Environment Protection and Biodiversity Conservation Act 1999

No. 91, 1999

This future law compilation was prepared on 15 December 2025 taking into account amendments made by the **Environment Protection Reform Act 2025 (No. 68, 2025)**.

There are multiple dates of commencement for the incorporated amendments.

Some amendments are expected to commence on 1 July 2026 and the commencement of the remaining provisions is unknown at the time of preparation.

Note: A future law compilation is not authorised as further changes may be made to the law before the compilation is ever current.

This compilation is in 3 volumes

Volume 1:	**sections 1-266**
Volume 2:	sections 266B-390SM
Volume 3:	sections 391-528 Schedules 1 and 2 Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a future compilation of the *Environment Protection and Biodiversity Conservation Act 1999* that shows the expected text of the law as amended by the *Environment Protection Reform Act 2025*.

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

Future amendments

The details of expected future amendments incorporated into the text, that have not yet commenced are underlined in the endnotes.

Any future amendments that are included in the endnotes are underlined.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

Chapter 1—Preliminary

Part 1—Preliminary

1 Short title

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

2 Commencement

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

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

3 Objects of Act

(1) The objects of this Act are:

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

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

(c) to promote the conservation of biodiversity; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) bilateral agreements with States and Territories; and

(ii) conservation agreements with land-holders; and

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

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

3A Principles of ecologically sustainable development

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

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

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

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

4 Act to bind Crown

This Act binds the Crown in each of its capacities.

5 Application of Act

Extension to external Territories

(1) This Act extends to each external Territory.

Limited extraterritorial application

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

Application limited to Australians outside exclusive economic zone

(3) A provision of this Act that has effect in relation to a place that is outside the outer limits of the exclusive economic zone and is not on or in the continental shelf applies only in relation to:
(a) Australian nationals; and
(b) Australian permanent residents; and
(d) the Commonwealth; and
(e) Commonwealth agencies; and
(f) Australian aircraft; and
(g) Australian vessels; and

(h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

Application to everyone in Australia and exclusive economic zone

(4) A provision of this Act that has effect in relation to a place that is within the outer limits of the exclusive economic zone (whether the place is in the zone or in Australia or an external Territory) or that is on or in the continental shelf applies in relation to:

(a) all persons (including persons who are not Australian citizens); and

(b) all aircraft (including aircraft that are not Australian aircraft); and

(c) all vessels (including vessels that are not Australian vessels).

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

Application in Greater Sunrise special regime area

(4A) Despite subsections (2) and (4), a provision of this Act that has effect in relation to a place that is in or above the Greater Sunrise special regime area applies only in relation to:

(a) Australian nationals who are not nationals or permanent residents of Timor-Leste; and

(b) Australian permanent residents who are not nationals or permanent residents of Timor-Leste; and

(c) the Commonwealth; and

(d) Commonwealth agencies; and

(e) the States; and

(f) the self-governing Territories; and

(g) agencies of the States or self-governing Territories; and

(h) Australian aircraft; and

(i) Australian vessels; and

(j) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels); and

(k) persons, aircraft or vessels declared under subsection (4B) to be subject to the provision.

(4B) The Minister may, by notifiable instrument, declare all or any of one or more of the following to be subject to a provision of this Act, if the Minister is satisfied that Timor-Leste has agreed to them being subject to the provision as it has effect in relation to a place that is in or above the Greater Sunrise special regime area:

(a) nationals of a foreign country who are not nationals or permanent residents of Timor-Leste;

(b) aircraft with the nationality of a foreign country other than Timor-Leste;

(c) vessels with the nationality of a foreign country other than Timor-Leste;

(d) members of crews (including persons in charge) of aircraft or vessels described in paragraph (b) or (c).

(4C) Despite subsections (2), (4) and (4A), a provision of this Act that has effect in relation to a place that is in or above the Greater Sunrise special regime area does not apply in relation to an act, omission, matter or thing that relates to any of the Petroleum Activities within the meaning of the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force from time to time.

Note: The Treaty could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

(4D) Subsection 13AB(1) of the *Seas and Submerged Lands Act 1973* does not affect the application of a provision of this Act.

Note: Subsection 13AB(1) of the *Seas and Submerged Lands Act 1973* provides that a law of the Commonwealth does not apply in relation to an act, omission, matter or thing directly or indirectly connected with the exploration of, or exploitation of the natural resources of, the continental shelf in the Greater Sunrise special regime area.

Definitions

(5) In this Act:

Australian aircraft means:

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

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

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

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

Australian national means:

(a) an Australian citizen; or
(b) a corporation incorporated in Australia or an external Territory.

Australian permanent resident means a person who:

(a) is not an Australian citizen; and
(b) holds a permanent visa under the *Migration Act 1958*; and
(c) is domiciled in Australia or an external Territory.

Australian vessel means:

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

Greater Sunrise special regime area has the same meaning as in the *Seas and Submerged Lands Act 1973*.

national of a foreign country means:

(a) a citizen of the country; or

(b) a corporation incorporated in the country.

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

(1) This section applies if:

(a) under the *Fisheries Management Act 1991*, a plan of management in force under that Act applies to particular fishing activities in a particular area of water; and

(b) the area of water is not within, or is not wholly within:

(i) the Australian jurisdiction; or

(ii) a Commonwealth area; or

(iii) a Commonwealth marine area; and

(c) the area of water is not:

(i) an area of water, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; or

(ii) an area of water within the limits of a State or the Northern Territory.

