A threat abatement plan must provide for the research,
9 management and other actions necessary to reduce the key
10 threatening process concerned to an acceptable level in order to
11 maximise the chances of the long-term survival in nature of native
12 species and ecological communities affected by the process.
- 13 (2) In particular, a threat abatement plan must:
- 14 (a) state the objectives to be achieved; and
15 (b) state criteria against which achievement of the objectives is
16 to be measured; and
17 (c) specify the actions needed to achieve the objectives; and
18 (d) state the estimated duration and cost of the threat abatement
19 process; and
20 (e) identify organisations or persons who will be involved in
21 evaluating the performance of the threat abatement plan; and
22 (f) specify any major ecological matters (other than the species
23 or communities threatened by the key threatening process
24 that is the subject of the plan) that will be affected by the
25 plan's implementation; and
26 (g) meet prescribed criteria (if any) and contain provisions of a
27 prescribed kind (if any).
- 28 (3) In making a threat abatement plan, regard must be had to:
29 (a) the objects of this Act; and

- 1 (b) the most efficient and effective use of the resources that are
2 allocated for the conservation of species and ecological
3 communities; and
4 (c) minimising any significant adverse social and economic
5 impacts consistently with the principles of ecologically
6 sustainable development; and
7 (d) meeting Australia's obligations under international
8 agreements between Australia and one or more countries
9 relevant to the species or ecological community threatened
10 by the key threatening process that is the subject of the plan;
11 and
12 (e) the role and interests of indigenous people in the
13 conservation of Australia's biodiversity.

14 **272 Eradication of non-native species**

15 If:

- 16 (a) the actions specified under paragraph 270(2)(c) in a recovery
17 plan, or under paragraph 271(2)(c) in a threat abatement plan,
18 include the eradication of a non-native species; and
19 (b) the species is threatened in a country in which its native
20 habitat occurs;
21 the recovery plan, or threat abatement plan, must require the
22 Commonwealth to offer to provide stock of the species to that
23 country before the eradication proceeds.

24 **273 Ensuring plans are in force**

25 *When a plan comes into force*

- 26 (1A) A recovery plan or a threat abatement plan comes into force on the
27 day on which it is made or adopted, or on a later day specified by
28 the Minister in writing.

Section 273

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Recovery plan for species and communities in Commonwealth areas only

- (1) A recovery plan for a listed threatened species or listed threatened ecological community that occurs only in Commonwealth areas must be made and come into force:
- (a) in the case of a native species listed in Schedule 1 to the *Endangered Species Protection Act 1992*, for which a recovery plan under that Act was not in force immediately before the commencement of this Act—within the remainder of the period allowed by section 36 of that Act for the preparation of the plan for that species; or
 - (b) in the case of a listed threatened species (other than a native species mentioned in paragraph (a)) in:
 - (i) the critically endangered category—within 2 years after the species in question became included in that category; or
 - (ii) the endangered category or the extinct in the wild category—within 3 years after the species in question became included in that category; or
 - (iii) the vulnerable category—within 5 years after the species in question became included in that category; or
 - (c) in the case of an ecological community (if any) listed in Schedule 2 to the *Endangered Species Protection Act 1992*, for which a recovery plan under that Act was not in force immediately before the commencement of this Act—within the remainder of the period allowed by section 36 of that Act for the preparation of the plan for that community; or
 - (d) in the case of a listed threatened ecological community (other than a community mentioned in paragraph (c)) in:
 - (i) the critically endangered category—within 2 years after the community in question became included in that category; or
 - (ii) the endangered category—within 3 years after the community in question became included in that category; or
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- 1 (iii) the vulnerable category—within 5 years after the
2 community in question became included in that
3 category.

4 *Recovery plan for species and communities partly in*
5 *Commonwealth areas*

- 6 (2) A recovery plan for a listed threatened species or a listed
7 threatened ecological community that occurs in and outside a
8 Commonwealth area must be made:
- 9 (a) in the case of a listed threatened species in:
- 10 (i) the critically endangered category—within 2 years after
11 the species in question became included in that
12 category; or
- 13 (ii) the endangered category or the extinct in the wild
14 category—within 3 years after the species in question
15 became included in that category; or
- 16 (iii) the vulnerable category—within 5 years after the
17 species in question became included in that category; or
- 18 (b) in the case of a listed threatened ecological community in:
- 19 (i) the critically endangered category—within 2 years after
20 the community in question became included in that
21 category; or
- 22 (ii) the endangered category—within 3 years after the
23 community in question became included in that
24 category; or
- 25 (iii) the vulnerable category—within 5 years after the
26 community in question became included in that
27 category.

28 *Recovery plan for species and communities wholly outside*
29 *Commonwealth areas*

- 30 (3) A recovery plan for a listed threatened species or listed threatened
31 ecological community that occurs only outside Commonwealth
32 areas must be made as soon as reasonably practicable after the

Section 274

1 species or ecological community is included in the list referred to
2 in section 178 or 181 (as appropriate).

3 *Deadline for threat abatement plan*

4 (4) A threat abatement plan for a key threatening process must be
5 made and in force within 3 years of the decision under section
6 270A to have the plan.

7 *Ensuring threat abatement plan is in force*

8 (5) Once the first threat abatement plan for a key threatening process is
9 in force, the Minister must exercise his or her powers under this
10 Subdivision to ensure that a threat abatement plan is in force for
11 the process until the Minister decides under section 270A not to
12 have a threat abatement plan for the process.

13 Note: The Minister may revoke a threat abatement plan for a key threatening
14 process if the Minister decides under section 270A not to have a threat
15 abatement plan for the process. See section 283A.

16 **274 Scientific Committee to advise on plans**

17 (1) The Minister must obtain and consider the advice of the Scientific
18 Committee on:

- 19 (a) the content of recovery and threat abatement plans; and
20 (b) the times within which, and the order in which, such plans
21 should be made.

22 (2) In giving advice about a recovery plan, the Scientific Committee
23 must take into account the following matters:

- 24 (a) the degree of threat to the survival in nature of the species or
25 ecological community in question;
26 (b) the potential for the species or community to recover;
27 (c) the genetic distinctiveness of the species or community;
28 (d) the importance of the species or community to the
29 ecosystem;
30 (e) the value to humanity of the species or community;
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- 1 (f) the efficient and effective use of the resources allocated to
2 the conservation of species and ecological communities.
- 3 (3) In giving advice about a threat abatement plan, the Scientific
4 Committee must take into account the following matters:
- 5 (a) the degree of threat that the key threatening process in
6 question poses to the survival in nature of species and
7 ecological communities;
- 8 (b) the potential of species and ecological communities so
9 threatened to recover;
- 10 (c) the efficient and effective use of the resources allocated to
11 the conservation of species and ecological communities.

12 **275 Consultation on plans**

- 13 (1) Before making a recovery plan or threat abatement plan under this
14 Subdivision, the Minister must:
- 15 (a) take reasonable steps to ensure that copies of the proposed
16 plan are available for purchase, for a reasonable price, at
17 prescribed places in each State and self-governing territory;
18 and
- 19 (b) give a copy of it, together with a notice of a kind referred to
20 in subsection (2), to the Scientific Committee; and
- 21 (c) cause the notice to be published:
- 22 (i) in the *Gazette*; and
- 23 (ii) in a daily newspaper that circulates generally in each
24 State, and self-governing Territory, in which the
25 relevant listed threatened native species, listed
26 threatened ecological community or key threatening
27 process occurs; and
- 28 (iii) in any other way required by the regulations (if any).
- 29 (2) The notice must:
- 30 (a) specify the places where copies of the proposed plan may be
31 purchased; and

Section 276

- 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 **276 Consideration of comments**

- 9 The Minister:
10 (a) must, in accordance with the regulations (if any), consider all
11 comments on a proposed recovery plan or threat abatement
12 plan made in response to an invitation under section 275; and
13 (b) may revise the plan to take account of those comments.

14 **277 Adoption of State plans**

- 15 (1) The Minister must not adopt a plan as a recovery plan or a threat
16 abatement plan under this Subdivision 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 270 or 271, as the
20 case requires.
21 (2) Before adopting a plan, the Minister must obtain and consider
22 advice from the Scientific Committee on the content of the plan.

23 **278 Publication, review and variation of plans**

- 24 (1) As soon as practicable after the Minister makes or adopts a
25 recovery plan or a threat abatement plan under this Subdivision,
26 the Minister must:
27 (a) make copies of the plan available for purchase, for a
28 reasonable price, at a prescribed place in each State and
29 self-governing Territory; and
-

- 1 (b) give notice of the making or adopting of each such plan; and
2 (c) publish the notice:
3 (i) in the *Gazette*; and
4 (ii) in a daily newspaper that circulates generally in each
5 State, and self-governing Territory; and
6 (iii) in any other way required by the regulations (if any).
- 7 (2) The notice must:
8 (a) state that the Minister has made or adopted the plan; and
9 (b) specify the day on which the plan comes into force; and
10 (c) specify the places where copies of the plan may be
11 purchased.

12 **279 Variation of plans by the Minister**

- 13 (1) The Minister may, at any time, review a recovery plan or threat
14 abatement plan that has been made or adopted under this
15 Subdivision and consider whether a variation of it is necessary.
- 16 (2) Each plan must be reviewed by the Minister at intervals of not
17 longer than 5 years.
- 18 (3) If the Minister considers that a variation of a plan is necessary, the
19 Minister may, subject to subsections (4), (5), (6) and (7), vary the
20 plan.
- 21 (4) The Minister must not vary a plan, unless the plan, as so varied,
22 continues to meet the requirements of section 270 or 271, as the
23 case requires.
- 24 (5) Before varying a plan, the Minister must obtain and consider
25 advice from the Scientific Committee on the content of the
26 variation.
- 27 (6) If the Minister has made a plan jointly with, or adopted a plan that
28 has been made by, a State or self-governing Territory, or an agency
29 of a State or self-governing Territory, the Minister must seek the

Section 280

1 co-operation of that State or Territory, or that agency, with a view
2 to varying the plan.

3 (7) Sections 275, 276 and 278 apply to the variation of a plan in the
4 same way that those sections apply to the making of a recovery
5 plan or threat abatement plan.

6 **280 Variation by a State or Territory of joint plans and plans**
7 **adopted by the Minister**

8 (1) If a State or self-governing Territory varies a plan that:
9 (a) the Minister has made jointly with the State or self-governing
10 Territory, or an agency of the State or Territory; or
11 (b) has been adopted by the Minister as a recovery plan or a
12 threat abatement plan;

13 the variation is of no effect for the purposes of this Act unless it is
14 approved by the Minister.

15 (2) Before approving a variation, the Minister must obtain and
16 consider advice from the Scientific Committee on the content of
17 the variation.

18 (3) The Minister must not approve a variation unless satisfied that:
19 (a) an appropriate level of consultation was undertaken in
20 varying the plan; and
21 (b) the plan, as so varied, continues to meet the requirements of
22 section 270 or 271, as the case requires.

23 (4) If the Minister approves a variation of a plan, the plan has effect as
24 so varied on and after the date of the approval, or such later date as
25 the Minister determines in writing.

26 (5) Section 278 applies to the variation of a plan in the same way that
27 it applies to the making of a recovery plan or threat abatement
28 plan.

1 **281 Commonwealth assistance**

- 2 (1) The Commonwealth may give to a State or self-governing
3 Territory, or to an agency of a State or a self-governing Territory,
4 financial assistance, and any other assistance, to make or
5 implement a recovery plan or a threat abatement plan.
- 6 (2) The Commonwealth may give to a person (other than a State or a
7 self-governing Territory, or an agency of a State or Territory)
8 financial assistance, and any other assistance, to implement a
9 recovery plan or a threat abatement plan.
- 10 (3) The giving of assistance may be made subject to such conditions as
11 the Minister thinks fit. The Minister is to have regard to the advice
12 of the Scientific Committee under section 282 before determining
13 those conditions.

14 **282 Scientific Committee to advise on assistance**

- 15 (1) The Scientific Committee is to advise the Minister on the
16 conditions (if any) to which the giving of assistance under section
17 281 should be subject.
- 18 (2) In giving advice about assistance for making or implementing a
19 recovery plan, the Scientific Committee must take into account the
20 following matters:
- 21 (a) the degree of threat to the survival in nature of the species or
22 ecological community in question;
- 23 (b) the potential for the species or community to recover;
- 24 (c) the genetic distinctiveness of the species or community;
- 25 (d) the importance of the species or community to the
26 ecosystem;
- 27 (e) the value to humanity of the species or community;
- 28 (f) the efficient and effective use of the resources allocated to
29 the conservation of species and ecological communities.

Section 283

- 1 (3) In giving advice about assistance for making or implementing
2 threat abatement plan, the Scientific Committee must take into
3 account the following matters:
4 (a) the degree of threat that the key threatening process in
5 question poses to the survival in nature of species and
6 ecological communities;
7 (b) the potential of species and ecological communities so
8 threatened to recover;
9 (c) the efficient and effective use of the resources allocated to
10 the conservation of species and ecological communities.

11 **283 Plans may cover more than one species etc.**

- 12 (1) A recovery plan made or adopted under this Subdivision may deal
13 with one or more listed threatened species and/or one or more
14 listed ecological communities.
15 (2) A threat abatement plan made or adopted under this Subdivision
16 may deal with one or more key threatening processes.

17 **283A Revoking a threat abatement plan**

- 18 (1) The Minister may, by written instrument, revoke a threat
19 abatement plan for a key threatening process if the Minister
20 decides under section 270A not to have a threat abatement plan for
21 the process.
22 (2) The Minister must publish in accordance with the regulations (if
23 any):
24 (a) the instrument revoking the threat abatement plan; and
25 (b) the Minister's reasons for revoking the plan.

26 **284 Reports on preparation and implementation of plans**

27 The Secretary must include in each annual report a report on the
28 making and adoption under this Subdivision of each recovery plan
29 and threat abatement plan during the year to which the report
30 relates.

1 **Subdivision B—Wildlife conservation plans**

2 **285 Wildlife conservation plans**

- 3 (1) Subject to this section, the Minister may make, by instrument in
4 writing, and implement a wildlife conservation plan for the
5 purposes of the protection, conservation and management of the
6 following:
- 7 (a) a listed migratory species that occurs in Australia or an
8 external Territory;
 - 9 (b) a listed marine species that occurs in Australia or an external
10 Territory;
 - 11 (c) a species of cetacean that occurs in the Australian Whale
12 Sanctuary;
 - 13 (d) a conservation dependent species.
- 14 (2) The Minister must not make a wildlife conservation plan for a
15 species that is a listed threatened species (except a conservation
16 dependent species).
- 17 (3) Subject to section 292, the Minister may, by instrument in writing,
18 adopt a plan that has been made by a State or a self-governing
19 Territory, or by an agency of a State or self-governing Territory, as
20 a wildlife conservation plan. The Minister may adopt a plan with
21 such modifications as are specified in the instrument.
- 22 (4) A plan, as modified and adopted under subsection (2), has effect as
23 if the plan had been made by the Minister under subsection (1).
- 24 (5) The Minister must seek the co-operation of the States and
25 self-governing Territories in which:
- 26 (a) a listed migratory species occurs; or
 - 27 (b) a listed marine species occurs; or
 - 28 (c) a species of cetacean occurs; or
 - 29 (d) a conservation dependent species occurs;
- 30 with a view to making and implementing jointly with those States
31 and Territories, or agencies of those States or Territories, a joint
-

Section 286

- 1 wildlife conservation plan unless the species occurs only in a
2 Commonwealth area.
- 3 (6) Before making a wildlife conservation plan under subsection (1) or
4 (5), the Minister must:
- 5 (a) consider the advice of the Scientific Committee given under
6 section 289; and
- 7 (b) consult about the plan in accordance with sections 290 and
8 291.
- 9 (7) A wildlife conservation plan comes into force on the day on which
10 it is made or adopted, or on such later day as the Minister specifies
11 in writing.

286 Acting in accordance with wildlife conservation plans

- 12 A Commonwealth agency must take all reasonable steps to act in
13 accordance with a wildlife conservation plan.
14

287 Content of wildlife conservation plans

- 15 (1) A wildlife conservation plan must provide for the research and
16 management actions necessary to support survival of the migratory
17 species, marine species, species of cetacean or conservation
18 dependent species concerned.
19
- 20 (2) In particular, a wildlife conservation plan must:
- 21 (a) state the objectives to be achieved; and
- 22 (b) state criteria against which achievement of the objectives is
23 to be measured; and
- 24 (c) specify the actions needed to achieve the objectives; and
- 25 (d) identify the habitats of the species concerned and the actions
26 needed to protect those habitats; and
- 27 (e) identify:
- 28 (i) interests that will be affected by the plan's
29 implementation; and

- 1 (ii) organisations or persons who will be involved in
2 evaluating the performance of the plan; and
3 (f) specify any major benefits to migratory species, marine
4 species, species of cetacean or conservation dependent
5 species (other than those to which the plan relates) that will
6 be affected by the plan's implementation; and
7 (g) meet prescribed criteria (if any) and contain provisions of a
8 prescribed kind (if any).
- 9 (3) In making a wildlife conservation plan, regard must be had to:
10 (a) the objects of this Act; and
11 (b) the most efficient and effective use of the resources that are
12 allocated for the conservation of migratory species, marine
13 species, species of cetacean and conservation dependent
14 species; and
15 (c) minimising any significant adverse social and economic
16 impacts, consistently with the principles of ecologically
17 sustainable development; and
18 (d) meeting Australia's obligations under international
19 agreements between Australia and one or more countries
20 relevant to the migratory species, marine species, species of
21 cetacean or conservation dependent species to which the plan
22 relates; and
23 (e) the role and interests of indigenous people in the
24 conservation of Australia's biodiversity.

25 **288 Eradication of non-native species**

- 26 If:
27 (a) the actions specified under section 287 in a wildlife
28 conservation plan include the eradication of a non-native
29 species; and
30 (b) the species is threatened in a country in which its native
31 habitat occurs;

Section 289

1 the wildlife conservation plan must require the Commonwealth to
2 offer to provide stock of the species to that country before the
3 eradication proceeds.

4 **289 Scientific Committee to advise on scheduling of plans**

5 (1) The Minister may seek advice from the Scientific Committee on
6 the need for wildlife conservation plans and the order in which
7 they should be made.

8 (1A) The Scientific Committee may advise the Minister on its own
9 initiative to make a wildlife conservation plan for a specified
10 species described in subsection 285(1).

11 (2) In giving advice under subsection (1) or (1A), the Scientific
12 Committee must take into account the resources available for
13 making plans.

14 (3) Before making a plan, the Minister must obtain and consider
15 advice from the Scientific Committee on the content of the plan.

16 **290 Consultation on plans**

17 (1) Before making a wildlife conservation plan under subsection
18 285(1) or (5), the Minister must:

19 (a) take reasonable steps to ensure that copies of the proposed
20 plan are available for purchase, for a reasonable price, at
21 prescribed places in each State and self-governing Territory;
22 and

23 (b) give a copy of it, together with a notice of a kind referred to
24 in subsection (2), to the Scientific Committee; and

25 (c) cause the notice to be published:

26 (i) in the *Gazette*; and

27 (ii) in a daily newspaper that circulates generally in each
28 State, and self-governing Territory; and

29 (iii) in any other way required by the regulations (if any).

30 (2) The notice must:

Section 291

- 1 (a) specify the places where copies of the proposed plan may be
2 purchased; and
3 (b) invite persons to make written comments about the proposed
4 plan; and
5 (c) specify:
6 (i) an address for lodgment of comments; and
7 (ii) a day by which comments must be made.
8 (3) The day specified must not be a day occurring within 3 months
9 after the notice is published in the *Gazette*.

10 **291 Consideration of comments**

11 The Minister:

- 12 (a) must, in accordance with the regulations (if any), consider all
13 comments on a proposed wildlife conservation plan made in
14 response to an invitation under section 290; and
15 (b) may revise the plan to take account of those comments.

16 **292 Adoption of State plans**

- 17 (1) The Minister must not adopt a plan as a wildlife conservation plan
18 under subsection 285(3) unless:
19 (a) the Minister is satisfied that an appropriate level of
20 consultation has been undertaken in making the plan; and
21 (b) the plan meets the requirements of section 287.
22 (2) Before adopting a plan, the Minister must obtain and consider
23 advice from the Scientific Committee on the content of the plan.

24 **293 Publication, review and variation of plans**

- 25 (1) As soon as practicable after the Minister makes or adopts a wildlife
26 conservation plan under section 285, the Minister must:
27 (a) make copies of the plan available for purchase, for a
28 reasonable price, at a prescribed place in each State and
29 self-governing Territory; and
-

Section 294

- 1 (b) give notice of the making or adoption of each such plan; and
2 (c) publish the notice:
3 (i) in the *Gazette*; and
4 (ii) in a daily newspaper that circulates generally in each
5 State, and self-governing Territory; and
6 (iii) in any other way required by the regulations (if any).
- 7 (2) The notice must:
8 (a) state that the Minister has made or adopted the plan; and
9 (b) specify the day on which the plan comes into force; and
10 (c) specify the places where copies of the plan may be
11 purchased.

12 **294 Variation of plans by the Minister**

- 13 (1) The Minister may, at any time, review a wildlife conservation plan
14 that has been made or adopted under section 285 and consider
15 whether a variation of it is necessary.
- 16 (2) Each plan must be reviewed by the Minister at intervals of not
17 longer than 5 years.
- 18 (3) If the Minister considers that a variation of a plan is necessary, the
19 Minister may, subject to subsections (4), (5), (6) and (7) vary the
20 plan.
- 21 (4) The Minister must not vary a plan, unless the plan, as so varied,
22 continues to meet the requirements of section 287.
- 23 (5) Before varying a plan, the Minister must obtain and consider
24 advice from the Scientific Committee on the content of the
25 variation.
- 26 (6) If the Minister has made a plan jointly with, or adopted a plan that
27 has been made by, a State or self-governing Territory, or an agency
28 of a State or self-governing Territory, the Minister must seek the
29 co-operation of that State or Territory, or that agency, with a view
30 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,
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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 (d) one or more conservation dependent species.

16 **298 Reports on preparation and implementation of plans**

17 The Secretary must include in each annual report a report on the
18 making and adoption under section 285 of each wildlife
19 conservation plan during the year to which the report relates.

20 **Subdivision C—Miscellaneous**

21 **299 Wildlife conservation plans cease to have effect**

22 If:

- 23 (a) a wildlife conservation plan is in force for all or any of the
24 following:
25 (i) a listed migratory species;
26 (ii) a listed marine species;
27 (iii) a species of cetacean; and

1 (b) the species becomes a listed threatened species (except a
2 conservation dependent species);
3 the wildlife conservation plan ceases to have effect in relation to
4 the species on and from the day on which a recovery plan takes
5 effect for the species.

6 **300 Document may contain more than one plan**

7 (1) All or any of the plans made under this Division may be included
8 in the same document.

9 (2) All or any of the plans adopted under this Division may be
10 included in the same instrument of adoption.

11 **300A State and Territory laws not affected**

12 Sections 269A, 270A, 270B, 273 and 285 do not exclude or limit
13 the concurrent operation of a law of a State or self-governing
14 Territory.

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 6A—Control of non-native species**

3 **301A Regulations for control of non-native species**

4

The regulations may:

5

(a) provide for the establishment and maintenance of a list of species, other than native species, whose members:

6

7

(i) do or may threaten biodiversity in the Australian jurisdiction; or

8

9

(ii) would be likely to threaten biodiversity in the Australian jurisdiction if they were brought into the Australian jurisdiction; and

10

11

12

(b) regulate or prohibit the bringing into the Australian jurisdiction of members of a species included in the list mentioned in paragraph (a); and

13

14

15

(c) regulate or prohibit trade in members of a species included in the list mentioned in paragraph (a):

16

17

(i) between Australia and another country; or

18

(ii) between 2 States; or

19

(iii) between 2 Territories; or

20

(iv) between a State and a Territory; or

21

(v) by a constitutional corporation; and

22

(d) regulate and prohibit actions:

23

(i) involving or affecting members of a species included in the list mentioned in paragraph (a); and

24

25

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

26

27

28

(e) provide for the making and implementation of plans to reduce, eliminate or prevent the impacts of members of species included in the list mentioned in paragraph (a) on biodiversity in the Australian jurisdiction.

29

30

31

Section 302

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.

1

2 **Division 8—Miscellaneous**

3

4 **303 Regulations**

- 5 (1) The regulations may make provision for the conservation of
6 biodiversity in Commonwealth areas.
- 7 (2) In particular, the regulations may prohibit or regulate actions
8 affecting a member of a native species in a Commonwealth area.
9 This does not limit subsection (1).