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

(a) the Australian jurisdiction; or

(b) a Commonwealth area; or

(c) a Commonwealth marine area;

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

(d) the Australian jurisdiction; or

(e) a Commonwealth area; or

(f) a Commonwealth marine area;

as the case requires.

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

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

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

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

(3) In this section:

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

7 Application of the *Criminal Code*

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

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

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

8 Native title rights not affected

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

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

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

9 Relationship with other Acts

Aboriginal Land Rights (Northern Territory) Act 1976

(1A) Subsection 70(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* does not prevent a person exercising powers or performing functions or duties under Division 4 or 5 of Part 15, or Division 5 of Part 19, of this Act from entering or remaining on land:
(a) in the Kakadu region or Uluru region; and
(b) in which an Aboriginal Land Trust established under that Act holds an estate in fee simple.

Airports Act 1996 not affected

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

Antarctic Treaty (Environment Protection) Act 1980 not affected

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

10 Relationship with State law

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

Section 11

Chapter 2—Protecting the environment

Part 2—Simplified outline of this Chapter

11 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

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

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

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

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

(b) a declaration by the Minister.

Also, an action does not need approval if it is taken in accordance with Regional Forest Agreements before the sunset day (see section 38), or it is for a purpose for which, under a zoning plan for a zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

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

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

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

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

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

(4) In this section:

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

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

13 What is a *declared World Heritage property*?

Properties on World Heritage List

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

Properties not yet on World Heritage List

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

14 Declaring a property to be a declared World Heritage property

Making declarations

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

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

(b) the Minister is satisfied that:

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

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

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

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

Consulting State or Territory before making declaration

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

Consultation not required if threat is imminent

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

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

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

Failure to comply with subsection (2)

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

When a declaration is in force

(5) A declaration:

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

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

(i) the end of the period specified in the declaration as the period for which the declaration is in force;

(ii) the revocation of the declaration;

(iii) if the declaration specifies a property submitted to the World Heritage Committee for inclusion in the World Heritage List—the Committee either includes the property in the List or decides the property should not be included in the List.

Specified period for which declaration is in force

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

(a) the World Heritage Committee needs to decide whether or not to include the property in the World Heritage List, in the case of a declaration specifying a property that has been submitted to the Committee for inclusion in the List; or

(b) the Commonwealth needs to decide whether the property has world heritage values and to submit the property to the World Heritage Committee for inclusion in the World Heritage List, in the case of a declaration specifying a property not yet submitted to the Committee for inclusion in the List.

Declarations because of threat in force for a year or less

(7) The Minister must not specify that a declaration of a property is to be in force for more than 12 months if:

(a) the declaration is made in the circumstances described in paragraph (1)(b); and

(b) the property is not a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List.

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

Revoking declarations specifying nominated property

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

Amending declarations specifying nominated property

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

Revoking declarations specifying property not yet nominated

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

15A Offences relating to declared World Heritage properties

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

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

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

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

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

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

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 1,000 penalty units, or both.

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

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

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

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

Subdivision AA—National Heritage

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

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

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

(a) between Australia and another country; or

(b) between 2 States; or

(c) between a State and Territory; or

(d) between 2 Territories;

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

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

(a) a Commonwealth area; or

(b) a Territory;

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

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

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

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

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

(7) Subsections (1), (2), (3), (4) and (5) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

15C Offences relating to National Heritage places

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

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

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

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

(d) the place is a National Heritage place.

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

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

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

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

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

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

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

(d) the place is a National Heritage place.

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

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

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

(3) A person commits an offence if:

(a) the person takes an action; and

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

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

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

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

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

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

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

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

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

(b) the action is taken in:
(i) a Commonwealth area; or
(ii) a Territory; and
(c) the action results or will result in a significant impact on the heritage values of a place; and
(d) the heritage values are National Heritage values of the place; and
(e) the place is a National Heritage place.

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

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

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

(6) A person commits an offence if:
(a) the person takes an action; and
(b) the action is taken in:
(i) a Commonwealth area; or
(ii) a Territory; and
(c) the action is likely to have a significant impact on the heritage values of a place; and
(d) the heritage values are National Heritage values of the place; and
(e) the place is a National Heritage place.

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

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

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

(7) A person commits an offence if:
(a) the person takes an action; and
(b) the action results or will result in a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and

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

(d) the place is a National Heritage place.

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

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

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

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

(8) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and

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

(d) the place is a National Heritage place.

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

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

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

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

(9) A person commits an offence if:

(a) the person takes an action; and

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

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

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

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

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

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

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

(10) A person commits an offence if:

(a) the person takes an action; and

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

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

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

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

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

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

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

(13) An offence against any of subsections (1) to (10) (inclusive) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 1,000 penalty units, or both.

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

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

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

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

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

Subdivision B—Wetlands of international importance

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

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

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

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

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

(3) In this Act:

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

17 What is a *declared Ramsar wetland*?

Areas designated for listing

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

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

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

Areas declared by the Minister

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

17A Making and revoking declarations of wetlands

Declaring threatened wetlands of international importance

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

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

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

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

Consulting State or Territory before making declaration

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

Consultation not required if threat is imminent

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

Failure to comply with subsection (2)

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

When a declaration is in force

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

Specifying period for which declaration is in force

(6) The Minister must specify in a declaration the period for which it is to be in force. The period must not be longer than the shorter of the following periods:
  (a) the period the Minister believes the Commonwealth needs to:
    (i) decide whether the wetland is of international significance in terms of ecology, botany, zoology, limnology or hydrology; and
    (ii) designate the wetland for inclusion in the List of Wetlands of International Importance kept under Article 2 of the Ramsar Convention;
  (b) 12 months.

Revocation of declaration of threatened wetland

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

17B Offences relating to declared Ramsar wetlands

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

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the ecological character of a wetland; and

(c) the wetland is a declared Ramsar wetland.

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 1,000 penalty units, or both.

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

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

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

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

Subdivision C—Listed threatened species and communities

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

Species that are extinct in the wild

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

Critically endangered species

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

Endangered species

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

Vulnerable species

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

Critically endangered communities

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

Endangered communities

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

Civil penalties

(7) Subsections (1), (2), (3), (4), (5) and (6) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

18A Offences relating to threatened species etc.

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

(b) the action results or will result in a significant impact on:
(i) a species; or
(ii) an ecological community; and
(c) the species is a listed threatened species, or the community is a listed threatened ecological community.

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

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

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

(2) A person commits an offence if:
(a) the person takes an action; and
(b) the action is likely to have a significant impact on:
(i) a species; or
(ii) an ecological community; and
(c) the species is a listed threatened species, or the community is a listed threatened ecological community.

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 1,000 penalty units, or both.

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

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

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

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

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

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

(ii) a conservation dependent species; or

(b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant impact) is an ecological community included in the vulnerable category of the list under section 181.

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

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

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

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

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

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

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

(aa) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

(4) A subsection of section 18 or 18A does not apply to an action, to the extent that it is covered by subsection 517A(7).

Subdivision D—Listed migratory species

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

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

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

(2) Subsection (1) does not apply to an action if:
(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or
(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in

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

20A Offences relating to listed migratory species

(1) A person commits an offence if:

(a) the person takes an action; and

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

(c) the species is a listed migratory species.

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

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

(c) the species is a listed migratory species.

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 1,000 penalty units, or both.

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

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

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

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

20B Certain actions relating to listed migratory species not prohibited

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

Subdivision E—Protection of the environment from radiological exposure actions

21 Requirement for approval of radiological exposure actions

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

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

(a) between Australia and another country; or

(b) between 2 States; or

(c) between a State and a Territory; or

(d) between 2 Territories;

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

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

(3A) Subsections (1), (2) and (3) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

22 Definition of *radiological exposure action*

Radiological exposure action

(1A) An action that is any of the following is a ***radiological exposure action***:

(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) uranium mining or milling, other than in circumstances involving only trace amounts of uranium;
(e) mining, processing, stockpiling or disposing of naturally occurring radioactive materials, if the action exceeds the activity level prescribed by the regulations for the circumstances in which the action is taken;
(f) establishing or significantly modifying a large-scale disposal facility for radioactive waste;
(g) decommissioning or rehabilitating any facility or area in which an activity described in any of paragraphs (a) to (f) has been undertaken;
(h) establishing, significantly modifying, decommissioning or rehabilitating a facility at which radioactive materials at or above the activity level prescribed by the regulations for the facility have been, are being, or are proposed to be, used or stored;
(i) an action prescribed by the regulations.

(1B) To avoid doubt, paragraph (1A)(d) does not include operations for the recovery of mineral sands or rare earth elements.

(1) In this Act:

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

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

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

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

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

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

(2) In this Act:

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

22A Offences relating to radiological exposure actions

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

(a) the corporation or agency takes a radiological exposure action; and

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

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

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

(a) the corporation or agency takes a radiological exposure action; and

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

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

(3) A person commits an offence if:

(a) the person takes a radiological exposure action; and

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

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; and

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

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

(4) A person commits an offence if:

(a) the person takes a radiological exposure action; and

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

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; and

(c) the radiological exposure action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

(5) A person commits an offence if:

(a) the person takes a radiological exposure action; and

(b) the radiological exposure action is taken in a Territory; and

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

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

(6) A person commits an offence if:

(a) the person takes a radiological exposure action; and

(b) the radiological exposure action is taken in a Territory; and

(c) the radiological exposure action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

(7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 1,000 penalty units, or both.

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

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

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

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

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

Subdivision F—Marine environment

23 Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the environment

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

Actions outside Commonwealth marine areas affecting those areas

(2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:
  (a) has or will have a significant impact on the environment in a Commonwealth marine area; or
  (b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Fishing in State or Territory waters managed by Commonwealth

(3) A person must not take in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory an action:
  (a) that:
    (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
    (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under

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

(b) that:

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

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

Civil penalties

(3A) Subsections (1), (2) and (3) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

Exceptions to prohibitions

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

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

Exception—fishing in Commonwealth waters managed by State

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

Exception—fishing outside Commonwealth marine areas

(6) Subsection (2) does not apply to an action that:
  (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
  (b) is permitted under a law of a State or self-governing Territory.

24 What is a *Commonwealth marine area*?

Each of the following is a ***Commonwealth marine area***:
  (a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:
    (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
    (ii) waters within the limits of a State or the Northern Territory;
  (b) the seabed under waters covered by paragraph (a);
  (c) airspace over waters covered by paragraph (a);
  (d) any waters over the continental shelf, except:
    (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act*

1980 or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and

(ii) waters within the limits of a State or the Northern Territory; and

(iii) waters covered by paragraph (a);

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

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

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

24A Offences relating to marine areas

Actions in Commonwealth marine areas affecting the environment

(1) A person commits an offence if:

(a) the person takes an action; and

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

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

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

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

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

Actions in Commonwealth marine areas likely to affect the environment

(2) A person commits an offence if:

(a) the person takes an action; and

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

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

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

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

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

Actions outside Commonwealth marine areas affecting those areas

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

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

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

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

Actions likely to affect environment in Commonwealth marine areas

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

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

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

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

Fishing with impact in State or Territory waters managed by Commonwealth

(5) A person commits an offence if:
(a) the person takes an action that:

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

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

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

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

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

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

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

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

(6) A person commits an offence if:

(a) the person takes an action that:

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

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

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

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

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

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

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

Penalties

(7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 1,000 penalty units, or both.