10 **303A Exemptions from this Part**

- 11 (1) A person proposing to take an action that would contravene a
12 provision of this Part apart from this section may apply in writing
13 to the Minister for an exemption from the provision.
- 14 (2) The Minister must decide within 20 business days of receiving the
15 application whether or not to grant the exemption.
- 16 (3) The Minister may, by written notice, exempt a specified person
17 from the application of a specified provision of this Part in relation
18 to a specified action.
- 19 (4) The Minister may do so only if he or she is satisfied that it is in the
20 national interest that the provision not apply in relation to the
21 person or the action.
- 22 (5) In determining the national interest, the Minister may consider
23 Australia's defence or security or a national emergency. This does
24 not limit the matters the Minister may consider.
- 25 (6) A provision specified in the notice does not apply in relation to the
26 specified person or action on or after the day specified in the
27 notice. The Minister must not specify a day earlier than the day the
28 notice is made.

Chapter 5 Conservation of biodiversity

Part 13 Species and communities

Division 8 Miscellaneous

Section 303A

- 1 (7) Within 10 business days after making the notice, the Minister
2 must:
3 (a) publish a copy of the notice and his or her reasons for
4 granting the exemption in accordance with the regulations;
5 and
6 (b) give a copy of the notice to the person specified in the notice.

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 Note: When the Minister is considering entering into a conservation
25 agreement, the Minister must take into account any responsibilities of
26 other Commonwealth Ministers that may be affected by the
27 agreement.

- 28 (2) The Minister must not enter into a conservation agreement unless
29 satisfied that:
30 (a) the proposed agreement will result in a net benefit to the
31 conservation of biodiversity; and

Section 306

- 1 (b) the proposed agreement is not inconsistent with a recovery
2 plan, threat abatement plan or wildlife conservation plan.
- 3 (3) For the purposes of paragraph (2)(a), in deciding whether a
4 proposed agreement will result in a net benefit to biodiversity
5 conservation, the Minister must have regard to the prescribed
6 matters (if any).
- 7 (4) A conservation agreement must not cover all or part of a
8 Commonwealth reserve.
- 9 (5) Under subsection (1), the Minister may enter into a conservation
10 agreement covering land with one of the following persons who
11 has a usage right relating to the land:
12 (a) an indigenous person;
13 (b) a body corporate wholly owned by indigenous persons;
14 (c) a body corporate established by or under an Act for the
15 purposes of holding for the benefit of indigenous persons
16 land vested in it by or under that Act;
17 (d) the trustee of a trust that holds land for the benefit of
18 indigenous persons.
- 19 This does not limit subsection (1).
- 20 (6) The Minister must take account of the following when entering
21 into a conservation agreement as described in subsection (5):
22 (a) paragraph (j) of Article 8 of the Biodiversity Convention;
23 (b) paragraph (c) of Article 10 of the Biodiversity Convention;
24 (c) paragraph 4 of Article 18 of the Biodiversity Convention;
25 (d) objective 1.8.2 of the National Strategy for the Conservation
26 of Australia's Biological Diversity, published by the
27 Commonwealth in 1996.

306 Content of conservation agreements

- 28
29 (1) Without limiting section 305, a conservation agreement may
30 provide, for example, for all or any of the following:

- 1 (a) activities that promote the protection and conservation of
2 biodiversity;
- 3 (b) controlling or prohibiting, in any place covered by the
4 agreement, actions or processes that might adversely affect
5 the species, ecological communities, habitats or potential
6 habitats covered by the agreement;
- 7 (c) requiring a person bound by the agreement not to obstruct
8 access by a person authorised under the agreement to places
9 covered by the agreement for the purpose of monitoring
10 compliance with the agreement;
- 11 (d) requiring a person bound by the agreement to give such an
12 authorised person information requested by the authorised
13 person that is in the first-mentioned person's control and is
14 relevant to compliance with the agreement;
- 15 (e) requiring the Commonwealth to provide financial, technical
16 or other assistance to a person bound by the agreement;
- 17 (g) the commencement and duration of the agreement.
- 18 (2) Without limiting section 305 or subsection (1) of this section, a
19 conservation agreement entered into with the owner of a place may
20 provide, for example, for all or any of the following:
- 21 (a) requiring the owner to carry out specified activities, or to do
22 specified things, that promote the conservation of
23 biodiversity;
- 24 (b) restricting the use of the place, or requiring the owner to
25 refrain from, control or refuse to permit, actions or processes
26 that may adversely affect the species, ecological
27 communities, habitats or potential habitats covered by the
28 agreement;
- 29 (c) requiring the owner to permit access to the place by specified
30 persons;
- 31 (d) requiring the owner to contribute towards costs incurred in
32 implementing the agreement;
- 33 (e) specifying the manner in which any money paid to the owner
34 under the agreement is to be applied by the owner;

Section 307

- 1 (f) requiring the owner to repay to the Commonwealth any
2 money paid to the owner under the agreement if the owner
3 commits a specified breach of the agreement or in other
4 specified circumstances;
- 5 (g) providing for any other matter relating to the conservation or
6 enhancement of the place, including the preparation and
7 implementation of a plan of management for the place.

8 **307 Conservation agreements to be legally binding**

9 A conservation agreement is legally binding on:

- 10 (a) the Commonwealth; and
11 (b) the person or persons with whom the Minister entered into
12 the agreement on behalf of the Commonwealth; and
13 (c) anyone else who is a successor to the whole or any part of
14 any interest that a person mentioned in paragraph (b) had,
15 when the agreement was entered into, in any place covered
16 by the agreement.

17 **308 Variation and termination of conservation agreements**

- 18 (1) A conservation agreement may be varied by a variation agreement
19 entered into by the Minister, on behalf of the Commonwealth, and
20 the person or persons bound by the conservation agreement under
21 paragraph 307(b) or (c).
- 22 (2) Sections 305 and 306 apply in relation to variation agreements in
23 the same way as they apply in relation to conservation agreements.
- 24 (3) A conservation agreement may be terminated:
- 25 (a) by agreement between the Minister, on behalf of the
26 Commonwealth, and the person or persons bound by the
27 conservation agreement under paragraph 307(b) or (c); or
28 (b) in such other manner, or in such circumstances (if any), as
29 the agreement specifies.

Section 309

- 1 (4) If the Minister is satisfied that a conservation agreement is not
2 capable of achieving its purpose, the Minister may, by order
3 published in the *Gazette*, terminate the agreement or vary it in any
4 way the Minister thinks necessary to ensure it becomes capable of
5 achieving its purpose.
- 6 (5) The Minister may make an order under subsection (4) in relation to
7 a conservation agreement without the agreement of the person or
8 persons bound by the conservation agreement under paragraph
9 307(b) or (c).
- 10 (6) The Minister must cause a copy of an order to be laid before each
11 House of the Parliament within the prescribed period after the
12 publication of the order.
- 13 (7) If a conservation agreement is varied by an order, the person or
14 persons bound by the conservation agreement under paragraph
15 307(b) or (c) may, by written notice given to the Minister,
16 terminate the agreement.
- 17 (8) If a conservation agreement is terminated or varied by an order, the
18 person or persons bound by the conservation agreement under
19 paragraph 307(b) or (c) are not entitled to any compensation in
20 respect of the termination or variation.
- 21 Note: See Parts 17 and 18 for remedies for breach of conservation
22 agreements.

23 **309 Publication of conservation agreements**

- 24 (1) As soon as practicable after a conservation agreement has been
25 entered into or varied, other than by an order under subsection
26 308(4), the Minister must:
- 27 (a) take reasonable steps to ensure that copies of the agreement
28 or variation are available for purchase, for a reasonable price,
29 at a prescribed place in each State and self-governing
30 Territory; and
- 31 (b) cause a notice of the agreement or variation to be published:
32 (i) in the *Gazette*; and
-

Section 310

- 1 (ii) in any other way required by the regulations.
- 2 (2) The notice must:
- 3 (a) state that the agreement or variation has been entered into or
- 4 made; and
- 5 (b) specify the places where copies of the agreement or variation
- 6 may be purchased.
- 7 (3) Subsection (1) does not apply in relation to a conservation
- 8 agreement, or a variation of such an agreement, or any part of such
- 9 an agreement or variation, if the Minister is satisfied that disclosure
- 10 of the agreement or variation, or the part of the agreement or
- 11 variation, as the case may be, would result in harm being done to
- 12 components of biodiversity.
- 13 (4) 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 disclose matters that the
- 18 Minister is satisfied are commercial-in-confidence.
- 19 (5) The Minister must not be satisfied that matter is
- 20 commercial-in-confidence unless a person demonstrates to the
- 21 Minister that:
- 22 (a) release of information under subsection (1) about the matter
- 23 would cause competitive detriment to the person; and
- 24 (b) the information is not in the public domain; and
- 25 (c) the information is not required to be disclosed under another
- 26 law of the Commonwealth, a State or a Territory; and
- 27 (d) the information is not readily discoverable.

28 **310 List of conservation agreements**

- 29 The Minister must:
- 30 (a) maintain an up-to-date list of conservation agreements that
- 31 are in force; and

Section 311

- 1 (b) take reasonable steps to ensure that copies of the list are
2 available for purchase, for a reasonable price, at a prescribed
3 place in each State and self-governing Territory.

4 **311 Commonwealth, State and Territory laws**

- 5 (1) A provision of a conservation agreement has no effect to the extent
6 (if any) to which it is inconsistent with a law of the
7 Commonwealth, or of a State or Territory.

- 8 (2) For the purposes of subsection (1), a provision of a conservation
9 agreement is not taken to be inconsistent with a law of the
10 Commonwealth, or of a State or Territory, if both the provision and
11 the law are capable of being complied with.

12 **312 Minister must not give preference**

- 13 The Minister must not, in exercising powers on behalf of the
14 Commonwealth under this Part, give preference to one State or any
15 part thereof within the meaning of section 99 of the Constitution.

Section 313

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

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;

Section 316

- 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.

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) the 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.

Section 317

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) the 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 in force at the
23 time.

24 Note: Section 323 explains what Australian World Heritage management
25 principles are.

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 the
19 Australian World Heritage management principles is prepared and
20 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:

Section 323

- 1 (a) the World Heritage Convention; and
2 (b) the 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 regulations must prescribe principles for the management of
10 natural heritage and cultural heritage. The principles prescribed are
11 the *Australian World Heritage management principles*.
- 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.

1

2 **Division 2—Managing wetlands of international**
3 **importance**

3

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

4

5 **325 Simplified outline of this Division**

5

6 The following is a simplified outline of this Division:

6

7

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.

8

9

10

11

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.

12

13

14

15

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.

16

17

18

19

The Commonwealth and Commonwealth agencies have duties relating to declared Ramsar wetlands in States and Territories.

20

21

The Commonwealth can provide assistance for the protection or conservation of declared Ramsar wetlands.

22

23

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.

24

25

26

Section 326

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:

- 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 (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) the 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 in force at the time.

18 Note: Section 335 explains what Australian Ramsar management principles
19 are.

20 **Subdivision E—Management of wetlands in States and**
21 **self-governing Territories**

22 **332 Application**

23 This Subdivision applies in relation to a wetland that:

- 24 (a) is:
25 (i) in a State; or
26 (ii) in a self-governing Territory; or

Section 333

- 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 the
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; 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 regulations must prescribe principles for the management of
4 wetlands included in the List of Wetlands of International
5 Importance kept under the Ramsar Convention. The principles
6 prescribed are the *Australian Ramsar management principles*.

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 the 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 the 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) the 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 regulations must prescribe principles for the management of
3 Biosphere reserves. The principles prescribed are the *Australian*
4 *Biosphere reserve management principles*.
- 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

3

Subdivision A—Simplified outline of this Division

4

342 Simplified outline of this Division

5

The following is a simplified outline of this Division:

6

Commonwealth reserves can be declared over areas of land or sea:

7

(a) that the Commonwealth owns or leases; or

8

(b) that are in a Commonwealth marine area; or

9

(c) outside Australia that the Commonwealth has international obligations to protect.

10

11

A Proclamation must assign the reserve to a particular category, that affects how the reserve is managed and used.

12

13

Some activities can be undertaken in a reserve only if a management plan provides for them. Commonwealth agencies must comply with a management plan. Regulations can be made to control a wide range of activities in reserves.

14

15

16

17

The Minister may approve a management plan prepared by the Director and any Board for a reserve.

18

19

In agreement with indigenous people, the Minister can set up a Board for a reserve including land leased from indigenous people.

20

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 or the Director 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 Director 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

Section 344

- 1 (iii) that is held under lease by the Commonwealth or the
2 Director in a Territory; or
3 (iv) that is held under lease by the Commonwealth or the
4 Director outside a 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

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 1999*.

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 **345A Commonwealth usage rights vest in Director**

25 (1) When a Commonwealth reserve is declared, a usage right that
26 relates to land or seabed in the reserve and is held by the
27 Commonwealth vests in the Director, by force of this subsection.

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- 1 (2) If the Commonwealth acquires a usage right relating to land or
2 seabed in a Commonwealth reserve, the usage right vests in the
3 Director.
- 4 (3) This section does not vest in the Director a usage right in respect of
5 minerals, despite subsections (1) and (2).

6 **346 Content of Proclamation declaring Commonwealth reserve**

7 *Content of Proclamation*

- 8 (1) The Proclamation declaring an area to be a Commonwealth reserve
9 must:
- 10 (a) give a name to the reserve; and
11 (b) state the purposes for which the reserve is declared; and
12 (c) state the depth of any land included in the reserve; and
13 (d) state the depth of the seabed that is under any sea included in
14 the reserve; and
15 (e) assign the reserve to one of the following categories (the
16 ***IUCN categories***):
- 17 (i) strict nature reserve;
18 (ii) wilderness area;
19 (iii) national park;
20 (iv) natural monument;
21 (v) habitat/species management area;
22 (vi) protected landscape/seascape;
23 (vii) managed resource protected area.

24 *Assigning different zones of a reserve to different IUCN categories*

- 25 (2) A Proclamation may also divide a reserve into zones and assign
26 each zone to an IUCN category.

27 *Assigning leasehold land to IUCN categories*

- 28 (3) Before the Governor-General makes a Proclamation assigning a
29 Commonwealth reserve or zone including land or seabed held by
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1 the Commonwealth or the Director under lease to a particular
2 IUCN category, the Minister must be satisfied that the category to
3 which it is proposed to assign the reserve or zone is consistent with
4 the terms of the lease.

5 **347 Assigning Commonwealth reserves and zones to IUCN**
6 **categories**

7 *Prerequisite to making Proclamation*

- 8 (1) Before the Governor-General makes a Proclamation assigning a
9 Commonwealth reserve, or a zone within a Commonwealth
10 reserve, to a particular IUCN category, the Minister must be
11 satisfied:
- 12 (a) that the reserve or zone:
 - 13 (i) has the characteristics listed in subsection (2) for the
 - 14 category; and
 - 15 (ii) meets the criteria (if any) prescribed by the regulations
 - 16 for the category; and
 - 17 (b) that the reserve or zone should be managed in accordance
 - 18 with the Australian IUCN reserve management principles for
 - 19 the category.

20 *Characteristics for IUCN categories*

- 21 (2) The characteristics are as follows:
- 22 (a) for a strict nature reserve—the Commonwealth reserve or
 - 23 zone contains some outstanding or representative
 - 24 ecosystems, geological or physiological features or species;
 - 25 (b) for a wilderness area—the Commonwealth reserve or zone
 - 26 consists of a large area of land, sea or both that:
 - 27 (i) is unmodified, or only slightly modified, by modern or
 - 28 colonial society; and
 - 29 (ii) retains its natural character; and
 - 30 (iii) does not contain permanent or significant habitation;

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- 1 (c) for a national park—the Commonwealth reserve or zone
2 consists of an area of land, sea or both in natural condition;
- 3 (d) for a natural monument—the Commonwealth reserve or zone
4 contains a specific natural feature, or natural and cultural
5 feature, of outstanding value because of its rarity,
6 representativeness, aesthetic quality or cultural significance;
- 7 (e) for a habitat/species management area—the Commonwealth
8 reserve or zone contains habitat for one or more species; and
- 9 (f) for a protected landscape/seascape—the Commonwealth
10 reserve or zone contains an area of land (with or without sea)
11 where the interaction of people and nature over time has
12 given the area a distinct character with significant aesthetic,
13 cultural or ecological value;
- 14 (g) for a managed resource protected area—the Commonwealth
15 reserve or zone contains natural systems largely unmodified
16 by modern or colonial technology.

17 **348 Australian IUCN reserve management principles**

- 18 (1) The regulations must prescribe principles for each IUCN category.
19 The principles prescribed for an IUCN category are the *Australian*
20 *IUCN reserve management principles* for the category.
- 21 (2) The principles prescribed for an IUCN category must identify the
22 purpose or purposes for which a Commonwealth reserve, or zone
23 of a Commonwealth reserve, assigned to the category is primarily
24 to be managed.

25 **349 Proclamations assigning reserve or zone to wilderness area**
26 **category may affect management**

27 A Proclamation assigning a Commonwealth reserve, or a zone of a
28 Commonwealth reserve, to the IUCN category of wilderness area
29 may contain provisions regulating the circumstances in which, and
30 the manner in which, the Director may do one of the following acts
31 if there is not a management plan in operation for the reserve:

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- 1 (a) kill, injure, take, trade, keep or move a member of a native
- 2 species;
- 3 (b) damage heritage;
- 4 (c) carry on an excavation;
- 5 (d) erect a building or other structure;
- 6 (da) carry out works;
- 7 (db) take an action for commercial purposes;
- 8 (e) establish a track;
- 9 (f) use a vehicle, aircraft or vessel;
- 10 (g) inundate land by means of a dam or other works for affecting
- 11 the flow of water (whether they are inside or outside the
- 12 reserve or zone);
- 13 (h) extract water by canals or other works for affecting the flow
- 14 of water (whether they are inside or outside the reserve or
- 15 zone).

16 **350 Revocation and alteration of Commonwealth reserves**

- 17 (1) The Governor-General may revoke or amend a Proclamation under
18 this Subdivision by another Proclamation.

19 Note: Section 351 sets out some prerequisites for making Proclamations.

- 20 (2) Before the Governor-General makes a Proclamation that results in
21 land, sea or seabed ceasing to be included in a Commonwealth
22 reserve, the Minister must be satisfied:
- 23 (a) that the Proclamation, if made, would be in accordance with
24 a resolution passed by each House of Parliament on a motion;
25 and
 - 26 (b) that notice of the motion was given at least 15 sitting days of
27 that House before the motion was moved.
- 28 (3) Subsection (2) does not apply to a Proclamation that results in land,
29 sea or seabed ceasing to be included in one Commonwealth reserve
30 or zone and being included in another Commonwealth reserve or
31 zone.

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- 1 (4) If the Director ceases to hold land or seabed in a Commonwealth
2 reserve under lease:
3 (a) the land or seabed ceases to be part of the reserve by force of
4 this paragraph; and
5 (b) the Governor-General must make a Proclamation revoking or
6 amending the Proclamation that included the land or seabed
7 in a Commonwealth reserve, to reflect the fact that the land
8 or seabed is no longer part of the reserve.
- 9 (5) Subsection (4) does not apply if the Director ceases to hold the
10 land or seabed under a lease because:
11 (a) the Commonwealth becomes the owner of the land or seabed;
12 or
13 (b) the Director surrenders the lease in consideration of the grant
14 to the Director of another lease of that land or seabed.
- 15 (6) Except as described in subsection (4), land, sea or seabed in a
16 Commonwealth reserve does not cease to be within the reserve
17 merely because a usage right relating to the land, sea or seabed is
18 transferred, assigned, surrendered, extinguished or changed in any
19 way.
- 20 (7) A *usage right* is an estate or a legal or equitable charge, power,
21 privilege, authority, licence or permit.
22 Note: Section 22 of the *Acts Interpretation Act 1901* defines *estate*.

23 **351 Report before making Proclamation**

24 *Minister must consider report before Proclamation made*

- 25 (1) Before the Governor-General makes a Proclamation under this
26 Subdivision, the Minister must consider a report prepared by the
27 Director on the matter to be dealt with by the Proclamation.

28 *Procedure for preparing report*

- 29 (2) In preparing a report, the Director must:
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- 1 (a) publish in the *Gazette* and in accordance with the regulations
2 (if any) a notice:
3 (i) stating the matter to be dealt with by the Proclamation;
4 and
5 (ii) inviting the public to comment on the matter to be dealt
6 with by the Proclamation; and
7 (iii) specifying the address to which comments may be sent;
8 and
9 (iv) specifying the day by which any comments must be
10 sent; and
11 (b) consider any comments made in response to the invitation;
12 and
13 (c) include in the report the comments and the Director's views
14 on the comments.

15 *Content of notice inviting comments*

- 16 (3) A notice stating the matter to be dealt with by a Proclamation to
17 declare a Commonwealth reserve must include a statement of:
18 (a) the proposed name of the reserve; and
19 (b) the proposed boundaries of the reserve and of any zones into
20 which the reserve is to be divided; and
21 (c) the purpose for which the reserve is to be declared; and
22 (d) which IUCN category the reserve (and, if applicable, each
23 zone of the reserve) is to be assigned to; and
24 (e) the purposes for which it is intended to manage and use the
25 reserve.

26 *Content of notice relating to revocation of Commonwealth reserve*

- 27 (4) A notice stating the matter to be dealt with by a Proclamation to
28 cause any land, sea or seabed to cease to be part of a
29 Commonwealth reserve must state the boundaries of that land, sea
30 or seabed.

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1 *Time for comment*

2 (5) The day specified in the notice as the day by which any comments
3 must be sent must be at least 60 days after the last day on which
4 the notice is published in the *Gazette* or in accordance with any
5 regulations.

6 *When this section does not apply*

7 (6) Subsection (1) does not apply in relation to a Proclamation that:
8 (a) declares an area in the Kakadu region to be a Commonwealth
9 reserve; or
10 (b) has the effect of changing the name of a Commonwealth
11 reserve in the Kakadu region; or
12 (c) results in land, sea or seabed ceasing to be included in one
13 Commonwealth reserve and being included in another
14 Commonwealth reserve without changing the IUCN category
15 to which the land, sea or seabed is assigned.

16 **352 What happens to Director's usage rights when Commonwealth**
17 **reserve is revoked**

18 (1) This section applies in relation to land or seabed that ceases to be
19 included in a Commonwealth reserve because of a Proclamation
20 made under section 350, except a Proclamation that causes the land
21 or seabed:

22 (a) to cease to be included in one Commonwealth reserve; and
23 (b) to be included in another Commonwealth reserve.

24 (2) A usage right relating to the land or seabed that the Director held
25 vests in the Commonwealth, by force of this subsection.

26 (3) However, if the usage right is a lease of indigenous people's land,
27 the usage right ceases to exist, by force of this subsection.

28 (4) If the land is in a State or Territory:

- 1 (a) the Director may give the officer of the State or Territory
2 responsible for registering land titles a copy of the
3 Proclamation, certified by the Director; and
4 (b) the officer may make an entry in his or her registers and do
5 anything else needed to reflect the effect of this section.

6 **Subdivision C—Activities in Commonwealth reserves**

7 **353 Simplified outline of this Subdivision**

8 The following is a simplified outline of this Subdivision:

9 Many works cannot be carried out in a Commonwealth reserve
10 unless permitted by a management plan.

11 If there is not a management plan in force for a reserve, it must be
12 managed in a way appropriate for the category it has been assigned
13 to by a Proclamation or an earlier management plan.

14 Regulations can be made to control activities in reserves.

15 People who have rights relating to an area that is later included in a
16 reserve can continue to exercise those rights in the reserve.

17 **354 Activities that may be carried on only under management plan**

- 18 (1) A person must not do one of the following acts in a
19 Commonwealth reserve except in accordance with a management
20 plan in operation for the reserve:
- 21 (a) kill, injure, take, trade, keep or move a member of a native
22 species; or
23 (b) damage heritage; or
24 (c) carry on an excavation; or
25 (d) erect a building or other structure; or
26 (e) carry out works; or
27 (f) take an action for commercial purposes.
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Civil penalty:

- (a) for an individual—500 penalty units;
- (b) for a body corporate—5,000 penalty units.

Note: These acts are totally prohibited in wilderness areas (except so far as the Director is concerned). See section 360.

(2) However, if a management plan is not in operation for a Commonwealth reserve, the Director may do an act described in subsection (1) for:

- (a) preserving or protecting the reserve; or
- (b) protecting or conserving biodiversity or heritage in the reserve; or
- (c) controlling authorised scientific research; or
- (d) protecting persons or property in the reserve; or
- (e) managing the effects of actions taken under a usage right described in section 359.

Note: The Director may only do these acts in a wilderness area under a management plan or Proclamation. See section 360.

(3) Subsection (2) does not apply in relation to so much of a Commonwealth reserve as is in the Kakadu region, the Uluru region or the Jervis Bay Territory.