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

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

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

Defences—general

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

Defence—fishing in Commonwealth waters managed by State

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

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

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

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

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

Defence—fishing outside Commonwealth marine areas

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

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

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

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

Subdivision FA—Great Barrier Reef Marine Park

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

Actions in Great Barrier Reef Marine Park affecting the environment

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

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

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

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

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

Civil penalties

(2A) Subsections (1) and (2) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

Exceptions to prohibition

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

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

24C Offences relating to Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

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

Penalty: Imprisonment for 7 years or 1,000 penalty units, or both.

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

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

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

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

Penalty: Imprisonment for 7 years or 1,000 penalty units, or both.

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

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

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

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

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

(d) the area is the Great Barrier Reef Marine Park.

Penalty: Imprisonment for 7 years or 1,000 penalty units, or both.

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

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

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

(7) A person commits an offence if:

(a) the person takes an action; and

(b) the action is taken outside the Great Barrier Reef Marine Park but in the Australian jurisdiction; and

(c) the action is likely to have a significant impact on the environment in an area; and

(d) the area is the Great Barrier Reef Marine Park.

Penalty: Imprisonment for 7 years or 1,000 penalty units, or both.

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

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

Defences

(9) Subsection (1), (3), (5) or (7) does not apply to an action if:

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

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

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

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

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

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

(a) the action involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the action:

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

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

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

(a) the action involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

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

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and Territory; or

(iv) between 2 Territories; and

(c) the action:

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

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

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

(a) the action involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the action is taken in:

(i) a Commonwealth area; or

(ii) a Territory; and

(c) the action:

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

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

(3A) Subsections (1), (2) and (3) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

24E Offences relating to water resources

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

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

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the action:

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

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

Penalty: Imprisonment for 7 years or 1,000 penalty units, or both.

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

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

(2) A person commits an offence if:

(a) the person takes an action involving:

(i) unconventional gas development; or

(ii) large coal mining development; and

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

(i) between Australia and another country; or
(ii) between 2 States; or
(iii) between a State and Territory; or
(iv) between 2 Territories; and

(c) the action:
(i) has or will have a significant impact on a water resource; or
(ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 1,000 penalty units, or both.

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

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

(3) A person commits an offence if:
(a) the person takes an action involving:
(i) unconventional gas development; or
(ii) large coal mining development; and

(b) the action is taken in:
(i) a Commonwealth area; or
(ii) a Territory; and

(c) the action:
(i) has or will have a significant impact on a water resource; or
(ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 1,000 penalty units, or both.

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

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

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

Subdivision G—Additional matters of national environmental significance

25 Requirement for approval of prescribed actions

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

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

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

(i) the action; and

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

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

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

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

(i) the action to be prescribed; and

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

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

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

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

(5) This section applies only to actions:

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

(b) taken in a Commonwealth marine area; or

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

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(d) taken by a constitutional corporation; or

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

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

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

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

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

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

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

(3) Regulations made for the purposes of subsection (1) may only specify actions:

(a) taken in a Territory; or

(b) taken in a Commonwealth marine area; or

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

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(d) taken by a constitutional corporation; or

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

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

(5) In this section:

regulatory provision means:

(a) a civil penalty provision set out in this Division; or

(b) a provision of this Division that creates an offence.

Subdivision HA—Limitation on liability for actions of third parties

25AA Limitation on liability for actions of third parties

(1) A provision mentioned in subsection (2) or (3) does not apply to an action (the ***primary action***) if:

(a) a person (the ***primary person***) takes the action; and

(b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and

(c) the secondary action is not taken at the direction or request of the primary person; and

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

Defence to offences

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

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

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

Exception to civil penalties

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

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

Subdivision I—Evidentiary certificates

25B Evidentiary certificates

Contravention

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

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

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

Proposal

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

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

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

25C Certificate to be given to person

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

25D Evidentiary effect of certificate

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

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

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

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

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

25E Variation of certificate

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

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

25F Revocation of certificate

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

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

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

Subdivision A—Protection of environment from actions involving Commonwealth land

26 Requirement for approval of activities involving Commonwealth land

Actions on Commonwealth land

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

Actions outside Commonwealth land affecting that land

(2) A person must not take outside Commonwealth land an action that:
  (a) has or will have a significant impact on the environment on Commonwealth land; or
  (b) is likely to have a significant impact on the environment on Commonwealth land.

Civil penalties

(2A) Subsections (1) and (2) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

Exceptions to prohibitions

(3) Subsection (1) or (2) does not apply to an action if:
  (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
  (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(c) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

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

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

27 What is *Commonwealth land*?

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

27A Offences relating to Commonwealth land

(1) A person commits an offence if:

(a) the person takes an action; and

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

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

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

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

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

(2) A person commits an offence if:

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

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

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

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

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

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

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

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

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

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

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

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

(5) An offence against subsection (1), (2), (3) or (4) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 1,000 penalty units, or both.