Note: Section 385 sets out what the Director may do in a Commonwealth reserve in the Kakadu region, Uluru region or Jervis Bay Territory when there is not a management plan in operation for the reserve.

(4) This section has effect despite any other law of the Commonwealth, a State or a Territory, but:

- (a) subsections (1) and (2) are subject to:
 - (i) section 359 (about interests and rights existing before a Commonwealth reserve); and
 - (ii) section 360 (about wilderness areas); and
 - (iii) the *Antarctic Treaty (Environment Protection) Act 1980*; and

- 1 (b) subsection (1) is also subject to section 385 (about activities
2 in Commonwealth reserves in the Kakadu region, Uluru
3 region or Jervis Bay Territory without management plans).

4 **355 Limits on mining operations in Commonwealth reserves**

- 5 (1) A person must not carry on mining operations in a Commonwealth
6 reserve unless:
7 (a) the Governor-General has approved the operations; and
8 (b) the person carries them on in accordance with a management
9 plan in operation for the reserve.

10 Note: Section 387 generally prohibits mining operations in Kakadu National
11 Park.

- 12 (2) The following are *mining operations*:
13 (a) operations or activities connected with, or incidental to, the
14 mining or recovery of minerals or the production of material
15 from minerals, including:
16 (i) prospecting and exploration for minerals; and
17 (ii) milling, refining, treatment and processing of minerals;
18 and
19 (iii) storage and disposal of minerals and materials produced
20 from minerals;
21 (b) the construction and use of towns, camps, dams, pipelines
22 power lines or other structures for the purposes of operations
23 or activities described in paragraph (a);
24 (c) the performance of any other work for the purposes of
25 operations or activities described in paragraph (a).
- 26 (3) A *mineral* is a naturally occurring substance or mixture of
27 substances.
- 28 (4) Subsection (1) does not prevent the doing of anything for the
29 purposes of building or construction, or the supply of water, in a
30 Commonwealth reserve unless the purposes are connected with, or
31 incidental to, mining operations.

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- 1 (5) This section is subject to:
2 (a) section 359 (about interests and rights existing before a
3 Commonwealth reserve); and
4 (b) section 387 (about mining operations in Kakadu National
5 Park); and
6 (c) the *Antarctic Treaty (Environment Protection) Act 1980*;
7 but has effect despite any other law of the Commonwealth, a State
8 or a Territory.

9 **356 Regulations controlling activities relating to Commonwealth**
10 **reserves**

- 11 (1) The regulations may:
12 (a) regulate or prohibit the pollution of soil, air or water in a
13 manner that is, or is likely to be, harmful to:
14 (i) people, biodiversity or heritage in Commonwealth
15 reserves; or
16 (ii) the natural features of Commonwealth reserves; and
17 (b) regulate or prohibit tourism in Commonwealth reserves; and
18 (c) provide for the protection and preservation of
19 Commonwealth reserves and property and things in
20 Commonwealth reserves; and
21 (d) provide for the protection and conservation of biodiversity in
22 Commonwealth reserves; and
23 (e) regulate or prohibit access to all or part of a Commonwealth
24 reserve by persons or classes of persons; and
25 (f) provide for the removal of trespassers from Commonwealth
26 reserves; and
27 (g) regulate or prohibit camping in Commonwealth reserves; and
28 (h) provide for the safety of persons in Commonwealth reserves;
29 and
30 (i) regulate or prohibit the use of fire in Commonwealth
31 reserves; and
32 (j) regulate the conduct of persons in Commonwealth reserves;
33 and
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- 1 (k) regulate or prohibit the carrying on of any trade or commerce
2 in a Commonwealth reserve; and
- 3 (l) regulate or prohibit the use of vehicles in Commonwealth
4 reserves and provide for signs and road markings for those
5 purposes; and
- 6 (m) provide for:
- 7 (i) the removal of vehicles, aircraft or vessels from places
8 in Commonwealth reserves where they have been left in
9 contravention of the regulations or have been
10 abandoned; and
- 11 (ii) the impounding of such vehicles, aircraft or vessels; and
- 12 (n) provide that the person taken for the purposes of the
13 regulations to be the owner of a motor vehicle involved in a
14 contravention of a provision of the regulations relating to the
15 parking or stopping of vehicles in a Commonwealth reserve
16 is, except as provided otherwise, taken to commit an offence
17 against the provision; and
- 18 (o) provide for a person to be taken to be the owner of a motor
19 vehicle for the purposes of regulations made under paragraph
20 (n) (including a person in whose name the motor vehicle is
21 registered under the law of a State or Territory); and
- 22 (p) regulate or prohibit the use of vessels in, and the passage of
23 vessels through, Commonwealth reserves; and
- 24 (q) regulate or prohibit the landing and use of aircraft in, and the
25 flying of aircraft over, Commonwealth reserves; and
- 26 (r) provide for the giving of effect to management plans for
27 Commonwealth reserves; and
- 28 (s) regulate or prohibit the taking of animals or plants into or out
29 of Commonwealth reserves; and
- 30 (t) provide for the impounding, removal, destruction or disposal
31 of animals found straying in Commonwealth reserves; and
- 32 (u) regulate or prohibit the taking into Commonwealth reserves,
33 and the use in Commonwealth reserves, of weapons, traps,
34 nets, snares, fishing apparatus and other devices; and

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- 1 (v) regulate or prohibit the laying of baits and the use of
2 explosives and poisons in Commonwealth reserves; and
3 (w) provide for the collection of specimens and the pursuit of
4 research in Commonwealth reserves for scientific purposes;
5 and
6 (x) provide for the issue of licences, permits and authorities
7 relating to activities in Commonwealth reserves, the
8 conditions subject to which they are issued and the charging
9 of fees by the Commonwealth in respect of such licences,
10 permits and authorities; and
11 (y) provide for any matter incidental to or connected with a
12 matter described in another paragraph.
- 13 (2) A provision of the regulations regulating or prohibiting the flying
14 of aircraft over a Commonwealth reserve does not have any effect
15 so far as it is inconsistent with a law of the Commonwealth. For
16 this purpose, a provision is not inconsistent with such a law if it
17 can be complied with without contravention of the law.
- 18 (3) A law of a Territory has effect so far as it is not inconsistent with a
19 provision of the regulations having effect in that Territory. For this
20 purpose, such a law is not inconsistent with the provision so far as
21 it can operate concurrently with the provision.

22 **356A Charges for activities in Commonwealth reserves**

- 23 Subject to the approval of the Minister, the Director may determine
24 and impose charges for:
- 25 (a) entering or using a Commonwealth reserve or part of a
26 Commonwealth reserve; and
27 (b) using services or facilities provided by the Director in or in
28 connection with a Commonwealth reserve; and
29 (c) the parking or stopping of vehicles in a Commonwealth
30 reserve; and
31 (d) the mooring or landing of vessels in a Commonwealth
32 reserve; and
33 (e) the landing of aircraft in a Commonwealth reserve; and
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1 (f) the use of vehicles and vessels in a Commonwealth reserve.

2 **357 Managing Commonwealth reserves while a management plan is**
3 **not in operation**

- 4 (1) While a management plan is not in operation for a Commonwealth
5 reserve, the Director must exercise the Director's powers and
6 perform the Director's functions in relation to the reserve or to a
7 zone of the reserve so as to manage the reserve in accordance with:
8 (a) the Australian IUCN reserve management principles for the
9 IUCN category to which the reserve or zone has most
10 recently been assigned by:
11 (i) a Proclamation made under Subdivision B; or
12 (ii) a management plan that was in operation for the reserve
13 (but is no longer); and
14 (b) if the Director holds land or seabed included in the reserve
15 under lease—the Director's obligations under 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 for the
22 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 Director holds land or seabed included in the reserve
28 under lease—the Director's obligations under the lease.
- 29 (3) If:
30 (a) a zone of a Commonwealth reserve is assigned to an IUCN
31 category at or after the time the reserve was most recently
32 assigned to an IUCN category; and
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- 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 Director's interests in Commonwealth**
7 **reserves**

- 8 (1) The Director must not sell or otherwise dispose of a usage right the
9 Director holds in relation to land, sea or seabed in a
10 Commonwealth reserve.
- 11 (2) However, the Director may grant a lease or sub-lease of, or a
12 licence relating to, land or seabed in a Commonwealth reserve, but
13 only in accordance with a management plan in operation for the
14 reserve.
- 15 (3) Despite subsection (1), the Director may surrender a lease of land
16 or seabed within a Commonwealth reserve in consideration of the
17 grant to the Director of a new lease of land or seabed that includes
18 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 or the Director) in
27 relation to land or seabed immediately before the land or seabed
28 was included in a Commonwealth reserve:
29 (a) provisions of this Division that relate to the reserve (whether
30 or not they also relate to another Commonwealth reserve);

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- 1 (b) provisions of the regulations made for the purposes of this
2 Division that relate to the reserve (whether or not they also
3 relate to another Commonwealth 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 **359A Traditional use of Commonwealth reserves by indigenous**
24 **persons**

- 25 (1) This Division and regulations made for the purposes of this
26 Division do not prevent an indigenous person from continuing in
27 accordance with law the traditional use of an area in a
28 Commonwealth reserve for:
29 (a) hunting or food-gathering (except for purposes of sale); or
30 (b) ceremonial and religious purposes.

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- 1 (2) However, regulations made for the purposes of this Division do
2 affect an indigenous person's traditional use of an area in a
3 Commonwealth reserve if they:
4 (a) are made for the purpose of conserving biodiversity in the
5 area; and
6 (b) expressly affect the traditional use of the area by indigenous
7 persons.

8 **360 Activities in wilderness areas**

- 9 (1) This section applies only to a Commonwealth reserve, or a zone of
10 a Commonwealth reserve, that is assigned by a Proclamation under
11 Subdivision B or a management plan for the reserve to the IUCN
12 category of wilderness area.
- 13 (2) The Commonwealth reserve or zone must be maintained in its
14 natural state.
- 15 (3) A person may use the Commonwealth reserve or zone only for:
16 (a) scientific research authorised by the Director; or
17 (b) a purpose (except recovery of minerals) specified in the
18 provisions of the management plan for the reserve that relate
19 to the zone.
- 20 (4) A person other than the Director must not do any of the following
21 acts in the Commonwealth reserve or zone:
22 (a) kill, injure, take, trade, keep or move a member of a native
23 species;
24 (b) damage heritage;
25 (c) carry on an excavation;
26 (d) erect a building or other structure;
27 (da) carry out works;
28 (db) take an action for commercial purposes;
29 (e) establish a track;
30 (f) use a vehicle, aircraft or vessel;

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- 1 (g) inundate land by means of a dam or other works for affecting
2 the flow of water (whether they are inside or outside the
3 reserve or zone);
- 4 (h) extract water by canals or other works for affecting the flow
5 of water (whether they are inside or outside the reserve or
6 zone).
- 7 Civil penalty:
- 8 (a) for an individual—500 penalty units;
9 (b) for a body corporate—5,000 penalty units.
- 10 (5) The Director must not do an act described in subsection (4) in the
11 Commonwealth reserve or zone, except for purposes essential to
12 the management of the reserve or zone and in accordance with:
- 13 (a) the provisions of the management plan in operation for the
14 reserve or zone; or
- 15 (b) if there is not a management plan in operation for the reserve
16 or zone and a Proclamation assigned the reserve or zone to
17 the IUCN category of wilderness area—the provisions of the
18 Proclamation.
- 19 (6) This section has effect despite any other law of the
20 Commonwealth, a State or a Territory, but is subject to section 359
21 (about usage rights existing before a Commonwealth reserve) and
22 to the *Antarctic Treaty (Environment Protection) Act 1980*.

23 **Subdivision D—Complying with management plans for**
24 **Commonwealth reserves**

25 **361 Simplified outline of this Subdivision**

26 The following is a simplified outline of this Subdivision:

27 The Director must manage a Commonwealth reserve to give effect
28 to a management plan for the reserve. If indigenous people think
29 the Director is not doing this for a reserve including their land, they
30 can take the matter up with the Minister.

Section 362

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Commonwealth agencies must act so as not to contravene a management plan.

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362 Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve

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(1) The Director must exercise the Director's powers and perform the Director's functions to give effect to a management plan that is in operation for a Commonwealth reserve.

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(2) The Commonwealth or a Commonwealth agency must not perform its functions or exercise its powers in relation to a Commonwealth reserve inconsistently with a management plan that is in operation for the reserve.

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(3) To avoid doubt, if a management plan for a Commonwealth reserve prohibits the exercise of a specified power, or the performance of a specified function, under an Act (including a power or function under an instrument made under an Act), the power or function must not be exercised in or in relation to the reserve while the plan is in operation.

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363 Resolving disagreement between land council and Director over implementation of plan

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Minister to resolve disagreement

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(1) If the Chair or Chairperson of a land council for indigenous people's land in a jointly managed reserve and the Director disagree about whether the Director is exercising the Director's powers and performing the Director's functions consistently with a management plan in operation for the reserve:

(a) the Director must inform the Minister; and

(b) the Minister must appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and

- 1 (c) the person appointed must inquire into the matter and give
2 the Minister a report and recommendations; and
3 (d) the Minister must give the Director any directions the
4 Minister thinks fit; and
5 (e) the Director must comply with any direction.

6 *What is a land council?*

- 7 (2) The **land council** for indigenous people's land in a Commonwealth
8 reserve is:
9 (a) if the land is in the area of an Aboriginal Land Council
10 established by or under the *Aboriginal Land Rights (Northern*
11 *Territory) Act 1976*—that Aboriginal Land Council; and
12 (b) if the land is in Jervis Bay Territory—the Wreck Bay
13 Aboriginal Community Council established by the
14 *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; and
15 (c) if the land is elsewhere—a body corporate that:
16 (i) is established by or under an Act; and
17 (ii) has functions relating to the indigenous people's land in
18 the reserve; and
19 (iii) consists of indigenous persons who either live in an area
20 to which one or more of the body's functions relate or
21 are registered as traditional owners of indigenous
22 people's land in an area to which one or more of the
23 body's functions relate.

24 *What is indigenous people's land?*

- 25 (3) Land is **indigenous people's land** if:
26 (a) a body corporate holds an estate that allows the body to lease
27 the land to the Commonwealth or the Director; and
28 (b) the body corporate was established by or under an Act for the
29 purpose of holding for the benefit of indigenous persons title
30 to land vested in it by or under that Act.

Section 364

1 *Who is an indigenous person?*

- 2 (4) A person is an *indigenous person* if he or she is:
3 (a) a member of the Aboriginal race of Australia; or
4 (b) a descendant of an indigenous inhabitant of the Torres Strait
5 Islands.

6 *What is a jointly managed reserve?*

- 7 (5) A Commonwealth reserve is a *jointly managed reserve* if:
8 (a) it includes indigenous people's land held under lease by the
9 Director; and
10 (b) a Board is established for the reserve under Subdivision F.

11 **364 Resolving disagreement between Director and Board over**
12 **implementation of plan**

- 13 (1) The Director must inform the Minister if the Director believes that:
14 (a) a decision of a Board for a Commonwealth reserve is likely
15 to be substantially detrimental to the good management of
16 the reserve; or
17 (b) a decision of a Board for a Commonwealth reserve is
18 contrary to a management plan in operation for the reserve.
- 19 (2) The Minister must take the steps he or she thinks fit to resolve the
20 matter.
- 21 (3) If the Minister cannot resolve the matter, the Minister must appoint
22 as an arbitrator to inquire into the matter a person whom the
23 Minister thinks is suitably qualified and in a position to deal with
24 the matter impartially.
- 25 (4) The person appointed must inquire into the matter and give the
26 Minister a report and recommendations.
- 27 (5) After the Minister receives the report and recommendations, he or
28 she must give the Director and the Board:
29 (a) the directions the Minister thinks appropriate; and
-

- 1 (b) a statement of reasons for giving the directions; and
2 (c) a copy of the report and recommendations.
- 3 (6) The Director and the Board must comply with any directions given
4 by the Minister.

5 **Subdivision E—Approving management plans for**
6 **Commonwealth reserves**

7 **365 Simplified outline of this Subdivision**

8 The following is a simplified outline of this Subdivision:

9 The Minister may approve a management plan for a
10 Commonwealth reserve prepared by the Director and any Board
11 for the reserve. Before the Minister approves a plan, he or she may
12 modify it.

13 Before the Director gives a plan to the Minister for approval, there
14 are 2 opportunities for the public and others with an interest in the
15 reserve to comment.

16 The Minister can resolve any disagreements between the Director
17 and a Board for a reserve over preparation of a plan for the reserve.

18 **366 Obligation to prepare management plans for Commonwealth**
19 **reserves**

20 *Plans required for Commonwealth reserves without Boards*

- 21 (1) The Director must prepare management plans for each
22 Commonwealth reserve for which there is not a Board to try to
23 ensure that a management plan for the reserve is in operation:
24 (a) as soon as practicable after the reserve is declared; and
25 (b) at all times after the first plan for managing the reserve takes
26 effect.

1 **367 Content of a management plan for a Commonwealth reserve**

2 *Mandatory content*

- 3 (1) A management plan for a Commonwealth reserve must provide for
4 the protection and conservation of the reserve. In particular, the
5 plan must:
- 6 (a) assign the reserve to an IUCN category (whether or not a
7 Proclamation has assigned the reserve or a zone of the
8 reserve to that IUCN category); and
 - 9 (b) state how the reserve, or each zone of the reserve, is to be
10 managed; and
 - 11 (c) state how the natural features of the reserve, or of each zone
12 of the reserve, are to be protected and conserved; and
 - 13 (d) if the Director holds land or seabed included in the reserve
14 under lease—be consistent with the Director’s obligations
15 under the lease; and
 - 16 (e) specify any limitation or prohibition on the exercise of a
17 power, or performance of a function, under an Act in or in
18 relation to the reserve; and
 - 19 (f) specify any mining operation, major excavation or other
20 work that may be carried on in the reserve, and the conditions
21 under which it may be carried on; and
 - 22 (g) specify any other operation or activity that may be carried on
23 in the reserve; and
 - 24 (h) indicate generally the activities that are to be prohibited or
25 regulated in the reserve, and the means of prohibiting or
26 regulating them; and
 - 27 (i) indicate how the plan takes account of Australia’s obligations
28 under each agreement with one or more other countries that
29 is relevant to the reserve (including the World Heritage
30 Convention and the Ramsar Convention, if appropriate).

Section 367

1 *Plan may assign different zones to different IUCN categories*

- 2 (2) A management plan for a Commonwealth reserve may divide the
3 reserve into zones and assign each zone to an IUCN category
4 (whether or not a Proclamation has assigned the reserve or each
5 zone of the reserve to that IUCN category). The category to which
6 a zone is assigned may differ from the category to which the
7 reserve is assigned.

8 *Consistency with Australian IUCN reserve management principles*

- 9 (3) The provisions of a management plan for a Commonwealth reserve
10 that relate to the reserve or a particular zone of the reserve must not
11 be inconsistent with the Australian IUCN reserve management
12 principles for the IUCN category to which the reserve or zone is
13 assigned by the plan.

14 *If zone is in different category from reserve*

- 15 (4) If the management plan for a Commonwealth reserve assigns the
16 reserve to one IUCN category and assigns a zone of the reserve to
17 a different IUCN category, disregard the IUCN category to which
18 the reserve is assigned for the purposes of the application of
19 subsection (3) in relation to the zone.

20 *Plans for different reserves may appear together*

- 21 (5) A management plan for a Commonwealth reserve may be in the
22 same document as a management plan for another Commonwealth
23 reserve.

24 *Plans for proposed extension of reserve*

- 25 (6) A management plan for a Commonwealth reserve may include
26 provisions relating to an area that is proposed to be included in the
27 reserve, but they do not have effect until the area is included in the
28 reserve.

1 **368 Steps in preparing management plans for Commonwealth**
2 **reserves**

3 *Overview of process*

- 4 (1) Before the Director gives the Minister a management plan for a
5 Commonwealth reserve for approval:
- 6 (a) the Director must publish under subsection (2) an invitation
7 to comment on the proposal to prepare a draft of the plan;
8 and
 - 9 (b) the Director and the Board (if any) for the reserve must
10 prepare a draft of the plan, taking into account any comments
11 received in response to the invitation; and
 - 12 (c) the Director must publish under subsection (5) an invitation
13 to comment on the draft; and
 - 14 (d) the Director must make publicly available copies of the draft
15 free or for a reasonable fee determined by the Director; and
 - 16 (e) the Director and the Board (if any) must consider any
17 comments received in response to the invitation to comment
18 on the draft and may alter the draft.

19 *Notice inviting comments on proposal to prepare draft*

- 20 (2) The Director must publish a notice in the *Gazette*, in a daily
21 newspaper circulating in each State and self-governing Territory
22 and in accordance with the regulations (if any):
- 23 (a) stating that the Director proposes to prepare a draft of a
24 management plan for the Commonwealth reserve; and
 - 25 (b) inviting comments on the proposal from:
 - 26 (i) members of the public; and
 - 27 (ii) the Chair or Chairperson of any land council for
28 indigenous people's land in the reserve; and
 - 29 (iii) if the reserve is in a State or self-governing Territory—
30 the agency (if any) of the State or Territory that is
31 responsible for managing national parks established in

Section 368

- 1 the State or Territory under a law of the State or
2 Territory; and
- 3 (iv) if the Minister has established under Division 4 of Part
4 19 an advisory committee with functions relating to the
5 reserve—the committee; and
- 6 (v) if the Director holds any land or seabed in the reserve
7 under lease—anyone the Director is obliged under the
8 lease to consult about management of the land or
9 seabed; and
- 10 (c) specifying the address to which comments may be sent; and
11 (d) specifying a day (at least 30 days after the last day on which
12 the notice is published in the *Gazette* or in accordance with
13 the regulations (if any)) by which comments must be sent.

14 *Considerations in preparing a management plan*

- 15 (3) In preparing a management plan for a Commonwealth reserve, the
16 Director and the Board (if any) for the reserve must take account
17 of:
- 18 (a) any report considered by the Minister under section 351
19 before a Proclamation declaring the reserve was made; and
- 20 (b) the regulation of the use of the reserve for the purpose for
21 which it was declared; and
- 22 (c) the interests of:
- 23 (i) any owner of any land or seabed in the reserve; and
24 (ii) the traditional owners of any indigenous people's land
25 in the reserve; and
- 26 (iii) any other indigenous persons interested in the reserve;
27 and
- 28 (iv) any person who has a usage right relating to land, sea or
29 seabed in the reserve that existed (or is derived from a
30 usage right that existed) immediately before the reserve
31 was declared; and
- 32 (d) the protection of the special features of the reserve, including
33 objects and sites of biological, historical, palaeontological,
34 archaeological, geological and geographical interest; and
-

- 1 (e) the protection, conservation and management of biodiversity
2 and heritage within the reserve; and
3 (f) the protection of the reserve against damage; and
4 (g) Australia's obligations under agreements between Australia
5 and one or more other countries relevant to the protection and
6 conservation of biodiversity and heritage.

7 *Who are the **traditional owners** of indigenous people's land?*

- 8 (4) The **traditional owners** of indigenous people's land are:
9 (a) a local descent group of indigenous persons who:
10 (i) have common spiritual affiliations to a site on the land
11 under a primary spiritual responsibility for that site and
12 for the land; and
13 (ii) are entitled by indigenous tradition to forage as of right
14 over the land; or
15 (b) if the land is in the Jervis Bay Territory—the members of the
16 Wreck Bay Aboriginal Community Council.

17 *Notice inviting comment on draft*

- 18 (5) The Director must publish a notice in the *Gazette*, in a daily
19 newspaper circulating in each State and self-governing Territory
20 and in accordance with the regulations (if any):
21 (a) stating that the Director has prepared a draft of a
22 management plan for the Commonwealth reserve; and
23 (b) stating how the draft can be obtained; and
24 (c) inviting comments on the draft from:
25 (i) members of the public; and
26 (ii) the Chair or Chairperson of any land council for any
27 indigenous people's land in the reserve; and
28 (iii) if the reserve is in a State or self-governing Territory—
29 the agency (if any) of the State or Territory that is
30 responsible for managing national parks established in
31 the State or Territory under a law of the State or
32 Territory; and
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- 1 (iv) if the Minister has established under Division 4 of Part
2 19 an advisory committee with functions relating to the
3 reserve—the committee; and
4 (v) if the Director holds any land or seabed in the reserve
5 under lease—anyone the Director is obliged under the
6 lease to consult about management of the land or
7 seabed; and
8 (d) specifying the address to which comments may be sent; and
9 (e) specifying a day (at least 30 days after the last day on which
10 the notice is published in the *Gazette* or in accordance with
11 the regulations (if any)) by which comments must be sent.

12 **369 Resolving disagreements between Director and Board in**
13 **planning process**

- 14 (1) The Director and the Board for a Commonwealth reserve must
15 inform the Minister if they cannot agree on:
16 (a) the content of a management plan they are preparing for the
17 reserve; or
18 (b) any changes to be made following comment made in
19 response to an invitation to comment on a draft management
20 plan for the reserve; or
21 (c) whether the Director should give a management plan for the
22 reserve to the Minister for approval (either initially or after
23 the Minister has given the plan back to the Director with
24 suggestions under paragraph 370(3)(b)).
25 (2) If the Minister is advised by the Director and a Board of a
26 disagreement, the Minister must take the steps the Minister thinks
27 fit to resolve the disagreement.
28 (3) If the Minister cannot resolve the disagreement, the Minister must
29 appoint as an arbitrator to inquire into the matter a person whom
30 the Minister thinks is suitably qualified and in a position to deal
31 with the matter impartially.

- 1 (4) The appointed arbitrator must inquire into the matter and give the
2 Minister a report and recommendations.
- 3 (5) After the Minister receives the report and recommendations, he or
4 she must give the Director and the Board:
- 5 (a) the directions the Minister thinks appropriate; and
6 (b) a statement of reasons for giving the directions; and
7 (c) a copy of the report and recommendations.
- 8 (6) The Director and the Board must comply with any directions given
9 by the Minister.

10 **370 Approval of management plans for Commonwealth reserves**

11 *Giving management plan to Minister for approval*

- 12 (1) The Director must give the Minister a management plan for a
13 Commonwealth reserve for approval, but only if the Board (if any)
14 for the reserve agrees. The Director must do so as soon as
15 practicable after considering under paragraph 368(1)(e) the
16 comments (if any) on a draft of the management plan.

17 *Things to be given to Minister with management plan*

- 18 (2) When the Director gives the plan to the Minister, the Director must
19 also give the Minister:
- 20 (a) any comments received in response to the invitation to
21 comment on a draft of the plan; and
22 (b) the views of the Director and any Board for the reserve on
23 the comments.

24 *Minister's decision*

- 25 (3) Within 60 days of the Director giving the plan, the Minister:
26 (a) must consider the plan and any comments and views given to
27 the Minister under subsection (2); and
28 (b) must either:
29 (i) approve the plan; or
-

Section 370

- 1 (ii) give the plan back to the Director with suggestions for
2 consideration by the Director and any Board for the
3 reserve.

4 Note: There are some extra rules about giving back to the Director a
5 management plan for a Commonwealth reserve in the Kakadu region,
6 the Uluru region or Jervis Bay Territory. See section 390.

7 *Procedure if Minister gives plan back*

- 8 (4) If the Minister gives the plan back to the Director with suggestions:
9 (a) the Director and any Board for the Commonwealth reserve to
10 which the plan relates must consider the suggestions; and
11 (b) the Director must give the Minister an identical or altered
12 version of the plan, but only if any Board for the reserve
13 agrees; and
14 (c) the Director must give the Minister, with the plan, the
15 Director's views on the Minister's suggestions.

16 *Minister's decision on re-submitted plan*

- 17 (5) As soon as practicable after the Director has given the Minister a
18 version of the plan under subsection (4), the Minister:
19 (a) must consider it and the views given to the Minister under
20 subsection (4); and
21 (b) must approve the plan with any modifications the Minister
22 considers appropriate.

23 *Considerations for Minister assigning reserve to IUCN category*

- 24 (6) When approving a management plan for a Commonwealth reserve
25 to assign the reserve, or a zone of a reserve, to a particular IUCN
26 category, the Minister must be satisfied of the matters specified in
27 section 347 that he or she would have to be satisfied of before the
28 Governor-General could make a Proclamation to assign the reserve
29 or zone to that IUCN category.

1 **371 Approved management plans are disallowable instruments**

- 2 (1) A management plan approved for a Commonwealth reserve by the
3 Minister is a disallowable instrument for the purposes of section
4 46A of the *Acts Interpretation Act 1901*.

5 Note: Section 46A of the *Acts Interpretation Act 1901* provides for the
6 commencement, tabling and disallowance of disallowable instruments.

- 7 (2) To avoid doubt, the provisions mentioned in section 46A of the
8 *Acts Interpretation Act 1901* apply as if the approval of the
9 management plan were the making of the plan.

- 10 (3) When the management plan is laid before each House of the
11 Parliament, there must also be laid before the House copies of any
12 comments, views, report or recommendations given to the Minister
13 under this Division in relation to the plan that have not been given
14 effect to in the plan.

15 **372 Amendment and revocation of management plans for**
16 **Commonwealth reserves**

17 A management plan for a Commonwealth reserve may amend or
18 revoke and replace an earlier management plan for the reserve.

19 **373 Expiry of management plans for Commonwealth reserves**

20 A management plan for a Commonwealth reserve ceases to have
21 effect 7 years after it took effect (unless it has already been
22 revoked).

23 **Subdivision F—Boards for Commonwealth reserves on**
24 **indigenous people's land**

25 **374 Simplified outline of this Subdivision**

26 The following is a simplified outline of this Subdivision:

Section 375

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9

The Minister must establish a Board for a Commonwealth reserve that is wholly or partly on indigenous people's land, if the land council for that land (or traditional owners) and the Minister agree that there should be a Board for the reserve.

The Board's role is to make decisions and plans for management of the reserve, in conjunction with the Director.

A majority of Board members must be indigenous people nominated by traditional owners if the reserve is wholly or mostly on indigenous people's land.

10 **375 Application**

11 This Subdivision provides for Boards for Commonwealth reserves
12 that consist of, or include, indigenous people's land held under
13 lease by the Director.

14 **376 Functions of a Board for a Commonwealth reserve**

- 15 (1) The functions of a Board established for a Commonwealth reserve
16 are:
- 17 (a) to make decisions relating to the management of the reserve
18 that are consistent with the management plan in operation for
19 the reserve; and
 - 20 (b) in conjunction with the Director, to:
 - 21 (i) prepare management plans for the reserve; and
 - 22 (ii) monitor the management of the reserve; and
 - 23 (iii) advise the Minister on all aspects of the future
24 development of the reserve.
- 25 (2) When performing its functions, a Board must comply with a
26 direction given by the Minister to the Board under:
- 27 (a) section 364 (Resolving disagreement between Director and
28 Board over implementation of plan); or

- 1 (b) section 369 (Resolving disagreements between Director and
2 Board in planning process).

3 **377 Minister must establish Board if land council or traditional**
4 **owners agree**

- 5 (1) The Minister must establish a Board for a specified
6 Commonwealth reserve by notice published in the *Gazette* and in
7 the way (if any) prescribed by the regulations if he or she agrees on
8 the matters set out in subsection (2) with:
9 (a) the land council for the indigenous people's land in the
10 reserve that the Director holds under lease; or
11 (b) if there is not such a land council—the traditional owners of
12 the indigenous people's land in the reserve that the Director
13 holds under lease.
- 14 (2) The matters to be agreed on are:
15 (a) that a Board should be established for the reserve; and
16 (b) the name of the Board; and
17 (c) the number of positions of member of the Board; and
18 (d) the qualifications for appointment to each position of
19 member of the Board.
- 20 (3) The notice must specify each of the matters described in
21 paragraphs (2)(b), (c) and (d).
- 22 Note: The notice may specify different qualifications for different positions.
23 See subsection 33(3A) of the *Acts Interpretation Act 1901*.
- 24 (4) If the reserve consists wholly or mostly of indigenous people's
25 land held by the Director under lease, a majority of the members of
26 the Board must be indigenous persons nominated by the traditional
27 owners of the indigenous people's land.
- 28 (5) If the reserve is in a State or self-governing Territory, at least one
29 member of the Board must be a person nominated by the State or
30 Territory.

Section 378

1 Note: By agreement between the Minister and the land council or traditional
2 owners, more than one member of a Board may be a person
3 nominated by the State or Territory.

4 **378 Altering the constitution of a Board or abolishing a Board**

5 *Revoking and amending notice establishing Board*

6 (1) The Minister may, by notice in the *Gazette*:

- 7 (a) revoke a notice under section 377 relating to the Board for
8 the reserve; or
9 (b) amend a notice under section 377 relating to the Board for
10 the reserve so as to:
11 (i) change the specification of the name by which the
12 Board is to be known; or
13 (ii) increase the number of members of the Board and
14 specify the qualifications for appointment to each of the
15 extra positions of member; or
16 (iii) decrease the number of positions of member of the
17 Board and specify which positions are abolished; or
18 (iv) change the qualifications for appointment to a position
19 of member of the Board.

20 Note: The Minister may exercise the power of amendment from time to
21 time. See subsection 33(1) of the *Acts Interpretation Act 1901*.

22 *Limits on changing composition of Board*

23 (2) Paragraph (1)(b) has effect subject to subsections 377(4) and (5).

24 Note 1: Subsection 377(4) requires a majority of the members of the Board of
25 a Commonwealth reserve consisting wholly or mostly of indigenous
26 people's land held by the Director under lease to be indigenous
27 persons nominated by the traditional owners of the land.

28 Note 2: Subsection 377(5) requires at least one member of a Board for a
29 reserve in a State or self-governing Territory to be a nominee of the
30 State or Territory.

1 *Prerequisite to revoking or amending notice*

2 (3) The Minister may revoke or amend a notice under section 377
3 relating to a Commonwealth reserve only if the Minister agrees on
4 the revocation or amendment with:

5 (a) the land council for indigenous people's land in the reserve,
6 if the Board for the reserve was established with the
7 agreement of the land council; or

8 (b) the traditional owners of indigenous people's land in the
9 reserve, if the Board for the reserve was established with the
10 agreement of the traditional owners.

11 *Board's identity not affected by name change*

12 (4) If the Minister amends a notice published under section 377 so as
13 to alter a Board's name or constitution, section 25B of the *Acts*
14 *Interpretation Act 1901* applies in relation to the alteration as if it
15 had been made by an Act.

16 Note: This ensures that the Board's identity and functions are not affected
17 by the alteration, and that certain references to the Board under its old
18 name are treated as references to the Board under its new name.

19 **379 Appointment of Board members**

20 *Appointment of qualified persons*

21 (1) The Minister may appoint a person in writing on a part-time basis
22 to a position of member of a Board if the person is qualified for
23 appointment to the position.

24 Note: Subsection (1) is subject to section 390A, which deals with the
25 appointment of a Northern Territory nominee as a member of the
26 Board for a Commonwealth reserve consisting wholly or mostly of
27 indigenous people's land held by the Director under lease in the
28 Territory.

Section 380

1 *Replacement appointments*

- 2 (2) As soon as practicable after a position of member of a Board
3 becomes vacant, the Minister must appoint a person to the position
4 under subsection (1).

5 *Validity of appointments*

- 6 (3) A deficiency or irregularity relating to the nomination, selection or
7 appointment of a member of a Board does not invalidate the
8 member's appointment.

9 **380 Terms and conditions**

10 *Term of office*

- 11 (1) A member of a Board holds office for the period specified in the
12 instrument of appointment. The period must not exceed 5 years.

13 Note: Section 382 sets out the circumstances in which a member's
14 appointment may be (or must be) terminated.

15 *Avoiding doubt—future terms of office*

- 16 (1A) To avoid doubt, subsection (1) does not prevent a person from
17 being appointed as a member of a Board again. This subsection
18 does not affect the operation of subsection 33(4A) of the *Acts*
19 *Interpretation Act 1901* in relation to this Act.

20 *Resignation*

- 21 (2) A member of a Board may resign his or her appointment by giving
22 the Minister a written resignation.

23 *Other terms and conditions*

- 24 (3) A member of a Board holds office on the terms and conditions (if
25 any) that are determined by the Minister in relation to matters not
26 covered by this Act or the regulations.

1 **381 Remuneration**

- 2 (1) A member of a Board is to be paid the remuneration that is
3 determined by the Remuneration Tribunal. If no determination of
4 that remuneration by the Tribunal is in operation, the member is to
5 be paid the remuneration that is prescribed.
- 6 (2) A member of a Board is to be paid the allowances that are
7 prescribed.
- 8 (3) This section has effect subject to the *Remuneration Tribunal Act*
9 *1973*.

10 **382 Termination of appointments of Board members**

11 *Termination when person stops being qualified for appointment*

- 12 (1) The appointment of a person to a position of member of a Board is
13 terminated when the person ceases to be qualified for appointment
14 to the position.

15 *Termination for misbehaviour or incapacity*

- 16 (2) The Minister may terminate the appointment of a member of a
17 Board for misbehaviour or physical or mental incapacity.

18 *Termination for failure to attend Board meetings*

- 19 (3) The Minister may terminate the appointment of a member of a
20 Board if the member is absent, except on leave of absence, from 3
21 consecutive meetings of the Board of which the member has had
22 notice.

23 *Termination for engaging in conflicting work*

- 24 (4) The Minister may terminate the appointment of a member of a
25 Board if the member engages in paid employment that, in the
26 Minister's opinion, conflicts or could conflict with the proper
27 performance of the duties of the member.

Section 382

1 *Termination for conduct inimical to Board*

- 2 (4A) The Minister may terminate the appointment of a member of a
3 Board for a reserve if the Minister is satisfied that the person has
4 acted in a way that is not in the interest of the Board as a whole.
5 However, the Minister may not terminate under this subsection the
6 appointment of a member nominated by traditional owners of
7 indigenous people's land in the reserve.

8 *Termination for failure to disclose interests*

- 9 (5) The Minister must terminate the appointment of a member of a
10 Board if:
11 (a) the member does not comply with any requirements
12 prescribed by the regulations to disclose an interest the
13 member has in a matter being considered or about to be
14 considered by the Board; and
15 (b) the member does not have a reasonable excuse for not
16 complying.

17 *Termination on request by nominator*

- 18 (6) The Minister must terminate the appointment of a member of a
19 Board if:
20 (a) the member was appointed on the nomination of a particular
21 person, body or group of persons; and
22 (b) the person, body or group gives the Minister a written request
23 to terminate the appointment.

24 *Termination for bankruptcy or insolvency*

- 25 (7) The Minister may terminate the appointment of a member of the
26 Board if the member:
27 (a) becomes bankrupt; or
28 (b) applies to take the benefit of any law for the relief of
29 bankrupt or insolvent debtors; or
30 (c) compounds with his or her creditors; or

- 1 (d) makes an assignment of his or her remuneration for the
2 benefit of his or her creditors.

3 **383 Procedure of a Board**

- 4 (1) The regulations may provide for:
5 (a) matters relating to the operation of a Board, including:
6 (i) procedures for convening meetings of the Board; and
7 (ii) procedures for determining who is to preside at a
8 meeting of the Board; and
9 (iii) determining who may attend a meeting of the Board;
10 and
11 (iv) the constitution of a quorum for a meeting of the Board;
12 and
13 (v) procedures relating to a member's interest in matters
14 being dealt with by the Board; and
15 (vi) the way in which matters are to be resolved by the
16 Board; and
17 (b) the appointment and rights of a deputy of a member of a
18 Board.
- 19 (2) The regulations may allow a Board to determine a matter relating
20 to the operation of the Board for which the regulations may
21 provide.
- 22 (3) If there are no regulations in force, a Board may operate in the way
23 it determines.
- 24 (4) A meeting of a Board for a Commonwealth reserve consisting
25 wholly of indigenous people's land:
26 (a) must not start; and
27 (b) must not continue;
28 unless the majority of the members of the Board present are
29 persons nominated by the traditional owners of the indigenous
30 people's land for appointment as members.
- 31 (5) Subsection (4) has effect despite subsections (1), (2) and (3).
-

Section 384

1 **Subdivision G—Special rules for some Commonwealth reserves**
2 **in the Northern Territory or Jervis Bay Territory**

3 **384 Simplified outline of this Subdivision**

4 The following is a simplified outline of this Subdivision:

5 Special rules apply to Commonwealth reserves in the Kakadu
6 region, Uluru region and Jervis Bay Territory, affecting the
7 activities that can be carried on in those reserves.

8 Special procedures apply to planning for management of reserves
9 in the Kakadu region, Uluru region and Jervis Bay Territory. These
10 provide for extra involvement of indigenous people in the planning
11 process.

12 **385 Activities in Commonwealth reserve without management plan**

13 When a management plan is not in operation for a particular
14 Commonwealth reserve wholly or partly in the Kakadu region,
15 Uluru region or Jervis Bay Territory, the Director may perform the
16 Director's functions and exercise the Director's powers in and in
17 relation to a part of the reserve in the region, subject to any
18 directions of the Minister.

19 **386 What are the *Kakadu region* and the *Uluru region*?**

20 (1) The *Kakadu region* is the part of the Alligator Rivers Region (as
21 defined in the *Environment Protection (Alligator Rivers Region)*
22 *Act 1978*) that excludes:

- 23 (a) the area shown as the Arnhem Land Aboriginal Reserve on
24 the map mentioned in that definition; and
25 (b) the areas that are pastoral leases and are described on that
26 map as Mount Bunday and Eva Valley.

- 1 (2) The *Uluru region* is the area of land described under the heading
2 “Uluru” in Schedule 1 to the *Aboriginal Land Rights (Northern*
3 *Territory) Act 1976*.

4 **387 No mining operations in Kakadu National Park**

- 5 (1) A person must not carry out mining operations in Kakadu National
6 Park.
- 7 (2) Subsection (1) and subsection 355(1) do not prevent:
8 (a) the use, development or reconstruction of the township
9 known as Jabiru; or
10 (b) the transportation of anything in Kakadu National Park along
11 routes (including air routes) prescribed by the regulations for
12 the purposes of this paragraph; or
13 (c) the construction and use of pipelines and power lines in
14 Kakadu National Park along routes prescribed by the
15 regulations for the purposes of this paragraph; or
16 (d) the doing of anything for the purposes of building or
17 construction, or the supply of water, in Kakadu National Park
18 as long as the purposes are not connected with, or incidental
19 to, mining operations; and
20 (e) prescribed activities carried on in Kakadu National Park in
21 connection with, or incidental to, mining operations carried
22 on outside Kakadu National Park.
- 23 (3) *Kakadu National Park* is the Commonwealth reserve (as it exists
24 from time to time) to which the name Kakadu National Park was
25 given by Proclamation continued in force by the *Environmental*
26 *Reform (Consequential Provisions) Act 1999*.

27 **388 Establishment and development of townships in the Kakadu** 28 **region and Uluru region**

- 29 (1) A person may develop a township in a part of a Commonwealth
30 reserve, but only if:
31 (a) the part is in the Kakadu region or the Uluru region; and
-

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- 1 (b) the person does so in accordance with:
2 (i) subsection (2) or (3); and
3 (ii) the management plan for the reserve; and
4 (iii) a town plan prepared and approved in accordance with
5 the regulations.
- 6 (2) A person (other than the Director) may develop a township only:
7 (a) on land that the person holds under lease or sub-lease from
8 the Director; or
9 (b) on land that was developed before 9 June 1978, if the
10 township was established before it was included in the
11 reserve.
- 12 (3) The Director may develop a township only if the township did not
13 exist before its site became part of the Commonwealth reserve.
- 14 (4) A person may only construct, alter or demolish a building or
15 structure in a township in accordance with the management plan
16 for the Commonwealth reserve and the town plan.

389 Planning for townships

Management plan provisions

- 18
19 (1) The provisions of a management plan for a Commonwealth reserve
20 that relate to a township must include provisions for and in relation
21 to:
22 (a) the site of the township and the general purposes of the
23 township, if the township was not established before its site
24 was included in the reserve; and
25 (b) the terms and conditions of any lease or sub-lease from the
26 Director of land on which the township is to be established or
27 developed; and
28 (c) the purposes of any zones into which the township is to be
29 divided.

1

Town plan provisions

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(2) A town plan must make detailed provision relating to the proposed construction or development of the township, including, in particular, the provision (if any) to be made for:

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(a) housing, shops, offices and other buildings and structures;
and

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(b) bridges, railways, roads, streets, footpaths and parking areas;
and

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(c) the supply of water, electricity and gas; and

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(d) the standards to be maintained in the construction and alteration of buildings and structures; and

11

12

(e) sewerage and drainage; and

13

(f) public amenities for recreation and other purposes; and

14

(g) any other matters that are specified for the purposes of this paragraph by:

15

16

(i) the management plan for the Commonwealth reserve containing the township; or

17

18

(ii) the regulations; or

19

(iii) any lease or sub-lease from the Director of land on which the township is to be established or developed.

20

21

Town plans may adopt, apply or incorporate other instruments

22

(3) For the purposes of subsection (2), a town plan may apply, adopt or incorporate, with or without modification:

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24

(a) the provisions of any law of the Northern Territory (or a part of the Territory) that would not otherwise apply in relation to the township, as in force at a specified time or as in force from time to time; or

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28

(b) any matter contained in any instrument or writing as in force or existing at a specified time.

29

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Town plans must not be inconsistent with other instruments

31

(4) A town plan must never be inconsistent with:

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- 1 (a) the management plan for the Commonwealth reserve that
2 includes the township; or
3 (b) any lease or sub-lease from the Director of land on which the
4 township is to be established or developed.

5 *Revocation and variation of town plans*

- 6 (5) A town plan may be revoked or amended in the manner provided
7 by the regulations.

8 Note: Town plans are to be prepared and approved in accordance with the
9 regulations. See subparagraph 388(1)(b)(iii).

10 **390 Special rules to protect Aboriginal interests in planning process**

- 11 (1) This section sets out some extra rules about the process of
12 preparing management plans for a Commonwealth reserve wholly
13 or partly within the Kakadu region, the Uluru region or Jervis Bay
14 Territory.
- 15 (2) The Minister must give a management plan for a Commonwealth
16 reserve back to the Director with suggestions under paragraph
17 370(3)(b) if the Minister is satisfied that there is a substantial
18 difference of opinion between:
- 19 (a) the Chair or Chairperson of a land council for indigenous
20 people's land in the reserve, on the one hand; and
21 (b) the Director, or the Director and the Board for the reserve (if
22 it is a jointly managed reserve), on the other hand.
- 23 (3) If the Minister gives the plan back to the Director with suggestions
24 under paragraph 370(3)(b) (whether because of subsection (2) or
25 not), the Minister must:
- 26 (a) give a copy of the suggestions to:
- 27 (i) the Chair or Chairperson of each land council for
28 indigenous people's land in the reserve; and
29 (ii) the Parks and Wildlife Commission of the Northern
30 Territory, if the plan is for a Commonwealth reserve
31 wholly or partly in the Territory; and

Section 390

- 1 (b) invite each person to whom the Minister gave a copy of the
2 suggestions to give the Director comments on the suggestions
3 within 14 days.
- 4 (4) When considering the Minister's suggestions as required by
5 paragraph 370(4)(a), the Director and any Board for the reserve
6 must also consider any comments made in response to the
7 Minister's invitation.
- 8 (5) When the Director gives the Minister an identical or altered version
9 of the plan under paragraph 370(4)(b), the Director must also:
10 (a) give the Minister a copy of the comments (if any) made in
11 response to the Minister's invitation, and the Director's
12 views on those comments; and
13 (b) give the Chair or Chairperson of each land council for
14 indigenous people's land in the reserve a copy of the version
15 of the plan given to the Minister and of the comments and
16 views (if any) being given to the Minister under paragraph
17 (a).
- 18 (6) The Chair or Chairperson of a land council for indigenous people's
19 land in the reserve may make comments to the Minister relating to
20 the version of the plan within 14 days of receiving the copy of it.
- 21 (7) If the Minister receives comments from the Chair or Chairperson
22 of a land council for indigenous people's land in the reserve and
23 the Minister is satisfied that there is a substantial difference of
24 opinion between the Chair or Chairperson and the Director over the
25 plan:
26 (a) the Minister may appoint a person the Minister considers to
27 be suitably qualified and in a position to deal with the matter
28 impartially to inquire into the matter; and
29 (b) the person appointed must inquire into the matter and give
30 the Minister a report and recommendations.
- 31 (8) The Minister:
32 (a) must also consider:
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Section 390A

- 1 (i) the comments (if any) made to the Minister by the Chair
2 or Chairperson under subsection (6); and
3 (ii) the report and recommendations (if any) given to the
4 Minister under subsection (7);
5 when considering under subsection 370(5) the version of the
6 plan given to the Minister under paragraph 370(4)(b); and
7 (b) must not approve the plan before the end of the period
8 described in subsection (6).

9 **390A Appointment of Northern Territory nominee to Board**

- 10 (1) This section makes special provision for the appointment of a
11 person nominated by the Northern Territory as a member of the
12 Board for a Commonwealth reserve consisting wholly or mostly of
13 indigenous people's land held by the Director under lease in the
14 Territory.
- 15 (2) Despite subsection 379(1), the Minister must not appoint the
16 person unless:
17 (a) the members of the Board nominated by the traditional
18 owners of the land consent to the appointment; or
19 (b) the appointment has been recommended under subsection
20 (5).
- 21 (3) The Northern Territory may inform the Minister if it believes that
22 the members of the Board nominated by the traditional owners of
23 the land are unreasonably withholding consent to the appointment.
- 24 (4) If the Northern Territory informs the Minister, he or she must refer
25 the matter to the person (the *Ombudsman*) holding the office of
26 Commonwealth Ombudsman under the *Ombudsman Act 1976*.
- 27 (5) If the Ombudsman is satisfied that the members of the Board
28 nominated by the traditional owners of the land are unreasonably
29 withholding consent to the appointment, the Ombudsman must
30 recommend to the Minister that the Minister make the
31 appointment.