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

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

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

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

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

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

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

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

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

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

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

27C Offences relating to Commonwealth Heritage places overseas

(1) A person commits an offence if:

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

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

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

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

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

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 1,000 penalty units, or both.

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

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

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

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

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

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

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

Subdivision B—Protection of the environment from Commonwealth actions

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

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

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place from an action taken by the Commonwealth or a Commonwealth agency, because the heritage values of a place are part of the environment. See the definition of ***environment*** in section 528.

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

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

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

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

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

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

(c) the action is one declared by the Minister in writing to be an action to which this section does not apply; or

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

(3) The Minister may make a written declaration that actions are actions to which this section does not apply, but only if he or she is satisfied that it is necessary in the interests of:

(a) Australia's defence or security; or

(b) preventing, mitigating or dealing with a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.

(4) The Minister may make a written declaration that all actions, or a specified class of actions, taken by a specified Commonwealth agency are actions to which this section does not apply.

(5) The Minister may make a declaration under subsection (4) relating to a Commonwealth agency's actions only if he or she is satisfied that:

(a) in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory (including a law of a State that is applied to a Commonwealth place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*), that has either or both of the following objects (whether express or implied):

(i) to protect the environment;

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

(b) the impacts that the actions have, will have or are likely to have on the environment, are adequately addressed under the State or Territory law.

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

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

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

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

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

(3) In this section:

regulatory provision means:

(a) a civil penalty provision set out in this Division; or

(b) a provision of this Division that creates an offence.

Subdivision D—Limitation on liability for actions of third parties

28AB Limitation on liability for actions of third parties

(1) A provision mentioned in subsection (2) or (3) does not apply to an action (the ***primary action***) if:

(a) a person (the ***primary person***) takes the action; and

(b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and

(c) the secondary action is not taken at the direction or request of the primary person; and

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

Defence to offences

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

(a) subsections 27A(1) to (4);

(b) subsections 27C(1) and (2).

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

Exception to civil penalties

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

(a) subsections 26(1) and (2);

(b) subsection 27B(1);

(c) subsection 28(1).

Part 4—Cases in which environmental approvals are not needed

Division 1—Actions covered by bilateral agreements

29 Actions declared by agreement not to need approval

(1) A person may take an action described in a provision of Part 3, other than section 24D or 24E, without an approval under Part 9 for the purposes of the provision if:

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

(b) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or Territory not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with a management or authorisation framework that is accredited for the purposes of the agreement); and

(c) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and

(d) the action is taken in accordance with the management or authorisation framework.

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

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

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

30 Extended operation in State and Northern Territory waters

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

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

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

Note: A provision of a bilateral agreement only has effect in relation to a Commonwealth area or the Great Barrier Reef Marine Park if the agreement expressly provides that it does. See section 49.

31 Extended operation in non-self-governing Territories

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

(a) the action is taken in a Territory (the ***action Territory***) that is not a self-governing Territory; and

(b) an Act providing for the government of the action Territory provides that some or all of the law of a State or self-governing Territory is in force in the action Territory as a law of the Territory; and

(c) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or self-governing Territory not to require approval under Part 9 for the purposes of the provision of Part 3 (because the action is approved or taken in accordance with a management or

authorisation framework that is accredited for the purposes of the agreement); and

(d) the bilateral agreement specifies that the provision of the agreement making the declaration has effect in relation to actions in the action Territory; and

(e) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and

(f) the action is taken in accordance with the framework.

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

Division 2—Actions covered by Ministerial declarations and accredited management or authorisation frameworks

Subdivision A—Effect of declarations

32 Actions declared by Minister not to need approval

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

(a) the action is one of a class of actions declared by the Minister under section 33 not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with a management or authorisation framework that is accredited for the purposes of the declaration); and

(b) the declaration is in operation when the action is taken; and

(c) the action is taken in accordance with the framework.

Subdivision B—Making declarations

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

Declaration of actions not needing approval

(1) The Minister may declare in writing, in relation to a specified class of actions, that the actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 because the taking of the actions has been approved in accordance with a management or authorisation framework that is accredited for the purposes of the declaration.

Note: Subdivision C deals with prerequisites for making a declaration. Subdivision D deals with suspension, variation and revocation of a declaration. Subdivision E has other provisions relating to declarations

(for example, dealing with exclusion determinations and review of declarations).

Minister may accredit management or authorisation framework

(2) The Minister may, by written instrument, accredit a management or authorisation framework for the purposes of a declaration under subsection (1).

Note: The Minister's power to accredit a framework is affected by other provisions of this section and sections 33A, 33B and 33C.

Minister must not accredit unless satisfied of certain criteria

(3) The Minister must not accredit a management or authorisation framework for the purposes of a declaration under subsection (1) unless the Minister is satisfied that:

(a) the framework is wholly or partly set out in, or wholly or partly made under:

(i) a law of the Commonwealth; or

(ii) an instrument made under a law of the Commonwealth; and

(b) if subparagraph (a)(i) applies to the framework—the law mentioned in that subparagraph:

(i) is identified in the declaration; and

(ii) meets any criteria prescribed by the regulations; and

(c) if subparagraph (a)(ii) applies to the framework—the law and the instrument mentioned in that subparagraph:

(i) are identified in the declaration; and

(ii) each meet any criteria prescribed by the regulations; and

(d) the framework meets any criteria prescribed by the regulations; and

(e) the framework is consistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and

(f) approving an action or class of actions in accordance with the framework will be consistent with any national

environmental standard prescribed by the regulations for the purposes of this paragraph; and

(g) there has been or will be adequate assessment of the impacts that actions or classes of actions approved in accordance with the framework have or will have or are likely to have on each matter protected by a provision of Part 3 to which the declaration relates (a ***declared protected matter***); and

(h) actions or classes of actions approved or taken in accordance with the framework will not have unacceptable impacts on a declared protected matter; and

Note: See the definition of ***unacceptable impacts*** in section 527F.

(i) the taking of an action or class of actions will only be approved under the framework if the approval would, assuming it were required to pass the net gain test, pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have, or is likely to have, on a declared protected matter; and

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

(j) the framework provides for appropriate disclosure of the greenhouse gas emissions information for actions taken in accordance with the framework; and

(k) the Minister has considered any other relevant matter.

Note 1: Subdivision C sets out more prerequisites for accrediting a management or authorisation framework.

Note 2: For paragraph (k), matters that the Minister might consider relevant may include, for example, policies or plans of the Commonwealth.

Identification of law or instrument framework is set out in or made under

(4) The instrument accrediting the framework must identify:

(a) if subparagraph (3)(a)(i) applies to the framework—the law mentioned in that subparagraph; or

(b) if subparagraph (3)(a)(ii) applies to the framework—the law and the instrument mentioned in that subparagraph.

Instruments are not legislative instruments

(5) The following are not legislative instruments:
  (a) a declaration made under subsection (1);
  (b) an instrument accrediting a management or authorisation framework under subsection (2).

Instruments to be published

(6) The Minister must publish a copy of an instrument mentioned in paragraph (5)(a) or (b):
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

33A Tabling and opposition of accreditation of management or authorisation framework

(1) If the Minister proposes to accredit a management or authorisation framework for the purposes of a declaration under subsection 33(1), the Minister must cause the following documents (the ***relevant documents***) to be tabled in each House of the Parliament:
  (a) a copy of the documents that together comprise the whole of the framework (including any part of the framework that is not set out in, or made under, a law or instrument);
  (b) a notice that the Minister proposes to accredit the framework for the purposes of the declaration.

When Minister must not accredit

(2) The Minister must not accredit the framework if:
  (a) notice of a motion to oppose accreditation of the framework is given in a House of the Parliament within the applicable opposition period; and

(b) within 15 sitting days of the House after the giving of the notice, the House passes a resolution, in pursuance of the motion, opposing accreditation of the framework.

When Minister may accredit

(3) The Minister may accredit the framework only if:

(a) no notice of a motion to oppose accreditation of the framework is given in a House of the Parliament within the applicable opposition period; or

(b) if such a notice is given in a House of the Parliament within the applicable opposition period:

(i) the notice is withdrawn or otherwise disposed of within 15 sitting days of the House after the notice is given; and

(ii) the applicable opposition period has ended.

Extended time for opposition after dissolution, expiry or prorogation

(4) If:

(a) notice of a motion to oppose the accreditation of the framework is given in a House of the Parliament (the ***opposing House***) within the applicable opposition period; and

(b) before the end of 15 sitting days of the opposing House after the notice is given:

(i) the House of Representatives is dissolved or expires; or

(ii) the Parliament is prorogued; and

(c) at the time of the dissolution, expiry or prorogation (as the case requires):

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the relevant documents are taken, for the purposes of subsections (2) and (3), to have been tabled in the opposing House on the first sitting day of the House after the dissolution, expiry or prorogation (as the case requires).

*Meaning of **applicable opposition period***

(5) In this section:

applicable opposition period, for a House of the Parliament, means the period of 15 sitting days of the House after the relevant documents are tabled in the House under subsection (1).

33B Advice from CEO before accreditation

Before accrediting a management or authorisation framework under subsection 33(2), the Minister must:

(a) seek advice from the CEO in relation to the decision whether to accredit the framework; and

(b) have regard to that advice in making the decision.

33C Accreditation must not result in approval of certain nuclear installations

(1) The Minister may accredit a management or authorisation framework under subsection 33(2) for the purposes of a declaration only if the Minister is satisfied the framework will not result in the approval of an action consisting of or involving the construction or operation of any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;

(b) a nuclear power plant;

(c) an enrichment plant;

(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

Section 34

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

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

Matter protected by provisions of Part 3

Item	Provision	Matter protected
1	section 12	the world heritage values of a declared World Heritage property
1A	section 15A	the world heritage values of a declared World Heritage property
1B	section 15B	the National Heritage values of a National Heritage place
1C	section 15C	the National Heritage values of a National Heritage place
2	section 16	the ecological character of a declared Ramsar wetland
2A	section 17B	the ecological character of a declared Ramsar wetland
3	subsection 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

Matter protected by provisions of Part 3		
Item	**Provision**	**Matter protected**
8A	subsection 18A(1) or (2)	a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species) and a listed threatened ecological community (except an ecological community included in the vulnerable category of the list referred to in section 181)
9	section 20	a listed migratory species
9A	section 20A	a listed migratory species
10	section 21	the environment
10A	section 22A	the environment
11	subsection 23(1)	the environment
12	subsection 23(2)	the environment in a Commonwealth marine area
13	subsection 23(3)	the environment in the coastal waters (as defined in the *Fisheries Management Act 1991*) in which the action is taken of the State or Territory
13A	subsection 24A(1) or (2)	the environment
13B	subsection 24A(3) or (4)	the environment in a Commonwealth marine area
13C	subsection 24A(5) or (6)	the environment in the coastal waters (as defined in the *Fisheries Management Act 1991*) in which the action is taken of the State or Territory
13D	subsection 24B(1)	the environment
13E	subsection 24B(2)	the environment in the Great Barrier Reef Marine Park