1

2 **Division 5—Conservation zones**

3 **390B Simplified outline of this Division**

4

The following is a simplified outline of this Division:

5

The Governor-General can proclaim a Commonwealth area to be a conservation zone, to protect biodiversity in the area while it is being assessed for inclusion in a Commonwealth reserve.

6

7

8

Regulations can be made to regulate a wide range of activities in a conservation zone.

9

10

People who have rights relating to an area that is later included in a conservation zone can continue to exercise those rights in the zone.

11

12

A conservation zone can be revoked if the Minister is satisfied the area concerned should not be included in a Commonwealth reserve. It is revoked automatically if it is included in a Commonwealth reserve.

13

14

15

16 **390C Object of this Division**

17

The object of this Division is to provide for the protection of biodiversity, other natural features and heritage in Commonwealth areas while they are being assessed for inclusion in a Commonwealth reserve.

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21 **390D Proclamation of conservation zones**

22

(1) The Governor-General may, by Proclamation, declare a Commonwealth area outside a Commonwealth reserve to be a conservation zone.

23

24

25

(2) Before the Governor-General makes a Proclamation declaring a Commonwealth area to be a conservation zone, the Minister must

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Section 390E

1 be satisfied that the area should be assessed to determine whether
2 the biodiversity, other natural features and heritage in the area
3 should be protected by including the area in a Commonwealth
4 reserve.

5 **390E Regulating activities generally**

- 6 (1) The regulations may:
- 7 (a) regulate or prohibit the pollution of soil, air or water in a
8 manner that is, or is likely to be, harmful to:
 - 9 (i) people, biodiversity or heritage in conservation zones;
10 or
 - 11 (ii) the natural features of conservation zones; and
 - 12 (b) regulate tourism in conservation zones; and
 - 13 (c) provide for the protection and preservation of conservation
14 zones and property and things in conservation zones; and
 - 15 (d) provide for the protection and conservation of biodiversity in
16 conservation zones; and
 - 17 (e) regulate or prohibit access to all or part of a conservation
18 zone by persons or classes of persons; and
 - 19 (f) provide for the removal of trespassers from conservation
20 zones; and
 - 21 (g) regulate camping in conservation zones; and
 - 22 (h) provide for the safety of persons in conservation zones; and
 - 23 (i) regulate the use of fire in conservation zones; and
 - 24 (j) regulate the conduct of persons in conservation zones; and
 - 25 (k) regulate the carrying on of any trade or commerce in a
26 conservation zone; and
 - 27 (l) regulate the use of vehicles in conservation zones and
28 provide for signs and road markings for those purposes; and
 - 29 (m) provide for:
 - 30 (i) the removal of vehicles, aircraft or vessels from places
31 in conservation zones where they have been left in
32 contravention of the regulations or have been
33 abandoned; and
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Section 390E

- 1 (ii) the impounding of such vehicles, aircraft or vessels; and
2 (n) provide that the person taken for the purposes of the
3 regulations to be the owner of a motor vehicle involved in a
4 contravention of a provision of the regulations relating to the
5 parking or stopping of vehicles in a conservation zone is,
6 except as provided otherwise, taken to commit an offence
7 against the provision; and
8 (o) provide for a person to be taken to be the owner of a motor
9 vehicle for the purposes of regulations made under paragraph
10 (n) (including a person in whose name the motor vehicle is
11 registered under the law of a State or Territory); and
12 (p) regulate the use of vessels in, and the passage of vessels
13 through, conservation zones; and
14 (q) regulate the landing and use of aircraft in, and the flying of
15 aircraft over, conservation zones; and
16 (r) regulate or prohibit the taking of animals or plants into or out
17 of conservation zones; and
18 (s) provide for the impounding, removal, destruction or disposal
19 of animals found straying in conservation zones; and
20 (t) regulate or prohibit the taking into conservation zones, and
21 the use in conservation zones, of weapons, traps, nets, snares,
22 fishing apparatus and other devices; and
23 (u) regulate or prohibit the laying of baits and the use of
24 explosives and poisons in conservation zones; and
25 (v) provide for the collection of specimens and the pursuit of
26 research in conservation zones for scientific purposes; and
27 (w) provide for the issue of licences, permits and authorities
28 relating to activities in conservation zones, the conditions
29 subject to which they are issued and the charging of fees by
30 the Commonwealth in respect of such licences, permits and
31 authorities; and
32 (x) provide for any matter incidental to or connected with a
33 matter described in another paragraph.

34 (2) Regulations relating to conservation zones may also:

Section 390F

- 1 (a) regulate the carrying on of mining operations, fishing,
2 pastoral or agricultural activities for commercial purposes;
3 and
4 (b) regulate the construction or alteration of buildings and
5 structures; and
6 (c) regulate the construction or establishment of bridges,
7 railways, roads, tracks, port facilities and air-strips and the
8 carrying out of any other works; and
9 (d) regulate the felling or taking of timber; and
10 (e) provide for and in relation to the powers to be exercised, and
11 the functions and duties to be performed, in and in relation to
12 conservation zones by wardens, by rangers and by other
13 persons included in specified classes of persons; and
14 (f) provide for and in relation to the giving of securities for
15 compliance with regulations made for the purposes of this
16 section by persons doing, or proposing to do, anything to
17 which those regulations relate.
- 18 (3) Regulations made for the purposes of this section have no effect to
19 the extent that they are inconsistent with the terms and conditions
20 of a right (however described) to explore for minerals, or to mine
21 for or recover minerals, granted under section 124 of the *Lands*
22 *Acquisition Act 1989*.

23 **390F Charges for activities in conservation zones**

24 Subject to the approval of the Minister, the Director may determine
25 and impose charges for using services or facilities provided by the
26 Director in or in connection with a conservation zone.

27 **390G Other laws and regulations made for this Division**

28 *Regulations regulating aircraft subject to other Commonwealth*
29 *laws*

- 30 (1) A provision of the regulations regulating the flying of aircraft over
31 a conservation zone does not have any effect so far as it is
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Section 390H

1 inconsistent with a law of the Commonwealth. For this purpose, a
2 provision is not inconsistent with such a law if it can be complied
3 with without contravention of the law.

4 *Territory laws subject to regulations*

5 (2) A law of a Territory has effect so far as it is not inconsistent with a
6 provision of the regulations made for the purposes of this Division
7 and having effect in that Territory. For this purpose, such a law is
8 not inconsistent with the provision so far as it can operate
9 concurrently with the provision.

10 **390H Prior usage rights relating to conservation zones continue to**
11 **have effect**

12 (1) None of the following provisions affect a usage right that was held
13 by a person (other than the Commonwealth) in relation to land or
14 seabed immediately before the land or seabed was included in a
15 conservation zone:

16 (a) provisions of this Division that relate to the zone (whether or
17 not they also relate to another conservation zone);

18 (b) provisions of the regulations made for the purposes of this
19 Division that relate to the zone (whether or not they also
20 relate to another conservation zone).

21 (2) None of the provisions covered by subsection (1) affect the
22 application of a law of a State or Territory in relation to the usage
23 right.

24 (3) The usage right may be renewed or have its term extended only:

25 (a) with the Minister's written consent; and

26 (b) subject to any conditions determined by the Minister.

27 This subsection has effect despite subsections (1) and (2) and any
28 other law of the Commonwealth, a State or a Territory.

29 (4) Subsections (1) and (2) apply in relation to a usage right relating to
30 minerals on, in or under land or seabed included in a conservation

Section 390J

1 zone as if the usage right were a usage right relating to the land or
2 seabed.

3 (5) This section applies to a right arising out of a usage right in the
4 same way as it applies to the usage right.

5 **390J Revoking and altering conservation zones**

6 *Proclamations to revoke or amend declaring Proclamation*

7 (1) The Governor-General may, by Proclamation, revoke or amend a
8 Proclamation made under section 390D (declaring a
9 Commonwealth area to be a conservation zone).

10 *Limit on making Proclamations*

11 (2) Before the Governor-General makes a Proclamation under
12 subsection (1) causing a Commonwealth area to cease to be within
13 a conservation zone, the Minister must be satisfied that the area
14 should not be included in a Commonwealth reserve.

15 *Declaration of Commonwealth reserve revokes conservation zone*

16 (3) A Commonwealth area ceases to be a conservation zone by force
17 of this subsection if the area becomes or is included in a
18 Commonwealth reserve.

19 *Conservation zone ends if it ceases to be in Commonwealth area*

20 (4) If land, waters, seabed or airspace in a conservation zone cease to
21 be a Commonwealth area, the land, waters, seabed or airspace
22 cease to be (or be in) a conservation zone by force of this
23 subsection.

24 *Proclamation to reflect cessation of conservation zone*

25 (5) If land, waters, seabed or airspace cease to be a conservation zone
26 by force of subsection (3) or (4), the Governor-General must make
27 a Proclamation revoking or amending the Proclamation that

Section 390J

1 included the land, waters, seabed or airspace in a conservation
2 zone, to reflect the fact that the land, waters, seabed or airspace are
3 no longer part of the conservation zone.

Section 391

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Chapter 6—Administration

Part 16—Application of precautionary principle in decision-making

391 Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

- (1) The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

- (2) The *precautionary principle* is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Decisions in which precautionary principle must be considered

- (3) The decisions are:

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

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	269A	about making a recovery plan or adopting a plan as a recovery plan
7A	270A	whether or not to have a threat abatement plan for a key threatening process
7B	270B	about making a threat abatement plan or adopting a plan as a 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

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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 (1A) However, an arrangement under subsection (1) must not provide
19 for the performance or exercise of functions or powers under this
20 Act or the regulations in relation to a Commonwealth reserve or
21 conservation zone.

22 (2) The Minister may enter into an arrangement with the appropriate
23 Minister of a State or of the Australian Capital Territory or of the
24 Northern Territory for:

25 (a) officers or employees in the Public Service of the State or
26 Territory, or in an authority of the State or Territory
27 (including a local government body); or

28 (b) members of the police force of the State or Territory;

1 to perform or exercise all or any of the functions or powers of
2 wardens or rangers under this Act or the regulations.

3 (3) The Minister may enter into an arrangement with the appropriate
4 person holding an office under section 13 of the *Norfolk Island Act*
5 *1979* for persons appointed or employed under an enactment
6 referred to in section 61 of that Act to perform or exercise all or
7 any of the functions or powers of wardens or rangers under this Act
8 or the regulations.

9 (4) The Director may make arrangements with the Secretary of a
10 Department of the Australian Public Service, or with an authority
11 of the Commonwealth, for the performance or exercise of all or
12 any of the functions or powers of wardens and rangers under this
13 Act or the regulations in relation to Commonwealth reserves or
14 conservation zones by officers or employees in the Department or
15 authority.

16 **394 Wardens *ex officio***

17 By force of this section each member or special member of the
18 Australian Federal Police is a warden.

19 **395 Identity cards**

20 (1) The Minister must issue to each warden (except a member of a
21 police force) and to each ranger, an identity card, in a form
22 approved by the Minister, containing a photograph of the person to
23 whom it is issued.

24 (2) If a person stops being a warden or ranger, the person must
25 immediately return his or her identity card to the Minister.

26 (3) A person who contravenes subsection (2) is guilty of an offence
27 punishable on conviction by a fine not exceeding one penalty unit.

Section 396

1 **Subdivision B—Inspectors**

2 **396 Appointment of inspectors**

- 3 (1) The Minister may, in writing, appoint a person to be an inspector.
- 4 (2) The Minister may make a written determination that a specified
5 person, or a person included in a specified class of persons, does
6 not have such of the powers conferred on an inspector by this Act
7 as are specified in the determination. The determination has effect
8 accordingly.
- 9 (3) If the Minister makes a determination under subsection (2) about a
10 named individual, the Minister must give the individual a copy of
11 the determination.

12 **397 Inspectors *ex officio***

13 By force of this section each of the following is an inspector:

- 14 (a) each member or special member of the Australian Federal
15 Police;
- 16 (b) each person appointed as an inspector under section 43 of the
17 *Great Barrier Reef Marine Park Act 1975* (other than such a
18 person whose appointment relates only to the powers of an
19 inspector under Part VIIA of that Act).

20 **398 Arrangements for State and Territory officers to be inspectors**

- 21 (1) The Minister may enter into an arrangement with the appropriate
22 Minister of a State or of the Australian Capital Territory or of the
23 Northern Territory for:
- 24 (a) officers or employees of the Public Service of the State or
25 Territory, or of an authority of the State or Territory
26 (including a local government body); or
- 27 (b) members of the police force of the State or Territory;
28 to be inspectors, and that arrangement has effect accordingly.

Section 399

- 1 (2) The Minister may enter into an arrangement with the appropriate
2 person holding an office under section 13 of the *Norfolk Island Act*
3 *1979* for persons appointed or employed under an enactment
4 referred to in section 61 of that Act to be inspectors, and that
5 arrangement has effect accordingly.
- 6 (3) The Minister may make a written determination that a specified
7 person, or a person included in a specified class of persons, who is
8 an inspector because of this section does not have such of the
9 powers conferred on an inspector by this Act as are specified in the
10 determination. The determination has effect accordingly.
- 11 (4) If the Minister makes a determination under subsection (3) about a
12 named individual, the Minister must give the individual a copy of
13 the determination.

14 **399 Identity cards**

- 15 (1) The Minister must issue to an inspector, (except a member of a
16 police force), an identity card in a form approved by the Minister,
17 containing a photograph of the person to whom it is issued.
- 18 (2) If a person stops being an inspector, the person must immediately
19 return his or her identity card to the Minister.
- 20 (3) A person who contravenes subsection (2) is guilty of an offence
21 punishable on conviction by a fine not exceeding one penalty unit.

22 **Subdivision C—Miscellaneous**

23 **400 Regulations may give wardens, rangers and inspectors extra**
24 **powers, functions and duties**

25 The regulations may provide for functions and powers to be
26 conferred, and duties to be imposed, on wardens, rangers and
27 inspectors.

Section 401

401 Impersonating authorised officers and rangers

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- (1) A person is guilty of an offence if:
 - (a) the person:
 - (i) impersonates an authorised officer or a ranger on an occasion; and
 - (ii) does so knowing it to be an occasion when the officer or ranger would be on duty and doing an act or attending a place; or
 - (b) the person:
 - (i) falsely represents himself or herself to be an authorised officer or a ranger; and
 - (ii) does an act or attends a place in the assumed character of that officer or ranger; or
 - (c) the person:
 - (i) impersonates an authorised officer or a ranger or falsely represents himself or herself to be an authorised officer or a ranger; and
 - (ii) does so with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.
 - (2) Subsection (1) does not apply to an authorised officer or a ranger.
 - (3) An authorised officer or a ranger is guilty of an offence if:
 - (a) the officer or ranger:
 - (i) impersonates another authorised officer or ranger on an occasion; and
 - (ii) does so knowing it to be an occasion when the other officer or ranger would be on duty and doing an act or attending a place; or
 - (b) the officer or ranger:
 - (i) falsely represents himself or herself to be another authorised officer or a ranger; and
 - (ii) does an act or attends a place in the assumed character of the other officer or ranger; or
 - (c) the officer or ranger:
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Section 402

- 1 (i) impersonates another authorised officer or a ranger or
2 falsely represents himself or herself to be another
3 authorised officer 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 (4) An offence against this section is punishable, on conviction, by
7 imprisonment for not more than 2 years or a fine not exceeding 120
8 penalty units, or both.

9 **402 Offences against authorised officers and rangers**

- 10 (1) A person is guilty of an offence if the person:
11 (a) uses or threatens violence against another person; and
12 (b) does so knowing that the other person is an authorised officer
13 or a ranger; and
14 (c) does so because of that other person's status as an authorised
15 officer or ranger.
- 16 (2) An offence against subsection (1) is punishable, on conviction, by
17 imprisonment for not more than 7 years or a fine not exceeding 420
18 penalty units, or both.
- 19 (3) A person is guilty of an offence if the person:
20 (a) obstructs, intimidates, resists or hinders another person who
21 is an authorised officer or a ranger exercising or performing
22 his or her powers, duties or functions; and
23 (b) does so knowing that the other person is an authorised officer
24 or ranger.
- 25 (4) An offence against subsection (3) 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 (5) It is immaterial whether the defendant was aware that the
29 authorised officer or ranger was engaged in the exercise or
30 performance, or attempted exercise or performance of a power,
31 duty or function of such officer or ranger.
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Chapter 6 Administration

Part 17 Enforcement

Division 1 Wardens, rangers and inspectors

Section 402

- 1 (6) It is a defence in proceedings for an offence against subsection (3),
2 if at the time of the conduct constituting the offence, the authorised
3 officer or ranger was abusing his or her power.
- 4 (7) This section does not limit the power of a court to punish a
5 contempt of that court.
- 6 (8) Subsections (1) and (3) are not intended to exclude or limit the
7 concurrent operation of any law of the Australian Capital Territory
8 in a case where the other person referred to in that subsection is a
9 member or special member of the Australian Federal Police.

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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 (except
5 subsection 406(4)).

6 (2) If an authorised officer enters any premises under subsection (1),
7 he or she may exercise the powers of an authorised officer under
8 section 406 (except subsection 406(4)).

9 (3) An authorised officer who enters premises under subsection (1)
10 must, if the occupier of the premises revokes his or her consent,
11 leave the premises forthwith, and is not entitled to exercise, or
12 continue to exercise, the powers of an authorised officer under
13 section 406 in relation to the premises.

14 **406 Powers of authorised officers**

15 (1) An authorised officer who boards a vehicle, vessel, aircraft or
16 platform under section 403, or enters premises under section 405
17 may:

18 (a) inspect and search the vehicle, vessel, aircraft, platform or
19 premises, as the case may be; and

20 (aa) may take photographs (including a video recording), and
21 make sketches, of the premises or of any substance or thing
22 on the vehicle, vessel, aircraft, platform or premises; and

23 (b) inspect, take extracts from, and make copies of, any
24 document that is, or that the authorised officer suspects on
25 reasonable grounds is, evidential material; and

26 (c) inspect, and take samples of, any other evidential material;
27 and

28 (ca) may take measurements of, and conduct tests on, the vehicle,
29 vessel, aircraft, platform or premises or any substance or
30 thing on the vehicle, vessel, aircraft, platform or premises;
31 and

Section 406

- 1 (d) exercise powers of seizure conferred on the authorised officer
2 by this Act; and
- 3 (e) may take onto the vehicle, vessel, aircraft, platform or
4 premises any equipment or material reasonably necessary for
5 the purpose of exercising a power referred to in paragraph
6 (a), (aa), (b), (c), (ca) or (d).
- 7 (2) Each of the following things, including any such thing in electronic
8 form, is *evidential material*:
- 9 (a) a thing with respect to which an offence against this Act or
10 the regulations has been committed or is suspected, on
11 reasonable grounds, to have been committed;
- 12 (b) a thing as to which there are reasonable grounds for
13 suspecting that it will afford evidence as to the commission
14 of an offence against this Act or the regulations;
- 15 (c) a thing as to which there are reasonable grounds for
16 suspecting that it is intended to be used for the purpose of
17 committing an offence against this Act or the regulations.
- 18 (3) For the purposes of exercising a power under subsection (1), an
19 authorised officer may break open any hold or compartment, or
20 any container or other receptacle (including any place that could be
21 used as a receptacle), on a vehicle, vessel, aircraft or platform or on
22 any premises.
- 23 (4) An authorised officer who boards a vehicle, vessel, aircraft or
24 platform under section 403 may require a person on the vehicle,
25 vessel, aircraft or platform to:
- 26 (a) answer a question asked by the authorised officer; or
27 (b) give the authorised officer information requested by the
28 authorised officer; or
29 (c) produce to the authorised officer records or documents kept
30 on the vehicle, vessel, aircraft or platform.
- 31 (5) A person is guilty of an offence if:
- 32 (a) an authorised officer has boarded a vehicle, vessel, aircraft or
33 platform under section 403; and
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Chapter 6 Administration

Part 17 Enforcement

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

Section 406

- 1 (b) the person is on the vehicle, vessel, aircraft or platform; and
2 (c) the authorised officer requires the person to:
3 (i) answer a question asked by the authorised officer; or
4 (ii) give the authorised officer information requested by the
5 authorised officer; or
6 (iii) produce to the authorised officer records or documents
7 kept on the vehicle, vessel, aircraft or platform; and
8 (d) the person contravenes the requirement.
- 9 (6) The offence is punishable on conviction by imprisonment for a
10 term not more than 6 months, a fine of not more than 30 penalty
11 units, or both.

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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 inspect and 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 (ca) the power to take measurements of, and conduct tests on, the
13 premises or any substance or thing on the premises;
14 (d) the power to take extracts from, or make copies of, any
15 document, book or record on the premises;
16 (e) the power to take onto the premises any equipment or
17 material reasonably necessary for the purpose of exercising a
18 power referred to in paragraph (a), (b), (c), (ca) or (d).

19 **408 Monitoring searches with occupier's consent**

20 *Entry by consent*

- 21 (1) An authorised officer may, with the consent of the occupier of any
22 premises, enter the premises for the purpose of finding out whether
23 any or all of the provisions of this Act or the regulations are being
24 complied with.

25 *Entry for monitoring purposes*

- 26 (2) An authorised officer may only enter premises under subsection (1)
27 to the extent that it is reasonably necessary for the purpose of
28 finding out whether any or all of the provisions of this Act or the
29 regulations are being complied with.

Section 408

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.

1 *Extension to vehicles, vessels and aircraft*

- 2 (8) Subsections (1), (2), (3), (4), (5), (6) and (7) apply in relation to:
3 (a) a vehicle, vessel or aircraft in the same way as they apply in
4 relation to premises; and
5 (b) a person apparently in charge of a vehicle, vessel or aircraft
6 in the same way as they apply in relation to the occupier of
7 premises.

8 **409 Monitoring warrants**

9 *Application for monitoring warrant*

- 10 (1) An authorised officer may apply to a magistrate for a warrant
11 under this section in relation to particular premises. The warrant is
12 to be known as a **monitoring warrant**.

13 *Issue of monitoring warrant*

- 14 (2) Subject to subsection (3), the magistrate may issue the monitoring
15 warrant if satisfied, by information on oath or affirmation, that it is
16 reasonably necessary that the authorised officer should have access
17 to the premises for the purpose of finding out whether any or all of
18 the provisions of this Act or the regulations are being complied
19 with.

20 *Information about grounds for issue of monitoring warrant*

- 21 (3) The magistrate must not issue the monitoring warrant unless the
22 authorised person or another person has given the magistrate, either
23 orally (on oath or affirmation) or by affidavit, such further
24 information as the magistrate requires about the grounds on which
25 the issue of the monitoring warrant is being sought.

26 *Terms of warrant*

- 27 (4) The monitoring warrant must:

Section 410

- 1 (a) authorise an authorised officer named in the monitoring
2 warrant, with such assistance and by such force as is
3 necessary and reasonable, from time to time while the
4 monitoring warrant remains in force, to enter the premises
5 and exercise monitoring powers; and
6 (b) state whether an entry under the monitoring warrant is
7 authorised to be made at any time of the day or night or
8 during specified hours of the day or night; and
9 (c) specify the day (not more than 6 months after the issue of the
10 monitoring warrant) on which the monitoring warrant ceases
11 to have effect; and
12 (d) state the purpose for which the monitoring warrant is issued.

13 *Seizure powers*

- 14 (5) If an authorised officer enters premises under a monitoring
15 warrant, he or she may exercise powers of seizure conferred by
16 section 445.

17 **410 Details of monitoring warrant to be given to occupier etc.**

- 18 (1) If a monitoring warrant in relation to premises is being executed
19 and the occupier of the premises, or another person who apparently
20 represents the occupier, is present at the premises, the authorised
21 officer named in the monitoring warrant must make available to
22 that person a copy of the monitoring warrant.
- 23 (2) The authorised officer named in the monitoring warrant must
24 identify himself or herself to that person at the premises.
- 25 (3) The copy of the monitoring warrant referred to in subsection (1)
26 need not include the signature of the magistrate or the seal of the
27 relevant court.

28 **411 Occupier entitled to be present during search**

- 29 (1) If a monitoring warrant in relation to premises is being executed
30 and the occupier of the premises, or another person who apparently
-

Section 412

1 represents the occupier, is present at the premises, the person is,
2 subject to Part 1C of the *Crimes Act 1914*, entitled to observe the
3 search being conducted.