Matter protected by provisions of Part 3		
Item	**Provision**	**Matter protected**
13F	subsections 24C(1) and (3)	the environment
13G	subsections 24C(5) and (7)	the environment in the Great Barrier Reef Marine Park
13H	section 24D	a water resource
13J	section 24E	a water resource
14	section 25	a thing prescribed by the regulations for the purposes of this item in relation to an action to which section 25 applies
15	subsection 26(1)	the environment
16	subsection 26(2)	the environment on Commonwealth land
16A	subsection 27A(1) or (2)	the environment
16B	subsection 27A(3) or (4)	the environment on Commonwealth land
16C	section 27B	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
16D	subsections 27C(1) and (2)	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
17	section 28	the environment

34AA Declaration or accreditation may apply, adopt or incorporate other instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, a declaration, or accreditation of a management or authorisation framework, under section 33 may apply, adopt or incorporate (with or without modifications) any matter contained in an instrument or other writing:

(a) as in force at a particular time; or
(b) as is in force or existing from time to time.

Subdivision C—Prerequisites for making declarations

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

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

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

34B Declarations relating to declared World Heritage properties

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

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and
(b) the Minister is satisfied that the declaration is not inconsistent with the Australian World Heritage management principles; and
(ba) the Minister is satisfied that the declaration is not inconsistent with any plan prepared for the management of the property under section 316 or as mentioned in section 321; and
(c) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of a declaration relating to a declared World Heritage property only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) Australia's obligations under the World Heritage Convention;

(b) the Australian World Heritage management principles;
(c) any plan prepared for the management of the property under section 316 or as mentioned in section 321.

34BA Declarations relating to National Heritage places

(1) The Minister may make a declaration under section 33 relating to a National Heritage place only if:
(a) the Minister is satisfied that the declaration is not inconsistent with the National Heritage management principles; and
(aa) the Minister is satisfied that the declaration is not inconsistent with any plan prepared for the management of the place under section 324S or as mentioned in section 324X; and
(ab) the Minister is satisfied that the declaration is not inconsistent with any agreement to which the Commonwealth is party in relation to the National Heritage place; and
(b) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of such a declaration only if the Minister is satisfied that the framework is not inconsistent with any of the following:
(a) the National Heritage management principles;
(b) any plan prepared for the management of the place under section 324S or as mentioned in section 324X;
(c) any agreement to which the Commonwealth is party in relation to the National Heritage place.

34C Declarations relating to declared Ramsar wetlands

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

(a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the declaration is not inconsistent with the Australian Ramsar management principles; and

(ba) the Minister is satisfied that the declaration is not inconsistent with any plan prepared for the management of the wetland as mentioned in section 333; and

(c) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of a declaration relating to a declared Ramsar wetland only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) Australia's obligations under the Ramsar Convention;

(b) the Australian Ramsar management principles;

(c) any plan prepared for the management of the wetland as mentioned in section 333.

34D Declarations relating to listed threatened species and ecological communities

Declarations under section 33

(1) The Minister may make a declaration under section 33 relating to a listed threatened species or a listed threatened ecological community only if the Minister is satisfied the declaration is not inconsistent with the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES;

(b) a threat abatement plan;

(c) a protection statement;
(d) a recovery plan.

(2) If there is a protection statement for the whole or one or more parts of the species or community:
(a) the requirement in paragraph (1)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and
(b) the Minister may have regard to any such recovery plan; and
(c) the Minister may have regard to an approved conservation advice for the species or community.

(3) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

Accreditation of management or authorisation frameworks

(4) The Minister may accredit a management or authorisation framework under section 33 for the purposes of a declaration relating to a listed threatened species or a listed threatened ecological community only if the Minister is satisfied the framework is not inconsistent with the following:
(a) Australia's obligations under:
(i) the Biodiversity Convention; or
(ii) the Apia Convention; or
(iii) CITES;
(b) a threat abatement plan;
(c) a protection statement;
(d) a recovery plan.

(5) If there is a protection statement for the whole or one or more parts of the species or community:
(a) the requirement in paragraph (4)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the

extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(6) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

34E Declarations relating to migratory species

(1) The Minister may make a declaration under section 33 relating to a listed migratory species only if:

(a) the Minister is satisfied that the declaration is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

(i) the Bonn Convention;

(ii) CAMBA;

(iii) JAMBA;

(iv) an international agreement approved under subsection 209(4); and

(c) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of a declaration relating to a listed migratory species only if the Minister is satisfied that the framework is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

(a) the Bonn Convention;

(b) CAMBA;

(c) JAMBA;

(d) an international agreement approved under subsection 209(4).

34F Declarations relating to Commonwealth Heritage places

(1) The Minister may make a declaration under section 33 relating to a Commonwealth Heritage place only if:
   (a) the Minister is satisfied that the declaration is not inconsistent with the Commonwealth Heritage management principles; and
   (b) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of such a declaration only if he or she is satisfied that the framework is not inconsistent with the Commonwealth Heritage management principles.