4 (2) The right to observe the search being conducted ceases if the
5 person impedes the search.

6 (3) This section does not prevent 2 or more areas of the premises being
7 searched at the same time.

8 **412 Announcement before entry**

9 (1) The authorised officer named in a monitoring warrant must, before
10 any person enters premises under the monitoring warrant:

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 monitoring warrant is not
20 frustrated.

21 **412A Other powers when on premises under monitoring warrant**

22 (1) If the authorised officer named in a monitoring warrant enters
23 premises under the warrant, he or she may require a person on the
24 premises to:

25 (a) answer a question asked by the authorised officer; or

26 (b) give the authorised officer information requested by the
27 authorised officer; or

28 (c) produce to the authorised officer records or documents kept
29 on the premises.

30 (2) A person is guilty of an offence if:

Section 412A

- 1 (a) the authorised officer named in a monitoring warrant has
2 entered premises under the warrant; and
3 (b) the person is on the premises; and
4 (c) the authorised officer requires the person to:
5 (i) answer a question asked by the authorised officer; or
6 (ii) give the authorised officer information requested by the
7 authorised officer; or
8 (iii) produce to the authorised officer records or documents
9 kept on the premises; and
10 (d) the person contravenes the requirement.
- 11 (3) The offence is punishable on conviction by imprisonment for a
12 term not more than 6 months, a fine of not more than 30 penalty
13 units, or both.

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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

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- (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
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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:
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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

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2

Division 5—Stopping and searching aircraft, vehicles or vessels

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429 Searches of aircraft, vehicles or vessels without warrant in emergency situations

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(1) This section applies if an authorised officer suspects, on reasonable grounds, that:

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(a) evidential material in relation to an indictable offence against this Act is in or on an aircraft, vehicle or vessel; and

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(b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and

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(c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.

14

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(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

(a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and

26

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.
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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.

20 440 Law relating to legal professional privilege not affected

21 This Part does not affect the law relating to legal professional
22 privilege.

23 441 Other laws about search, arrest etc. not affected

- 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.

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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.**

3 **Subdivision A—Seizure of goods**

4 **445 Seizure of goods**

- 5 (1) This section applies to any goods, including vehicles, vessels,
6 aircraft, platforms, documents and organisms.
- 7 (2) An authorised officer may seize goods if he or she has reasonable
8 grounds to suspect that:
- 9 (a) the goods have been used or otherwise involved in the
10 commission of an offence against this Act or the regulations;
11 or
12 (b) the goods will afford evidence of the commission of an
13 offence against this Act or the regulations.

14 **446 Retention of goods that have been seized**

- 15 (1) Goods seized under section 445 may be retained until:
- 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
19 (b) if:
- 20 (i) proceedings for an offence against this Act or the
21 regulations are instituted within that period; and
22 (ii) the goods may have been used or otherwise involved in
23 the commission of the offence or the goods may afford
24 evidence of the commission of the offence;
- 25 the proceedings (including any appeal to a court in relation to those
26 proceedings) are terminated.
- 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.

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).
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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.

28 **Subdivision C—Court-ordered forfeiture**

29 **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.

Section 457

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2 **Division 11—Powers of pursuit**

3 **457 Power to pursue persons etc.**

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(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:

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(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.

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(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.

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(3) A reference in subsection (2) to losing sight of a person or vessel includes losing output from a radar or other sensing device.

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2 **Division 12—Environmental audits**

3 **458 Directed environmental audits**

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(1) The Minister may, by written notice given to the holder of an environmental authority, require the holder to carry out an environmental audit if the Minister believes or suspects on reasonable grounds:

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(a) that the holder has contravened, or is likely to contravene, a condition of the authority; or

(b) the impacts that the action authorised by the authority has, has had or is likely to have on the matter dealt with by the provision for which the authority authorises the action are significantly greater than was indicated in the information available to the Minister when the authority was granted.

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(2) The notice must specify:

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(a) the matters to be covered by the audit; and

(b) the form of the audit report and the kinds of particulars it is to contain; and

(c) the date on or before which the report must be given to the Minister.

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(3) Without limiting the matters that may be specified under paragraph (2)(a), those matters may include all or any of the following:

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(a) an evaluation of the nature of the environment that is or will be affected by the holder's activities; and

(b) an assessment of the risks to the environment resulting from the activities; and

(c) an assessment of the holder's existing capacity to comply with the authority and the requirements of this Act and the regulations in carrying on the activities; and

(d) an assessment of what the holder will need to do, or continue to do, so to comply.

32

(4) For the purposes of this Act, an *environmental authority* is:

Section 459

- 1 (a) an approval under Part 9; or
2 (b) a permit issued under Chapter 5.

3 **459 Appointment of auditor and carrying out of audit**

4 (1) If the Minister gives the holder of an environmental authority a
5 notice under section 458, the holder must appoint an environmental
6 auditor and arrange for the auditor to carry out an environmental
7 audit in accordance with the notice.

8 (2) The holder of an environmental authority must not contravene
9 subsection (1).

10 Civil penalty: 500 penalty units.

11 (3) The holder must not appoint an officer or employee of the holder to
12 be an environmental auditor.

13 (4) The holder must not appoint a person to be an environmental
14 auditor unless the Minister has approved the person for such
15 appointment before the appointment is made.

16 (5) An appointment of a person as an environmental auditor made
17 otherwise than in accordance with subsections (3) and (4) has no
18 effect.

19 **460 Nature of directed environmental audit**

20 (1) If:

21 (a) an environmental auditor carries out a directed environmental
22 audit; and

23 (b) in the course of carrying out the audit, the auditor does not
24 deal with a particular matter; and

25 (c) the matter is specified in the Minister's notice under section
26 458 as a matter that is to be covered by the audit;

27 the auditor is guilty of an offence, punishable on conviction by a
28 fine not exceeding 30 penalty units.

Section 461

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

3 (2) If:

4 (a) an environmental auditor carries out a directed environmental
5 audit; and

6 (b) in the course of carrying out the audit, the auditor conceals,
7 or does not take into account, any information or document;
8 and

9 (c) the information or document is relevant to the audit;

10 the auditor is guilty of an offence punishable on conviction by
11 imprisonment for not more than 6 months.

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

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

18 (3) In carrying out a directed environmental audit, the environmental
19 auditor may, if:

20 (a) an environmental audit (including an environmental audit
21 carried out in accordance with a condition of the relevant
22 authority) was completed within the last preceding 2 years;
23 and

24 (b) the auditor is satisfied that the previous audit is still relevant;
25 have regard to the results of the previous audit.

26 (4) For the purposes of this Act, a *directed environmental audit* is an
27 audit required by a notice under section 458.

28 **461 Audit reports**

29 (1) After completing a directed environmental audit, the environmental
30 auditor must prepare, and give the holder of the relevant
31 environmental authority, a written report setting out the results of
32 the audit.

Section 462

- 1 (2) The holder must give the report to the Minister:
2 (a) on or before the date specified by the Minister under
3 paragraph 458(2)(c); or
4 (b) on or before such later date as the Minister, on application by
5 the holder, determines.

- 6 (3) If the holder fails to comply with subsection (2), the holder is
7 guilty of an offence, punishable on conviction by a fine not
8 exceeding 50 penalty units.

9 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
10 criminal responsibilities.

- 11 (4) If:
12 (a) the environmental auditor includes a statement in the report;
13 and
14 (b) the statement is false or misleading in a material particular;
15 the auditor is guilty of an offence punishable on conviction by
16 imprisonment for not more than 6 months.

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

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

23 **462 Directed environmental audits do not affect other audit**
24 **obligations**

25 This Division does not affect any obligation of a holder of an
26 environmental authority to carry out an environmental audit in
27 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:

6

The Minister may make conservation orders controlling activities, and requiring specified people to take specified actions, in Commonwealth areas to protect listed threatened species or ecological communities.

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A person who contravenes a conservation order commits an offence.

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12

Before the Minister makes a conservation order, he or she must consult various Commonwealth agencies.

13

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The Secretary must publicise conservation orders, and may give assistance to a person to comply with a conservation order.

15

16 **Subdivision B—Making and reviewing conservation orders**

16

17 **464 Minister may make conservation orders**

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Making conservation orders

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(1) The Minister may make a written order (a *conservation order*):

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(a) prohibiting or restricting specified activities on or in:

21

(i) all Commonwealth areas; or

22

(ii) specified Commonwealth areas; or

23

(b) requiring specified persons to take specified action on or in:

24

(i) all Commonwealth areas; or

25

(ii) specified Commonwealth areas.

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 listed threatened
- 11 species or listed threatened ecological community the order was
- 12 made to protect.
- 13 (4) The Minister must not vary the order unless he or she is satisfied
- 14 that the order as varied adequately protects the listed threatened
- 15 species or listed threatened ecological community the order was
- 16 first made to protect.
- 17 (5) Immediately after a variation of the order, the order continues in
- 18 force as so varied.

19 **467 Publication of conservation orders**

- 20 (1) As soon as practicable after making or reviewing a conservation
- 21 order, the Minister must cause the Secretary to be informed of the
- 22 making of the order, or the decision on the review, as the case
- 23 requires.
- 24 (2) The Secretary must, as soon as practicable after being so informed:
- 25 (a) cause to be published in the *Gazette*, in a daily newspaper
- 26 circulating in each State or self-governing Territory in which
- 27 are located Commonwealth areas to which the order relates
- 28 and in any other way required by the regulations, a notice
- 29 containing:
- 30 (i) a copy of the order; and

Section 468

- 1 (ii) a statement to the effect that contravention of the order
2 is an offence against this Act; and
3 (iii) if applicable, a statement of the decision on the review;
4 and
5 (iv) a statement to the effect that a person affected by the
6 order may apply to the Minister, within 28 days of the
7 publication (or within such further period as the
8 Minister allows), for a reconsideration of the order by
9 the Minister; and
10 (b) take all reasonable steps to ensure that each person who the
11 Secretary knows would be affected by the order is given a
12 notice containing:
13 (i) a copy of the order; and
14 (ii) if applicable, a statement of the decision on the review;
15 and
16 (iii) unless the person is a Commonwealth agency or an
17 agency of a State or self-governing Territory—a
18 statement to the effect that contravention of the order is
19 an offence against this Act; and
20 (iv) a statement to the effect that the person may apply to the
21 Minister, within 28 days of being given the notice (or
22 within such further period as the Minister allows), for a
23 reconsideration of the order by the Minister.
24 (3) Failure to comply with this section does not affect the validity of
25 the order.

26 **468 Application for reconsideration of conservation orders or**
27 **decisions on review**

- 28 (1) A person affected by a conservation order, or by the decision on a
29 review of a conservation order, may apply to the Minister to
30 reconsider the order or the decision, as the case requires.
31 (2) The application must be in writing.

- 1 (3) Subject to subsection (4), the application must be made within 28
2 days, or within such further period as the Minister allows, after the
3 publication under paragraph 467(2)(a) of the notice relating to the
4 making of the order or conduct of the review.
- 5 (4) If the person is given a copy of the order after that publication, the
6 period of 28 days within which that person must make the
7 application is taken to commence on the day on which the person
8 received the notice.

9 **469 Reconsideration of conservation orders and decisions on review**

- 10 (1) Upon receiving the application, the Minister must:
11 (a) seek the Secretary's advice on the application; and
12 (b) reconsider the conservation order or the decision on review,
13 as the case requires; and
14 (c) by written instrument:
15 (i) confirm, vary or revoke the order; or
16 (ii) confirm or vary the decision on review; and
17 (d) cause the Secretary to be informed accordingly.
- 18 (2) As soon as practicable after being so informed, the Secretary must:
19 (a) notify the applicant in writing of the result of the
20 reconsideration; and
21 (b) if the order is revoked or varied or the decision on review is
22 varied—cause to be published in the *Gazette*, and in any
23 other way required by the regulations, a notice:
24 (i) stating that fact; and
25 (ii) in the case of a variation—setting out a copy of the
26 order or decision as so varied.
- 27 (3) Immediately after a variation of the order, the order continues in
28 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 an 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.

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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

(b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:

27

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 person bound by a conservation agreement engages or
16 proposes to engage in conduct consisting of an act or omission that
17 constitutes a contravention of the agreement, another person bound
18 by the agreement or the Minister may apply to the Federal Court
19 for an injunction.

20 Note: Section 307 explains who is bound by a conservation agreement.

21 *Prohibitory injunctions*

- 22 (2) If a person has engaged, is engaging or is proposing to engage in
23 conduct contravening the agreement, the Court may grant an
24 injunction restraining the person from engaging in the conduct.

25 *Additional orders with prohibitory injunctions*

- 26 (3) If the court grants an injunction restraining a person from engaging
27 in conduct and in the Court’s opinion it is desirable to do so, the
28 Court may make an order requiring the person to do something
29 (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 proposing to refuse or fail to do an act, and the refusal or failure was, is or would be a contravention of the agreement, the Court may grant an injunction requiring the person to do the act.

3

4

5

6

Interim injunctions

7

- (5) Before deciding an application for an injunction under this section the Court may grant an interim injunction:

8

9

10

(a) restraining a person from engaging in conduct; or

(b) requiring a person to do an act.

11

477 Discharge of injunctions

12

On application, the Federal Court may discharge or vary an injunction.

13

14

478 No undertakings as to damages

15

The Federal Court is not to require an applicant for an injunction to give an undertaking as to damages as a condition of granting an interim injunction.

16

17

18

479 Certain considerations for granting injunctions not relevant

19

Prohibitory injunctions

20

- (1) The Federal Court may grant an injunction restraining a person from engaging in conduct:

21

22

23

24

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

25

26

(b) whether or not the person has previously engaged in conduct 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.

1

2 **Division 15—Civil penalties**

3 **Subdivision A—Obtaining an order for a civil penalty**

4 **481 Federal Court may order person to pay pecuniary penalty for**
5 **contravening civil penalty provision**

6 *Application for order*

- 7 (1) Within 6 years of a person (the *wrongdoer*) contravening a civil
8 penalty provision, the Minister may apply on behalf of the
9 Commonwealth to the Federal Court for an order that the
10 wrongdoer pay the Commonwealth a pecuniary penalty.

11 *Court may order wrongdoer to pay pecuniary penalty*

- 12 (2) If the Court is satisfied that the wrongdoer has contravened a civil
13 penalty provision, the Court may order the wrongdoer to pay to the
14 Commonwealth for each contravention the pecuniary penalty that
15 the Court determines is appropriate (but not more than the relevant
16 amount specified for the provision).

17 *Determining amount of pecuniary penalty*

- 18 (3) In determining the pecuniary penalty, the Court must have regard
19 to all relevant matters, including:
20 (a) the nature and extent of the contravention; and
21 (b) the nature and extent of any loss or damage suffered as a
22 result of the contravention; and
23 (c) the circumstances in which the contravention took place; and
24 (d) whether the person has previously been found by the Court in
25 proceedings under this Act to have engaged in any similar
26 conduct.

1 *Conduct contravening more than one civil penalty provision*

- 2 (4) If conduct constitutes a contravention of 2 or more civil penalty
3 provisions, proceedings may be instituted under this Act against a
4 person in relation to the contravention of any one or more of those
5 provisions. However, the person is not liable to more than one
6 pecuniary penalty under this section in respect of the same
7 conduct.

8 **482 What is a *civil penalty provision*?**

9 A subsection of this Act (or a section of this Act that is not divided
10 into subsections) is a *civil penalty provision* if:

- 11 (a) the words “civil penalty” and one or more amounts in penalty
12 units are set out at the foot of the subsection (or section); or
13 (b) another provision of this Act specifies that the subsection (or
14 section) is a civil penalty provision.

15 **483 Contravening a civil penalty provision is not an offence**

16 A contravention of a civil penalty provision is not an offence.

17 **484 Persons involved in contravening civil penalty provision**

- 18 (1) A person must not:
19 (a) aid, abet, counsel or procure a contravention of a civil
20 penalty provision; or
21 (b) induce (by threats, promises or otherwise) a contravention of
22 a civil penalty provision; or
23 (c) be in any way directly or indirectly knowingly concerned in,
24 or party to, a contravention of a civil penalty provision; or
25 (d) conspire to contravene a civil penalty provision.
- 26 (2) This Division applies to a person who contravenes subsection (1)
27 in relation to a civil penalty provision as if the person had
28 contravened the provision.

Section 485

1 **485 Recovery of a pecuniary penalty**

- 2 If the Federal Court orders a person to pay a pecuniary penalty:
- 3 (a) the penalty is payable to the Commonwealth; and
- 4 (b) the Commonwealth may enforce the order as if it were a
- 5 judgment of the Court.

6 **486 Gathering information for application for pecuniary penalty**

- 7 (1) This section applies if it appears to the Minister that a person (the
- 8 *wrongdoer*) may have contravened a civil penalty provision.
- 9 (2) If the Minister, on reasonable grounds, suspects or believes that a
- 10 person other than the wrongdoer can give information relevant to
- 11 an application for a civil penalty order in relation to the
- 12 contravention, whether or not such an application has been made,
- 13 the Minister may, by writing given to the person, require the
- 14 person to give all reasonable assistance in connection with such an
- 15 application.
- 16 (3) Subsection (2) does not apply in relation to a duly qualified legal
- 17 practitioner who is acting, or has acted, for the wrongdoer.
- 18 (4) If a person fails to give assistance as required under subsection (2):
- 19 (a) the person contravenes this subsection; and
- 20 (b) the Federal Court may, on the application of the Minister,
- 21 order the person to comply with the requirement as specified
- 22 in the order.

23 **Subdivision B—Civil penalty proceedings and criminal**

24 **proceedings**

25 **486A Civil proceedings after criminal proceedings**

26 The Federal Court must not make a pecuniary penalty order against

27 a person for a contravention of a civil penalty provision if the

28 person has been convicted of an offence constituted by conduct

Section 486B

1 that is substantially the same as the conduct constituting the
2 contravention.

3 **486B Criminal proceedings during civil proceedings**

- 4 (1) Proceedings for a pecuniary penalty order against a person for a
5 contravention of a civil penalty provision are stayed if:
- 6 (a) criminal proceedings are started or have already been started
7 against the person for an offence; and
8 (b) the offence is constituted by conduct that is substantially the
9 same as the conduct alleged to constitute the contravention.
- 10 (2) The proceedings for the order may be resumed if the person is not
11 convicted of the offence. Otherwise, the proceedings for the order
12 are dismissed.

13 **486C Criminal proceedings after civil proceedings**

14 Criminal proceedings may be started against a person for conduct
15 that is substantially the same as conduct constituting a
16 contravention of a civil penalty provision regardless of whether a
17 pecuniary penalty order has been made against the person.

18 **486D Evidence given in proceedings for penalty not admissible in**
19 **criminal proceedings**

20 Evidence of information given or evidence of production of
21 documents by an individual is not admissible in criminal
22 proceedings against the individual if:

23 (a) the individual previously gave the evidence or produced the
24 documents in proceedings for a pecuniary penalty order
25 against the individual for a contravention of a civil penalty
26 provision (whether or not the order was made); and
27 (b) the conduct alleged to constitute the offence is substantially
28 the same as the conduct that was claimed to constitute the
29 contravention.

Chapter 6 Administration
Part 17 Enforcement
Division 15 Civil penalties

Section 486D

1 However, this does not apply to a criminal proceeding in respect of
2 the falsity of the evidence given by the individual in the
3 proceedings for the pecuniary penalty 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
7 or request under Part 7, 8, 9 or 13; and

8 (b) the person is reckless as to whether the information is false or
9 misleading in a material particular.

10 Note: The fault element in paragraph (1)(b) can be demonstrated by proof of
11 knowledge. See subsection 5.4(4) of the *Criminal Code*.

12 (2) An offence against subsection (1) is punishable on conviction by:

13 (a) imprisonment for a term not more than 2 years, a fine not
14 more than 120 penalty units, or both, if it is proved the
15 person knew the information was false or misleading; or

16 (b) imprisonment for a term not more than 1 year, a fine not
17 more than 60 penalty units, or both, if it is proved the person
18 was reckless as to whether the information was false or
19 misleading.

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

23 (2A) A person is guilty of an offence if:

24 (a) the person provides information in response to a requirement
25 or request under Part 7, 8, 9 or 13; and

26 (b) the person is negligent as to whether the information is false
27 or misleading in a material particular.

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

30 (2B) An offence against subsection (2A) is punishable on conviction by
31 a fine not more than 30 penalty units.

1 **491 Providing false or misleading information to authorised officer**
2 **etc.**

3 (1) A person is guilty of an offence if the person:

4 (a) provides information or a document to another person (the
5 *recipient*); and

6 (b) knows the recipient is:

7 (i) an authorised officer; or

8 (ii) the Minister; or

9 (iii) an employee or officer in the Department; or

10 (iv) a commissioner;

11 performing a duty or carrying out a function under this Act or
12 the regulations; and

13 (c) knows the information or document is false or misleading in
14 a material particular.

15 (2) The offence is punishable on conviction by imprisonment for a
16 term not more than 1 year, a fine not more than 60 penalty units, or
17 both.

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

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

(1) If:

27

(a) a body corporate contravenes:

28

(i) section 489 (Providing false or misleading information to obtain approval or permit); or

29

- 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 (2) If:

- 20 (a) a body corporate contravenes:
21 (i) section 15A (Offences relating to declared World
22 Heritage properties); or
23 (ii) section 17B (Offences relating to declared Ramsar
24 wetlands); or
25 (iii) section 18A (Offences relating to threatened species
26 etc.); or
27 (iv) section 20A (Offences relating to listed migratory
28 species); or
29 (v) section 22A (Offences relating to nuclear actions); or
30 (vi) section 24A (Offences relating to marine areas); or
31 (vii) section 27A (Offences relating to Commonwealth land);
32 or
33 (viii) section 142A (Offence of breaching conditions on
34 approval); and

Section 496

- 1 (b) an executive officer of the body was reckless as to whether
2 the contravention would occur; and
3 (c) the officer was in a position to influence the conduct of the
4 body in relation to the contravention; and
5 (d) the officer failed to take all reasonable steps to prevent the
6 contravention;
7 the officer is guilty of an offence.

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

- 10 (3) An offence against subsection (2) is punishable on conviction by
11 imprisonment for a term not exceeding the term specified in the
12 provision contravened by the body corporate.

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

17 **496 Did an executive officer take reasonable steps to prevent**
18 **contravention?**

- 19 (1) For the purposes of sections 494 and 495, in determining whether
20 an executive officer of a body corporate failed to take all
21 reasonable steps to prevent the contravention, a court is to have
22 regard to:
23 (a) what action (if any) the officer took directed towards
24 ensuring the following (to the extent that the action is
25 relevant to the contravention):
26 (i) that the body arranges regular professional assessments
27 of the body's compliance with this Act and the
28 regulations;
29 (ii) that the body implements any appropriate
30 recommendations arising from such an assessment;
31 (iii) that the body has an appropriate system established for
32 managing the effects of the body's activities on the
33 environment;

- 1 (iv) that the body's employees, agents and contractors have
2 a reasonable knowledge and understanding of the
3 requirements to comply with this Act and the
4 regulations, in so far as those requirements affect the
5 employees, agents or contractors concerned; and
6 (b) what action (if any) the officer took when he or she became
7 aware that the body was contravening:
8 (i) this Act; or
9 (ii) the regulations; or
10 (iii) if the body contravened Part 3 or section 142 or 142A—
11 any environmental management plan that was prepared
12 by the body, and approved by the Minister, as required
13 by a condition attached to an approval under Part 9 for
14 the purposes of a provision of Part 3 of the body's
15 taking of an action.
- 16 (2) This section does not, by implication, limit the generality of
17 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.

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.

Section 498A

1

2 **Division 21—Immunity of officers**

3 **498A Immunity of officers and assistants**

4 (1) An authorised officer or ranger is not liable to any proceedings
5 relating to an act done, or omitted to be done, in good faith in the
6 exercise or purported exercise of any power conferred on the
7 officer or ranger by this Part or regulations made for the purposes
8 of this Part or Division 5 of Part 15.

9 (2) A person requested by an authorised officer or ranger to assist the
10 officer or ranger in the exercise or purported exercise of any power
11 conferred on the officer or ranger by this Part, or by regulations
12 made for the purposes of this Part or Division 5 of Part 15, is not
13 liable to any proceedings relating to an act done, or omitted to be
14 done, in good faith for the purpose of assisting the officer or
15 ranger.

1
2 **Part 18—Remedying 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**
4 **Species Scientific Committee**

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
8 Committee, including the qualifications of its members.
- 9 (3) The Minister is to appoint the members of the Committee on a
10 part-time basis, and must appoint one of the members to chair the
11 Committee.

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
15 13 in relation to the making of recovery plans and threat
16 abatement plans; and
- 17 (b) to advise the Minister (on the Minister's request or on the
18 Committee's initiative) on the amendment and updating of
19 the lists established under Part 13; and
- 20 (c) to advise the Minister, at his or her request, on matters
21 relating to the administration of this Act; and
- 22 (d) to give the Minister such other advice as is provided for in
23 this Act; and
- 24 (e) to perform such other functions as are conferred on the
25 Committee by this Act.

**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;
 - (ea) indigenous peoples;
 - (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

Chapter 6 Administration

Part 19 Organisations

Division 2 Establishment and functions of the Biological Diversity Advisory Committee

Section 505

1 (b) is appointed to represent the scientific community and is not
2 appointed to represent any of the other bodies, groups of
3 bodies or communities referred to in subsection (4).

4 (6) The Minister must ensure that a majority of the members are not
5 persons employed by the Commonwealth or Commonwealth
6 agencies.

7 **505 Functions of the Committee**

8 The functions of the Committee are:

- 9 (a) to advise the Minister, at his or her request, on matters
10 relating to the conservation and ecologically sustainable use
11 of biological diversity; and
12 (b) to perform such other functions as are conferred on the
13 Committee by this Act or the regulations.

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2 **Division 2A—Indigenous Advisory Committee**

3 **505A Establishment**

- 4 (1) The Indigenous Advisory Committee is established.
- 5 (2) The Minister is to determine in writing the composition of the
6 Committee, including the qualifications of its members.
- 7 (3) The Minister is to appoint the members of the Committee on a
8 part-time basis, and must appoint one of the members to chair the
9 Committee.

10 **505B Functions of the Committee**

- 11 (1) The function of the Committee is to advise the Minister on the
12 operation of the Act, taking into account the significance of
13 indigenous peoples' knowledge of the management of land and the
14 conservation and sustainable use of biodiversity.
- 15 (2) The Minister may give the Committee written guidelines about its
16 function.

Section 506

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 (c) the Indigenous Advisory Committee.

8 **507 Terms and conditions**

9 *Term of office*

- 10 (1) A member of a Committee holds office for the period specified in
11 the instrument of appointment. The period must not exceed 5 years.

12 Note: Section 509 sets out the circumstances in which a member's
13 appointment may be (or must be) terminated.

14 *Resignation*

- 15 (2) A member of a Committee may resign his or her appointment by
16 giving the Minister a written resignation.

17 *Other terms and conditions*

- 18 (3) A member of a Committee holds office on the terms and conditions
19 (if any) that are determined by the Minister in relation to matters
20 not covered by this Act or the regulations.

21 **508 Remuneration**

- 22 (1) A member of a Committee is to be paid the remuneration that is
23 determined by the Remuneration Tribunal. If no determination of
24 that remuneration by the Tribunal is in operation, the member is to
25 be paid the remuneration that is prescribed.

- 1 (2) A member of a Committee is to be paid the allowances that are
2 prescribed.
- 3 (3) This section has effect subject to the *Remuneration Tribunal Act*
4 *1973*.

5 **509 Termination of appointments of Committee members**

6 *Termination when person stops being qualified for appointment*

- 7 (1) The appointment of a person to a position of member of a
8 Committee is terminated when the person ceases to be qualified for
9 appointment to the position.

10 *Termination for misbehaviour or incapacity*

- 11 (2) The Minister may terminate the appointment of a member of a
12 Committee for misbehaviour or physical or mental incapacity.

13 *Termination for failure to attend Committee meetings*

- 14 (3) The Minister may terminate the appointment of a member of a
15 Committee if the member is absent, except on leave of absence,
16 from 3 consecutive meetings of the Committee of which the
17 member has had notice.

18 *Termination for engaging in conflicting work*

- 19 (4) The Minister may terminate the appointment of a member of a
20 Committee if the member engages in paid employment that, in the
21 Minister's opinion, conflicts or could conflict with the proper
22 performance of the duties of the member.

23 *Termination for failure to disclose interests*

- 24 (5) The Minister must terminate the appointment of a member of a
25 Committee if:
26 (a) the member does not comply with any requirements
27 prescribed by the regulations to disclose an interest the

Section 510

- 1 member has in a matter being considered or about to be
2 considered by the Committee; and
3 (b) the member does not have a reasonable excuse for not
4 complying.

5 *Termination for bankruptcy or insolvency*

- 6 (6) The Minister may terminate the appointment of a member of a
7 Committee if the member:
8 (a) becomes bankrupt; or
9 (b) applies to take the benefit of any law for the relief of
10 bankrupt or insolvent debtors; or
11 (c) compounds with his or her creditors; or
12 (d) makes an assignment of his or her remuneration for the
13 benefit of his or her creditors.

14 **510 Procedure of a Committee**

- 15 (1) The regulations may provide for:
16 (a) matters relating to the operation of a Committee, including:
17 (i) procedures for convening meetings of the Committee;
18 and
19 (ii) procedures for determining who is to preside at a
20 meeting of the Committee; and
21 (iii) determining who may attend a meeting of the
22 Committee; and
23 (iv) the constitution of a quorum for a meeting of the
24 Committee; and
25 (v) procedures relating to a member's interest in matters
26 being dealt with by the Committee; and
27 (vi) the way in which matters are to be resolved by the
28 Committee; and
29 (b) the appointment and rights of a deputy of a member of a
30 Committee.

Section 510

- 1 (2) The regulations may allow a Committee to determine a matter
2 relating to the operation of the Committee for which the
3 regulations may provide.
- 4 (3) If there are no regulations in force, a Committee may operate in the
5 way it determines.

Section 511

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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.

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.

Section 514A

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2 **Division 5—Director of National Parks**

3 **Subdivision A—Establishment, functions and powers**

4 **514A Continuation**

5 The corporation sole that existed under section 15 of the *National*
6 *Parks and Wildlife Conservation Act 1975* immediately before the
7 commencement of this Act continues in existence as the Director
8 of National Parks.

9 Note: Subject to section 514U, the *Commonwealth Authorities and*
10 *Companies Act 1997* applies to the Director. That Act deals with
11 matters relating to Commonwealth authorities, including reporting and
12 accountability, banking and investment, and conduct of officers.

13 **514B Functions**

14 (1) The functions of the Director are:

15 (a) to administer, manage and control Commonwealth reserves
16 and conservation zones; and

17 (b) to protect, conserve and manage biodiversity and heritage in
18 Commonwealth reserves and conservation zones; and

19 (c) to co-operate with any country in matters relating to the
20 establishment and management of national parks and nature
21 reserves in that country; and

22 (d) to provide, and assist in the provision of, training in the
23 knowledge and skills relevant to the establishment and
24 management of national parks and nature reserves; and

25 (e) to carry out alone or in co-operation with other institutions
26 and persons, and to arrange for any other institution or person
27 to carry out, research and investigations relevant to the
28 establishment and management of Commonwealth reserves;
29 and

30 (f) to make recommendations to the Minister in relation to the
31 establishment and management of Commonwealth reserves;
32 and

Section 514C

- 1 (g) to administer the Australian National Parks Fund; and
2 (h) any other functions conferred on the Director under any other
3 Act; and
4 (i) to do anything incidental or conducive to the performance of
5 any of the functions mentioned in paragraphs (a) to (h)
6 (inclusive).

7 Note: Section 514D sets out requirements relating to the performance of the
8 Director's functions.

- 9 (2) The Director may perform any of the Director's functions in
10 co-operation with a State, a self-governing Territory, an agency of
11 a State or self-governing Territory or a Commonwealth agency.

12 **514C Powers**

- 13 (1) The Director has power to do all things necessary or convenient to
14 be done for or in connection with the performance of the Director's
15 functions.
- 16 (2) The Director's powers include, but are not limited to, the following
17 powers:
- 18 (a) to enter into contracts; and
19 (b) to erect buildings and structures and carry on works; and
20 (c) to occupy, use and control any land or building owned or
21 held under lease by the Commonwealth and made available
22 for the purposes of the Director; and
23 (d) to acquire, hold and dispose of real or personal property; and
24 (e) despite section 514D, obtain goods or services on credit from
25 any person by the use of a credit card; and
26 (f) to accept gifts, devises and bequests made to the Director
27 whether on trust or otherwise, and to act as trustee of moneys
28 or other property vested in the Director upon trust.

29 Note: Section 514D sets out limits on the Director's powers.

Section 514D

1 **514D Requirements relating to functions and powers**

2 *Ministerial directions*

- 3 (1) The Director must perform the Director's functions and exercise
4 the Director's powers in accordance with any directions given by
5 the Minister, unless this Act provides otherwise.

6 *Consultation*

- 7 (2) The Director must consult and have regard to the views of the
8 following persons in relation to the performance of the Director's
9 functions and the exercise of the Director's powers in relation to a
10 Commonwealth reserve or conservation zone:
11 (a) if the reserve or zone is wholly or partly in a State or
12 self-governing Territory—the agency (if any) of the State or
13 Territory responsible for managing national parks established
14 under the law of the State or Territory;
15 (b) if the reserve or zone is wholly or partly in an area for which
16 an Aboriginal Land Council has been established under the
17 *Aboriginal Land Rights (Northern Territory) Act 1976*—the
18 Chairperson of the Council;
19 (c) if the reserve is Booderee National Park—the Chairperson of
20 the Wreck Bay Aboriginal Community Council.

21 *Australian National Botanic Gardens in Jervis Bay Territory*

- 22 (3) The Director must consult and have regard to the views of the
23 Chairperson of the Wreck Bay Aboriginal Community Council in
24 relation to the performance of the Director's functions and the
25 exercise of the Director's powers in relation to the part of the
26 Commonwealth reserve known as the Australian National Botanic
27 Gardens that is in the Jervis Bay Territory.

Section 514E

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Trust property

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- (4) The Director must deal with any money or property vested in the Director on trust in accordance with the powers and duties of the Director as trustee, despite the other provisions of this Act.

3

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5

Limits on contracts and leases

6

- (5) The Director must not:

7

- (a) enter into a contract involving the payment or receipt of an amount more than:

8

9

- (i) \$250,000; or

10

- (ii) if the regulations prescribe a greater amount—that greater amount; or

11

12

- (b) take land (except indigenous people's land) on lease for more than 10 years;

13

14

without the Minister's approval.

15

No borrowing

16

- (6) The Director must not borrow money in the performance of the Director's functions.

17

18

Subdivision B—Constitution of Director of National Parks

19

514E Constitution

20

- (1) The Director:

21

- (a) is a body corporate with perpetual succession; and

22

- (b) must have a seal; and

23

- (c) may sue and be sued in its corporate name.

24

- (2) All courts, judges and persons acting judicially must:

25

- (a) take judicial notice of the imprint of the seal of the Director appearing on a document; and

26

27

- (b) presume that the document was duly sealed.

Section 514F

1 **514F Appointment**

- 2 (1) A person is to be appointed as the Director by the
3 Governor-General by written instrument.
- 4 (2) Before the Governor-General appoints a person as the Director, the
5 Minister must be satisfied that the person has qualifications and
6 experience in connection with national parks or the conservation
7 and management of biodiversity that make the person suitable for
8 the appointment.
- 9 (3) The appointment is on a full-time basis. However, a person
10 appointed as the Director may also hold an office or be employed
11 in the Australian Public Service on a part-time basis, subject to this
12 Division.

13 **514G Acting appointments**

- 14 (1) The Minister may appoint a person to act as the Director:
15 (a) during a vacancy in the office of Director; or
16 (b) during any period, or during all periods, when the person
17 appointed as the Director is absent from duty or from
18 Australia, or is, for any reason, temporarily unable to perform
19 the duties of the office.
- 20 (2) A person acting as the Director is taken to constitute the
21 corporation mentioned in section 514A while the person is acting.
- 22 (3) Anything done by or in relation to a person purporting to act under
23 an appointment is not invalid merely because:
24 (a) the occasion for the appointment had not arisen; or
25 (b) there was a defect or irregularity in connection with the
26 appointment; or
27 (c) the appointment had ceased to have effect; or
28 (d) the occasion to act had not arisen or had ceased.

1 **Subdivision C—Terms and conditions of appointment**

2 **514H Term of office**

3 The person appointed as the Director holds office for the period
4 specified in the instrument of appointment. The period must not
5 exceed 7 years.

6 **514J Remuneration**

- 7 (1) The person appointed as the Director is to be paid the remuneration
8 that is determined by the Remuneration Tribunal. If no
9 determination of that remuneration by the Tribunal is in operation,
10 the person is to be paid the remuneration that is prescribed.
- 11 (2) The person is to be paid the allowances that are prescribed by the
12 regulations.
- 13 (3) This section has effect subject to the *Remuneration Tribunal Act*
14 *1973*.

15 **514K Outside employment**

16 The person appointed as the Director must not engage in paid
17 employment outside the duties of the Director's office without the
18 Minister's approval.

19 **514L Disclosure of interests**

20 If the person appointed as the Director has a material personal
21 interest in a matter that he or she is considering or is about to
22 consider as the Director, the person must give written notice of the
23 interest to the Minister.

Section 514M

1 **514M Leave of absence**

- 2 (1) Subject to section 87E of the *Public Service Act 1922*, the person
3 appointed as the Director has the recreation leave entitlements that
4 are determined by the Remuneration Tribunal.
- 5 (2) The Minister may grant the person appointed as the Director leave
6 of absence, other than recreation leave, on the terms and conditions
7 as to remuneration or otherwise that the Minister determines.

8 **514N Resignation**

9 The person appointed as the Director may resign his or her
10 appointment by giving the Governor-General a written resignation.

11 **514P Termination**

- 12 (1) The Governor-General may terminate the appointment of a person
13 as the Director for misbehaviour or physical or mental incapacity.
- 14 (2) The Governor-General may terminate the appointment of a person
15 as the Director if:
- 16 (a) the person:
- 17 (i) becomes bankrupt; or
- 18 (ii) applies to take the benefit of any law for the relief of
19 bankrupt or insolvent debtors; or
- 20 (iii) compounds with his or her creditors; or
- 21 (iv) makes an assignment of his or her remuneration for the
22 benefit of his or her creditors; or
- 23 (b) the person is absent, except on leave of absence, for 14
24 consecutive days or for 28 days in any 12 months; or
- 25 (c) the person engages, except with the Minister's approval, in
26 paid employment outside the duties of the office of Director;
27 or
- 28 (d) the person fails, without reasonable excuse, to comply with
29 section 514L.

1 **514Q Other terms and conditions**

2 The person appointed as the Director holds office on the terms and
3 conditions (if any) in relation to matters not covered by this Act
4 that are determined by the Governor-General.

5 **Subdivision D—Australian National Parks Fund**

6 **514R Australian National Parks Fund**

7 The fund established by section 45 of the *National Parks and*
8 *Wildlife Conservation Act 1975* continues in existence as the
9 Australian National Parks Fund, vested in the Director.

10 **514S Payments to Australian National Parks Fund**

11 The following amounts are to be paid into the Australian National
12 Parks Fund:

- 13 (a) any money appropriated by the Parliament for the purposes
14 of the Department and allocated by the Secretary for the
15 management of Commonwealth reserves or conservation
16 zones;
- 17 (b) the proceeds of the sale of any property acquired out of
18 money standing to the credit of the Fund;
- 19 (c) any amounts paid to the Director in respect of leases,
20 licences, permits and other authorities granted by the
21 Director in relation to Commonwealth reserves or
22 conservation zones;
- 23 (d) any other amount paid by a person to the Director if:
24 (i) payment of the amount into the Fund would be
25 consistent with the purposes for which the amount was
26 paid; and
27 (ii) the Minister administering the *Commonwealth*
28 *Authorities and Companies Act 1997* considers it
29 appropriate that the amount should be paid into the
30 Fund;
- 31 (e) any charges paid under section 356A or section 390F;
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Section 514T

- 1 (f) any other money received by the Director in the performance
2 of his or her functions.

3 **514T Application of money**

- 4 (1) The money of the Australian National Parks Fund may be applied
5 only:
6 (a) in payment or discharge of the costs, expenses and other
7 obligations incurred by the Director in the performance of the
8 Director's functions; and
9 (b) in payment of any remuneration, allowances and
10 compensation payable under this Division or Division 4 of
11 Part 15.
- 12 (2) Subsection (1) does not prevent investment of surplus money of the
13 Fund under section 18 of the *Commonwealth Authorities and*
14 *Companies Act 1997*.

15 **Subdivision E—Accountability**

16 **514U Modification of the *Commonwealth Authorities and Companies***
17 ***Act 1997***

- 18 (1) Sections 514A and 514E provide that the Director is a corporation.
19 The *Commonwealth Authorities and Companies Act 1997* applies
20 (subject to subsections (2) and (3)) in relation to the corporation as
21 if the person holding, or performing the duties of, the office of
22 Director were a director of the corporation for the purposes of that
23 Act.
- 24 (2) Section 21 of the *Commonwealth Authorities and Companies Act*
25 *1997* does not apply in relation to the Director.
- 26 (3) To avoid doubt, the *Commonwealth Authorities and Companies*
27 *Act 1997* applies to the Australian National Parks Fund as though
28 the Fund were money of the Director.

1 **514V Extra matters to be included in annual report**

2 The annual report prepared by the Director under section 9 of the
3 *Commonwealth Authorities and Companies Act 1997* must also
4 include particulars of any directions given by the Minister under
5 subsection 514D(1) of this Act during the year to which the report
6 relates.

7 **Subdivision F—Miscellaneous**

8 **514W Exemption from taxation**

9 The income of the Australian National Parks Fund and the property
10 and transactions of the Director are not subject to taxation under a
11 law of the Commonwealth or of a State or Territory.

12 **514X Changes in office of Director**

13 An authority given, or a delegation or appointment made, by a
14 person for the time being holding or acting in the office of Director
15 continues in force despite the person ceasing to hold or act in that
16 office, but may be revoked by a person later holding or acting in
17 that office.

Section 515

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Part 20—Delegation

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515 Delegation

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(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.

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(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.

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(3) The Director may, by sealed instrument, delegate all or any of the Director's powers or functions under this Act to a person. The delegate is, in the exercise of a delegated power or function, subject to the directions of the Director.

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Part 21—Reporting

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Division 1—Annual reports

5

516 Annual report on operation of Act

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- (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 (except Divisions 4 and 5 of Part 15 and Division 5 of Part 19) for the 12 months ending on that 30 June.

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Note 1: Other provisions of this Act require the report to include certain matters.

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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.

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- (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.

17

516A Annual reports to deal with environmental matters

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Departmental annual reports

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21

- (1) The Secretary of a Department under the *Public Service Act 1922* must ensure that a report under section 25 of that Act complies with subsection (6).

22

Parliamentary Department annual reports

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- (2) The relevant Presiding Officer in relation to a Parliamentary Department (as defined in section 9B of the *Public Service Act 1922*) must ensure that a report under that section complies with subsection (6).

Section 516A

1 *Annual reports of Commonwealth authorities*

- 2 (3) The directors of a Commonwealth authority (as defined in the
3 *Commonwealth Authorities and Companies Act 1997*) must ensure
4 that an annual report relating to the authority prepared under that
5 Act complies with subsection (6).

6 *Annual reports of Commonwealth companies*

- 7 (4) A Commonwealth company (as defined in the *Commonwealth*
8 *Authorities and Companies Act 1997*) that is a Commonwealth
9 agency must ensure that the documents given to the responsible
10 Minister (as defined in that Act) under section 36 of that Act
11 include a report complying with subsection (6).

12 *Annual reports of other Commonwealth agencies*

- 13 (5) A Commonwealth agency that is:
14 (a) established by or under a law of the Commonwealth; and
15 (b) required by law to give the Minister responsible for it an
16 annual report; and
17 (c) not described in subsection (3) or (4);
18 must ensure that the annual report complies with subsection (6).

19 *Content of report*

- 20 (6) A report described in subsection (1), (2), (3), (4) or (5) relating to a
21 body or person (the *reporter*) for a period must:
22 (a) include a report on how the actions of, and the administration
23 (if any) of legislation by, the reporter during the period
24 accorded with the principles of ecologically sustainable
25 development; and
26 (b) identify how the outcomes (if any) specified for the reporter
27 in an Appropriations Act relating to the period contribute to
28 ecologically sustainable development; and
29 (c) document the effect of the reporter's actions on the
30 environment; and

Section 516A

- 1 (d) identify any measures the reporter is taking to minimise the
2 impact of actions by the reporter on the environment; and
3 (e) identify the mechanisms (if any) for reviewing and increasing
4 the effectiveness of those measures.

5 Note: The *Auditor-General Act 1997* lets the Auditor-General audit a
6 reporter's compliance with these requirements.

Section 516B

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2 **Division 2—State of the environment reports**

3 **516B State of the environment reports**

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(1) The Minister must cause a report on the environment in the Australian jurisdiction to be prepared in accordance with the regulations (if any) every 5 years. The first report must be prepared by 31 December 2001.

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(2) The report must deal with the matters prescribed by the regulations.

9

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(3) 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.

11

12

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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 (k) the Framework Convention on Climate Change done at Rio
19 de Janeiro on 5 June 1992.
- 20 (4) Regulations made in relation to an agreement that has not entered
21 into force for Australia are not to come into operation on a day
22 earlier than the day on which the agreement enters into force for
23 Australia.
- 24 (5) Subsection (3) does not limit subsection (1).

25 **521 Fees and charges must not be taxes**

26 A fee or charge provided for by or under this Act, and whether
27 prescribed by the regulations or not, must be reasonably related to
28 the expenses incurred or to be incurred by the Commonwealth in
29 relation to the matters to which the fee or charge relates and must
30 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.

6 **522A Review of operation of Act**

- 7 (1) The Minister must cause independent reviews to be undertaken by
8 a person or body of:
9 (a) the operation of this Act; and
10 (b) the extent to which the objects of this Act have been
11 achieved.
- 12 (2) The first review must be undertaken within 10 years of the
13 commencement of this Act. Later reviews must be undertaken at
14 intervals of not more than 10 years.
- 15 (3) The person or body undertaking a review must give a report of the
16 review to the Minister.
- 17 (4) The Minister must cause a copy of the report to be laid before each
18 House of the Parliament within 15 sitting days of that House after
19 the Minister receives it.

20 **522B This Act does not apply to certain actions with prior approval**

- 21 (1) This Act does not apply to an action that:
22 (a) consists of a use of land, sea or seabed; and
23 (b) was specifically authorised under a law of the
24 Commonwealth, a State or a self-governing Territory before
25 the commencement of this Act.
- 26 (2) However, this Act does apply to an action described in subsection
27 (1) if, immediately before the commencement of this Act, a further
28 authorisation (however described) under a law of the

Section 522B

1 Commonwealth, a State or a self-governing Territory was
2 necessary to allow the action to be taken lawfully.

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;

22 (b) a Commonwealth agency;

23 (c) a State;

24 (d) a self-governing Territory;

25 (e) an agency of a State or self-governing Territory;

26 (f) an authority established by a law applying in a Territory that
27 is not a self-governing Territory.

Section 524A

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 **524A Provision of grant funding is not an action**

17 Provision of funding by way of a grant by one of the following is
18 not an *action*:

- 19 (a) the Commonwealth;
20 (b) a Commonwealth agency;
21 (c) a State;
22 (d) a self-governing Territory;
23 (e) an agency of a State or self-governing Territory;
24 (f) an authority established by a law applying in a Territory that
25 is not a self-governing Territory.

26 **524B Significant impact of actions**

27 In determining for the purposes of this Act whether an impact that
28 an action has, will have or is likely to have is *significant*, the
29 matters (if any) prescribed by the regulations must be taken into
30 account.

Section 525

1 **Subdivision B—Areas**

2 **525 Commonwealth areas**

3 *What is a Commonwealth area?*

4 (1) Each of the following, and any part of it, is a **Commonwealth area**:

5 (a) land owned by the Commonwealth or a Commonwealth
6 agency (including land owned in Norfolk Island) and
7 airspace over the land;

8 (b) an area of land held under lease by the Commonwealth or a
9 Commonwealth agency (including an area held under lease in
10 Norfolk Island) and airspace over the land;

11 (c) land in:

12 (i) an external Territory (except Norfolk Island); or

13 (ii) the Jervis Bay Territory;

14 and airspace over the land;

15 (d) the coastal sea of Australia or an external Territory;

16 (e) the continental shelf, and the waters and airspace over the
17 continental shelf;

18 (f) the waters of the exclusive economic zone, the seabed under
19 those waters and the airspace above those waters;

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

22 *Territory Land in ACT is not a Commonwealth area*

23 (2) Despite paragraph (1)(a), an area of land that is Territory Land,
24 within the meaning of the *Australian Capital Territory (Planning
25 and Land Management) Act 1988* is not a **Commonwealth area**
26 merely because of that paragraph, unless it is held under lease by
27 the Commonwealth or a Commonwealth agency.

1 *Coastal waters of States and NT are not Commonwealth areas*

2 (3) Despite paragraphs (1)(d), (e) and (f), none of the following areas
3 (or parts of them) are **Commonwealth areas**:

4 (a) the seabed vested in a State under section 4 of the *Coastal*
5 *Waters (State Title) Act 1980*; and

6 (b) the seabed vested in the Northern Territory under section 4 of
7 the *Coastal Waters (Northern Territory Title) Act 1980*; and

8 (c) the subsoil under the seabed described in paragraph (a) or
9 (b); and

10 (d) any water and airspace over seabed described in paragraph
11 (a) or (b).

12 **Subdivision C—Entities**

13 **526 Subsidiaries of bodies corporate**

14 The question whether a body corporate is a subsidiary of a body or
15 company is to be determined in the same way as the question
16 whether a body corporate is a subsidiary of another body corporate
17 is determined for the purposes of the Corporations Law.

18 **Subdivision D—Criminal law**

19 **527 Convictions**

20 A reference in this Act to a conviction of a person of an offence
21 includes a reference to making an order under section 19B of the
22 *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

accredited management plan has the meaning given by subsection
6 33(2).

7

acquisition of property has the meaning given by subsection
8 519(2).

9

action has the meaning given by Subdivision A of Division 1 of
10 Part 23.

11

agency of a State or self-governing Territory means:

12

(a) a Minister of the State or Territory; or

13

(b) a body corporate established for a public purpose by a law of
14 the State or Territory; or

14

15

(c) a body corporate established by:

16

(i) the Governor of the State; or

17

(ii) if the Territory is the Australian Capital Territory—the
18 Governor-General acting in relation to the Australian
19 Capital Territory; or

19

20

(iii) if the Territory is the Northern Territory or Norfolk
21 Island—the Administrator of the Territory; or

21

22

(iv) a Minister of the State or Territory;

23

otherwise than by or under a law of the Territory; or

24

(d) a company in which the whole of the shares or stock, or
25 shares or stock carrying more than one-half of the voting
26 power, is or are owned by or on behalf of the State or
27 Territory; or

27

28

(e) a body corporate that is a subsidiary of:

29

(i) a body or company referred to in paragraph (b), (c) or
30 (d); or

30

- 1 (ii) a body corporate that, because of a previous application
2 or previous applications of this paragraph, is taken to be
3 an agency of the State or Territory for the purposes of
4 this definition; or
5 (f) a person holding, or performing the duties of:
6 (i) an office established by or under a law of the State or
7 Territory (except a judicial office or an office of
8 member of a tribunal); or
9 (ii) an appointment made under a law of the State or
10 Territory (except appointment to a judicial office or an
11 office of member of a tribunal); or
12 (g) a person holding, or performing the duties of, an appointment
13 made 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 State or Territory.

22 ***aircraft*** means an apparatus that can derive support in the
23 atmosphere from the reactions of the air.

24 ***animal*** means any member, alive or dead, of the animal kingdom
25 (other than a human being).

26 ***Apia Convention*** means the Convention on Conservation of Nature
27 in the South Pacific, done at Apia, Western Samoa, on 12 June
28 1976, as in force for Australia immediately before the
29 commencement of this Act.

30 Note: The English text of the Convention is set out in Australian Treaty
31 Series 1990 No. 41.

32 ***article*** includes a substance or a mixture of substances.

Section 528

- 1 **assess** an action includes assess the impacts that the action:
2 (a) has or will have; or
3 (b) is likely to have.
- 4 **assessment report** has the meaning given by subsection 130(2).
- 5 **Australian aircraft** has the meaning given by subsection 5(5).
- 6 **Australian Biosphere reserve management principles** has the
7 meaning given by section 340.
- 8 **Australian IUCN reserve management principles** has the meaning
9 given by subsection 348(1).
- 10 **Australian jurisdiction** has the meaning given by subsection 5(5).
- 11 **Australian platform** has the meaning given by section 403.
- 12 **Australian Ramsar management principles** has the meaning given
13 by section 335.
- 14 **Australian vessel** has the meaning given by subsection 5(5).
- 15 **Australian World Heritage management principles** has the
16 meaning given by section 323.
- 17 **authorised officer** means:
18 (a) a warden; or
19 (b) an inspector.
- 20 **baggage** has the meaning given by section 443.
- 21 **bilateral agreement** has the meaning given by subsection 45(2).
- 22 **bilaterally accredited management plan** has the meaning given by
23 subsection 46(2).
- 24 **biodiversity** means the variability among living organisms from all
25 sources (including terrestrial, marine and other aquatic ecosystems
26 and the ecological complexes of which they are part) and includes:
27 (a) diversity within species and between species; and
-

1 (b) diversity of ecosystems.

2 ***Biodiversity Convention*** means the Convention on Biological
3 Diversity done at Rio de Janeiro on 5 June 1992, as in force for
4 Australia immediately before the commencement of this Act.

5 Note: The English text of this Convention is set out in Australian Treaty
6 Series 1993 No. 32.

7 ***biological resources*** includes genetic resources, organisms, parts
8 of organisms, populations and any other biotic component of an
9 ecosystem with actual or potential use or value for humanity.

10 ***Biosphere reserve*** has the meaning given by section 337.

11 ***Board*** means a Board established under section 377.

12 ***Bonn Convention*** means the Convention on the Conservation of
13 Migratory Species of Wild Animals done at Bonn on 23 June 1979,
14 as in force for Australia immediately before the commencement of
15 this Act.

16 Note: The English text of the Convention is set out in Australian Treaty
17 Series 1991 No. 32.

18 ***business day*** means a day that is not:

19 (a) a Saturday or a Sunday; or

20 (b) a public holiday or bank holiday in the place concerned.

21 ***CAMBA*** means the Agreement between the Government of
22 Australia and the Government of the People's Republic of China
23 for the protection of Migratory Birds and their Environment done
24 at Canberra on 20 October 1986, as in force for Australia
25 immediately before the commencement of this Act.

26 Note: The English text of the Agreement is set out in Australian Treaty
27 Series 1988 No. 22.

28 ***cetacean*** means a member of the sub-order Mysticeti or
29 Odontoceti of the Order Cetacea, and includes a part of such a
30 member and any product derived from a such a member.

Section 528

1 **CITES** means the Convention on International Trade in
2 Endangered Species of Wild Fauna and Flora done at Washington
3 on 3 March 1973, as in force for Australia immediately before the
4 commencement of this Act.

5 Note: The English text of the Convention is set out in Australian Treaty
6 Series 1976 No. 29.

7 **civil penalty provision** has the meaning given by section 482.

8 **coastal sea** of Australia or an external Territory has the same
9 meaning as in subsection 15B(4) of the *Acts Interpretation Act*
10 1901.

11 **coastal waters** of a State or the Northern Territory has the meaning
12 given by section 227.

13 **commissioner** means a person holding an appointment under
14 paragraph 107(1)(a).

15 **Commonwealth agency** means:

- 16 (a) a Minister; or
17 (b) a body corporate established for a public purpose by a law of
18 the Commonwealth; or
19 (c) a body corporate established by a Minister otherwise than
20 under a law of the Commonwealth; or
21 (d) a company in which the whole of the shares or stock, or
22 shares or stock carrying more than one-half of the voting
23 power, is or are owned by or on behalf of the
24 Commonwealth; or
25 (e) a body corporate that is a subsidiary of:
26 (i) a body or company referred to in paragraph (b), (c) or
27 (d); or
28 (ii) a body corporate that, because of a previous application
29 or previous applications of this paragraph, is taken to be
30 a Commonwealth agency for the purposes of this
31 definition; or
32 (f) a person holding, or performing the duties of:

- 1 (i) an office established by or under a law of the
2 Commonwealth (except a judicial office or office of
3 member of a tribunal); or
4 (ii) an appointment made under a law of the
5 Commonwealth (except an appointment to a judicial
6 office or office of member of a tribunal); or
7 (g) a person holding, or performing the duties of, an appointment
8 made by the Governor-General, or by a Minister, otherwise
9 than under a law of the Commonwealth;

10 but does not include:

- 11 (h) a person holding an office established by or under any of the
12 following Acts, or holding an appointment made under any
13 of them:
14 (i) the *Northern Territory (Self-Government) Act 1978*;
15 (ii) the *Norfolk Island Act 1979*;
16 (iii) the *Australian Capital Territory (Self-Government) Act*
17 *1988*; or
18 (i) any of the following:
19 (i) an Aboriginal Land Trust, or an Aboriginal Land
20 Council, established under the *Aboriginal Land Rights*
21 *(Northern Territory) Act 1976*;
22 (ii) an Aboriginal corporation within the meaning of the
23 *Aboriginal Councils and Associations Act 1976*;
24 (iii) the Wreck Bay Aboriginal Community Council
25 established by the *Aboriginal Land Grant (Jervis Bay*
26 *Territory) Act 1986*; or
27 (j) a company prescribed by the regulations for the purposes of
28 this paragraph.

29 ***Commonwealth aircraft*** has the meaning given by section 403.

30 ***Commonwealth area*** has the meaning given by section 525.

31 ***Commonwealth land*** has the meaning given by section 27.

32 ***Commonwealth marine area*** has the meaning given by section 24.

Section 528

1 **Commonwealth reserve** means a reserve declared under Division 4
2 of Part 15.

3 **Commonwealth ship** has the meaning given by section 403.

4 **components of biodiversity** has the meaning given by subsection
5 171(3).

6 **conservation agreement** means an agreement made under section
7 305.

8 **conservation dependent**: a native species may be included in the
9 **conservation dependent** category of the list of threatened native
10 species in accordance with Subdivision A of Division 1 of Part 13.

11 **conservation dependent species** means a listed threatened species
12 that is included in the conservation dependent category of the list
13 referred to in section 178.

14 **conservation order** means an order made under section 464 (with
15 variations (if any) under section 466 or 469).

16 **conservation zone** means a Commonwealth area that is declared to
17 be a conservation zone under Division 5 of Part 15.

18 **constitutional corporation** means a corporation to which
19 paragraph 51(xx) of the Constitution applies.

20 **continental shelf** means the continental shelf (as defined in the
21 *Seas and Submerged Lands Act 1973*) of Australia (including its
22 external Territories).

23 **continuation** of a use of land, sea or seabed has the meaning given
24 by subsection 523(2).

25 **controlled action** has the meaning given by section 67.

26 **controlling provision** has the meaning given by section 67.

27 **convict** a person of an offence has a meaning affected by section
28 527.

1 **critical habitat** for a listed threatened species or a listed threatened
2 ecological community has the meaning given by subsection
3 207A(4).

4 **critically endangered:**

- 5 (a) a native species may be included in the **critically endangered**
6 category of the list of threatened native species in accordance
7 with Subdivision A of Division 1 of Part 13; and
8 (b) an ecological community may be included in the **critically**
9 **endangered** category of the list of threatened ecological
10 communities in accordance with Subdivision A of Division 1
11 of Part 13.

12 **cultural heritage** has the meaning given by subsection 12(4).

13 **daily newspaper** means a newspaper that is ordinarily published on
14 each day that is a business day in the place where the newspaper is
15 published, whether or not the newspaper is ordinarily published on
16 other days.

17 **declared Ramsar wetland** has the meaning given by section 17.

18 **declared World Heritage property** has the meaning given by
19 section 13.

20 **designated proponent** of an action means the person designated
21 under Division 2 of Part 7 as the proponent of the action.

22 **directed environmental audit** has the meaning given by subsection
23 460(4).

24 **Director** means the Director of National Parks referred to in
25 section 514A.

26 **ecological character** has the meaning given by subsection 16(3).

27 **ecological community** means an assemblage of native species that:

- 28 (a) inhabits a particular area in nature; and
29 (b) meets the additional criteria specified in the regulations (if
30 any) made for the purposes of this definition.
-

Section 528

1 ***ecologically sustainable use*** of natural resources means use of the
2 natural resources within their capacity to sustain natural processes
3 while maintaining the life-support systems of nature and ensuring
4 that the benefit of the use to the present generation does not
5 diminish the potential to meet the needs and aspirations of future
6 generations.

7 ***ecosystem*** means a dynamic complex of plant, animal and
8 micro-organism communities and their non-living environment
9 interacting as a functional unit.

10 ***eligible seizable item*** means anything that would present a danger
11 to a person or that could be used to assist a person to escape from
12 lawful custody.

13 ***endangered:***

14 (a) a native species may be included in the ***endangered*** category
15 of the list of threatened native species in accordance with
16 Subdivision A of Division 1 of Part 13; and

17 (b) an ecological community may be included in the ***endangered***
18 category of the list of threatened ecological communities in
19 accordance with Subdivision A of Division 1 of Part 13.

20 ***environment*** includes:

21 (a) ecosystems and their constituent parts, including people and
22 communities; and

23 (b) natural and physical resources; and

24 (c) the qualities and characteristics of locations, places and
25 areas; and

26 (d) the social, economic and cultural aspects of a thing
27 mentioned in paragraph (a), (b) or (c).

28 ***environmental authority*** has the meaning given by subsection
29 458(4).

30 ***evidential material*** has the meaning given by subsection 406(2).

1 **exclusive economic zone** means the exclusive economic zone (as
2 defined in the *Seas and Submerged Lands Act 1973*) of Australia
3 (including its external Territories).

4 **executing officer**, for a warrant, means the person named in the
5 warrant as being responsible for executing the warrant.

6 **executive officer** of a body corporate has the meaning given by
7 section 493.

8 **extinct**: a native species may be included in the *extinct* category of
9 the list of threatened native species in accordance with Subdivision
10 A of Division 1 of Part 13.

11 **extinct in the wild**: a native species may be included in the *extinct*
12 *in the wild* category of the list of threatened native species in
13 accordance with Subdivision A of Division 1 of Part 13.

14 **Federal Court** means the Federal Court of Australia.

15 **foreign whaling vessel** has the meaning given by subsection
16 236(5).

17 **forestry operations** has the meaning given by subsection 40(2).

18 **frisk search** has the meaning given by subsection 413(3).

19 **genetic resources** means any material of plant, animal, microbial
20 or other origin that contains functional units of heredity and that
21 has actual or potential value for humanity.

22 **goods** has the meaning given by section 443.

23 **habitat** means the biophysical medium or media:

- 24 (a) occupied (continuously, periodically or occasionally) by an
25 organism or group of organisms; or
26 (b) once occupied (continuously, periodically or occasionally) by
27 an organism, or group of organisms, and into which
28 organisms of that kind have the potential to be reintroduced.

29 **holder** means:

Section 528

1 (a) in the case of a permit issued under Chapter 5—the person to
2 whom the permit was issued or transferred, as the case may
3 be; or

4 (b) in the case of an approval under Part 9—the person to whom
5 the approval applies.

6 *imported* in relation to a cetacean or foreign whaling vessel means
7 brought into the Australian jurisdiction.

8 *indigenous people's land* has the meaning given by subsection
9 363(3).

10 *indigenous person* has the meaning given by subsection 363(4).

11 *indigenous tradition* has the meaning given by section 201.

12 *inspector* means:

- 13 (a) a person appointed as an inspector under section 396;
14 (b) a person who is an inspector because of section 397; or
15 (c) a person who is an inspector because of an arrangement
16 entered into under section 398.

17 *interested person* has the meaning given by section 475.

18 *interfere* with a cetacean has the meaning given by subsection
19 229B(4).

20 *IUCN category* has the meaning given by subsection 346(1).

21 *JAMBA* means the Agreement between the Government of Japan
22 and the Government of Australia for the Protection of Migratory
23 Birds and Birds in Danger of Extinction and their Environment
24 done at Tokyo on 6 February 1974, as in force for Australia
25 immediately before the commencement of this Act.

26 Note: The English text of the Agreement is set out in Australian Treaty
27 Series 1981 No. 6.

28 *jointly managed reserve* has the meaning given by subsection
29 363(5).

1 ***Kakadu National Park*** has the meaning given by subsection
2 387(3).

3 ***Kakadu region*** has the meaning given by subsection 386(1).

4 ***keep*** a cetacean or member of a listed threatened species, listed
5 migratory species, listed marine species or listed threatened
6 ecological community means:

- 7 (a) in the case of a cetacean, or a species of animal or
8 community of animals—have charge or possession of the
9 cetacean or member, either in captivity or in a domesticated
10 state; and
11 (b) in the case of a species of plant or community of plants—
12 have possession of the member.

13 ***key threatening process*** means a threatening process included in
14 the list referred to in section 183.

15 ***land*** has the meaning given by subsection 345(2).

16 ***land council*** for indigenous people's land has the meaning given
17 by subsection 363(2).

18 ***large-scale disposal facility*** for radioactive waste has a meaning
19 affected by subsection 22(2).

20 ***list*** includes a list containing no items.

21 ***listed marine species*** means a marine species included in the list
22 referred to in section 248.

23 ***listed migratory species*** means a migratory species included in the
24 list referred to in section 209.

25 ***listed threatened ecological community*** means an ecological
26 community included in the list referred to in section 181.

27 ***listed threatened species*** means a native species included in the list
28 referred to in section 178.

Section 528

1 **magistrate** means a magistrate who is remunerated by salary or
2 otherwise.

3 **master** of a foreign whaling vessel has the meaning given by
4 subsection 236(5).

5 **matter protected** by a provision of Part 3 has the meaning given by
6 section 34.

7 **member** of a listed threatened species, listed migratory species,
8 listed marine species or listed threatened ecological community,
9 includes, in the case of a species of animal or community of
10 animals, the whole or part of the dead body of the member.

11 **mineral** has the meaning given by subsection 355(3).

12 **mining operations** has the meaning given by subsection 355(2).

13 **monitoring power** relating to premises has the meaning given by
14 section 407.

15 **monitoring warrant** has the meaning given by section 409.

16 **native species** means a species:

- 17 (a) that is indigenous to Australia or an external Territory; or
18 (b) that is indigenous to the seabed of the coastal sea of Australia
19 or an external Territory; or
20 (c) that is indigenous to the continental shelf; or
21 (d) that is indigenous to the exclusive economic zone; or
22 (e) members of which periodically or occasionally visit:
23 (i) Australia or an external Territory; or
24 (ii) the exclusive economic zone; or
25 (f) that was present in Australia or an external Territory before
26 1400.

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

30 **natural heritage** has the meaning given by subsection 12(4).

- 1 **nuclear action** has the meaning given by subsection 22(1).
- 2 **nuclear installation** has the meaning given by subsection 22(1).
- 3 **occupier** of premises means the person apparently in charge of the
4 premises.
- 5 **officer assisting**, in relation to a warrant, means:
6 (a) an authorised officer who is assisting in executing the
7 warrant; or
8 (b) a person who is not an authorised officer, but who has been
9 authorised by the relevant executing officer to assist in
10 executing the warrant.
- 11 **officer of Customs** has the same meaning as it has in the *Customs*
12 *Act 1901*.
- 13 **ordinary search** has the meaning given in subsection 414(3).
- 14 **organism** includes:
15 (a) a virus; and
16 (b) the reproductive material of an organism; and
17 (c) an organism that has died.
- 18 **plant** means a member, alive or dead, of the plant kingdom or of
19 the fungus kingdom, and includes a part of a plant and plant
20 reproductive material.
- 21 **plant reproductive material** means:
22 (a) a seed or spore of a plant; or
23 (b) a cutting from a plant; or
24 (c) any other part, or product, of a plant from which another
25 plant can be produced.
- 26 **population** of a species or ecological community means an
27 occurrence of the species or community in a particular area.
- 28 **precautionary principle** has the meaning given by subsection
29 391(2).
-

Section 528

- 1 *premises* includes a place, vehicle, vessel and aircraft.
- 2 *prescribed waters* means waters in respect of which regulations
3 made for the purposes of section 226 are in force.
- 4 *principles of ecologically sustainable development* has a meaning
5 affected by section 3A.
- 6 *radioactive waste* has the meaning given by subsection 22(1).
- 7 *Ramsar Convention* means the Convention on Wetlands of
8 International Importance especially as Waterfowl Habitat done at
9 Ramsar, Iran, on 2 February 1971, as in force for Australia
10 immediately before the commencement of this Act.
- 11 Note: The English Text of the Convention is set out in Australian Treaty
12 Series 1975 No. 48.
- 13 *range* of a species means the area where members of the species
14 live, feed, breed or visit periodically or regularly.
- 15 *ranger* means a person holding an appointment as a ranger under
16 Part 17.
- 17 *recovery plan* means a plan made or adopted under section 269A.
- 18 *regional forest agreement* has the meaning given by subsection
19 38(2).
- 20 *relevant impacts* of an action has the meaning given by section 82.
- 21 *reprocessing* has the meaning given by subsection 22(1).
- 22 *RFA forestry operations* has the meaning given by subsection
23 38(2).
- 24 *RFA region* has the meaning given by section 41.
- 25 *Scientific Committee* means the Threatened Species Scientific
26 Committee established by section 502.
- 27 *seabed* has the meaning given by subsection 345(2).

1 **Secretary** means the Secretary to the Department that:
2 (a) deals with the matter to which the provision containing the
3 reference relates; and
4 (b) is administered by the Minister administering the provision.

5 **self-governing Territory** means:
6 (a) the Australian Capital Territory; or
7 (b) the Northern Territory; or
8 (c) Norfolk Island.

9 **significant**, in relation to the impact of an action, has a meaning
10 affected by section 524B.

11 **species** means a group of biological entities that:
12 (a) interbreed to produce fertile offspring; or
13 (b) possess common characteristics derived from a common
14 gene pool;
15 and includes:
16 (c) a sub-species; and
17 (d) a distinct population of such biological entities that the
18 Minister has determined, under section 517, to be a species
19 for the purposes of this Act.

20 Note: Determinations under paragraph (d) are disallowable instruments. See
21 section 517.

22 **spent nuclear fuel** has the meaning given by subsection 22(1).

23 **subsidiary** of a body corporate has a meaning affected by section
24 526.

25 **sub-species** means a geographically separate population of a
26 species, being a population that is characterised by morphological
27 or biological differences from other populations of that species.

28 **terms of reference** has the meaning given by paragraph 107(1)(b).

Section 528

- 1 **territorial sea** means the territorial sea (as defined in the *Seas and*
2 *Submerged Lands Act 1973*) of Australia (including its external
3 Territories).
- 4 **threat abatement plan** means a plan made or adopted under section
5 270B.
- 6 **threatening process** has the meaning given by subsection 188(3).
- 7 **trade** a cetacean or member of a listed threatened species, listed
8 migratory species, listed marine species or threatened ecological
9 community includes:
- 10 (a) buy the cetacean or member, agree to receive it under an
11 agreement to buy, agree to accept it under such an agreement
12 or acquire it by barter; or
- 13 (b) sell the cetacean or member, offer it for sale, agree to sell it,
14 have it in possession for the purpose of sale, deliver it for the
15 purpose of sale, receive it for the purpose of sale or dispose
16 of it by barter for the purpose of gain or advancement; or
- 17 (c) export the cetacean or member from Australia or an external
18 Territory or import it into Australia or an external Territory;
19 or
- 20 (d) cause or allow any of the acts referred to in paragraph (a), (b)
21 or (c) to be done.
- 22 **traditional owners** of indigenous people's land has the meaning
23 given by subsection 368(4).
- 24 **treat** a cetacean has the meaning given by subsection 229D(3).
- 25 **Uluru-Kata Tjuta National Park** has the meaning given by
26 subsection 344(3).
- 27 **Uluru region** has the meaning given by subsection 386(2).
- 28 **usage right** has the meaning given by subsection 350(7).
- 29 **vehicle** includes a hovercraft.

1 **vessel** means a ship, boat, raft or pontoon or any other thing
2 capable of carrying persons or goods through or on water and
3 includes a floating structure and hovercraft.

4 **vulnerable:**

- 5 (a) a native species may be included in the **vulnerable** category
6 of the list of threatened native species in accordance with
7 Subdivision A of Division 1 of Part 13; and
8 (b) an ecological community may be included in the **vulnerable**
9 category of the list of threatened ecological communities in
10 accordance with Subdivision A of Division 1 of Part 13.

11 **warden** means a person holding an appointment as a warden under
12 Part 17.

13 **warrant premises** means premises in relation to which a warrant is
14 in force.

15 **wetland** has the same meaning as in the Ramsar Convention.

16 **whale watching** has the meaning given by section 238.

17 **wildlife conservation plan** means a plan of a kind referred to in
18 section 285 that has been made or adopted under that section.

19 **World Heritage Convention** means the Convention for the
20 Protection of the World Cultural and Natural Heritage done in
21 Paris on 23 November 1972, as in force for Australia immediately
22 before the commencement of this Act.

23 Note: The English text of the Convention is set out in Australian Treaty
24 Series 1975 No. 47.

25 **World Heritage List** means the list kept under that title under
26 Article 11 of the World Heritage Convention.

27 **world heritage values** of a property has the meaning given by
28 subsection 12(3).