Subdivision D—Suspension, variation and revocation of declarations

35 Suspension, variation and revocation of declaration

(1) If, in relation to a declaration in force under section 33, the Minister reasonably believes that a situation mentioned in subsection (2) exists or will arise, or is satisfied that any requirements prescribed by the regulations for the purposes of this subsection are met, the Minister may, by written instrument:
   (a) suspend the declaration for the purposes of this Act, or specified provisions of Part 3 of this Act, either generally or in relation to actions of a specified class, for the specified period; or
   (b) vary the declaration so that the declaration no longer has effect for the purposes of this Act, or specified provisions of Part 3 of this Act, either generally or in relation to actions of a specified class; or
   (c) revoke the declaration.

(2) The situations are that the body administering a management or authorisation framework that is accredited for the purposes of the declaration:

(a) has not complied with the framework; or

(b) has not given effect to the framework in a way that:

(i) accords with the objects of this Act and the objects of this Part; and

(ii) promotes the discharge of Australia's obligations under any agreement with one or more other countries relevant to a matter covered by the declaration; or

(c) has given effect to the framework in a way that is inconsistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 33(3)(e) or (f); or

(d) has given effect to the framework in a way that has resulted or will result in an unacceptable impact on a matter protected by a provision of Part 3 specified in the declaration; or

Note: See the definition of ***unacceptable impacts*** in section 527F.

(e) has given effect to the framework in a way that has resulted or is likely to result in approvals of actions or classes of actions that, assuming the approvals were required to pass the net gain test, would not pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have or is likely to have on a matter protected by a provision of Part 3 specified in the declaration.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

(3) A variation, revocation or period of suspension takes effect on the day specified in the instrument. The Minister must not specify a day that is earlier than the day that is 10 business days after the day the instrument is made.

(4) For the purposes of paragraph (1)(a), the specified period for a suspension may end:

(a) on a specified day; or

(b) on the occurrence of a specified event.

(5) An instrument made under subsection (1) is not a legislative instrument.

35A Notice of suspension, variation or revocation

(1) As soon as practicable after suspending, varying or revoking a declaration under section 35, the Minister must give the body administering the management or authorisation framework to which the declaration relates:

(a) a copy of the instrument of suspension, variation or revocation; and

(b) a written statement of the reasons for the suspension, variation or revocation.

(2) The Minister must also publish the instrument and statement of reasons:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

35B Suspension, variation or revocation does not affect some actions

If:

(a) a declaration made under section 33 is suspended, varied or revoked; and

(b) before the suspension, variation or revocation, an action was being taken that could be taken without approval under Part 9 for the purposes of a provision of Part 3 because the declaration was in force in relation to the class of actions to which the action belongs; and

(c) as a result of the suspension, variation or revocation, the action can no longer be taken without approval under Part 9 for the purposes of the provision of Part 3; and

(d) the action had not been completed before the suspension, variation or revocation;

this Act continues to operate in relation to the action as if the declaration had not been suspended, varied or revoked.

35C Variation or revocation during period of suspension

(1) Nothing in section 35 prevents the Minister varying or revoking a declaration made under section 33 while the declaration is suspended.

(2) Subsection (1) applies regardless of whether the suspension, variation or revocation has effect generally or otherwise.

35D Reinstatement of suspended declaration

(1) The Minister must, by written instrument, revoke an instrument suspending a declaration made under section 33 if, before the end of the specified period of the suspension, the Minister becomes satisfied that there is no longer a ground under subsection 35(1) for suspending the declaration.

(2) If the Minister revokes the instrument, the Minister must give the body administering the management or authorisation framework to which the declaration relates a copy of the revoking instrument.

(3) The Minister must also publish the revoking instrument:
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

(4) Suspension of the declaration ends on the day specified in the revoking instrument (which must not be earlier than the day that instrument is made).

(5) An instrument made under subsection (1) is not a legislative instrument.

35E Reinstatement of varied or revoked declaration

(1) The Minister must, by written instrument (the ***revoking instrument***), revoke an instrument varying or revoking a declaration made under section 33 if, before the variation or revocation takes effect, the Minister becomes satisfied that there is

no longer a ground under subsection 35(1) for varying or revoking the declaration.

(2) If the Minister revokes the variation or revocation, the Minister must give the body administering the management or authorisation framework to which the declaration relates a copy of the revoking instrument.

(3) The Minister must also publish the revoking instrument:
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

(4) An instrument made under subsection (1) is not a legislative instrument.

36 Minister must not give preference

In making a declaration or accrediting a management or authorisation framework under section 33, or suspending, varying or revoking a declaration under section 35, relating to an action taken:
  (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
  (b) by a constitutional corporation;

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

36A Determinations that amended management or authorisation frameworks continue to be accredited

(1) If:
  (a) a management or authorisation framework has been accredited for the purposes of a declaration under section 33; and
  (b) the framework is amended, or is proposed to be amended; and

(c) the Minister is satisfied the amendments will not have a significant effect on the operation of the framework; and

(d) the Minister is satisfied that the requirements of the following provisions are met, or will be met, in relation to the framework as amended:

(i) paragraphs 33(3)(d) to (j);

(ii) section 33C;

(iii) section 34A;

(iv) subsection 34B(2), 34BA(2), 34C(2), 34D(4), 34E(2) or 34F(2) (as the case requires);

the Minister may, by instrument in writing, determine that this section applies to the amendments.

(2) If the Minister makes a determination under subsection (1):

(a) the framework as amended is taken to be accredited for the purposes of the declaration; and

(b) subsections 33(3) and (4), and section 33A, do not apply in relation to the amendments to the framework, or the management arrangement or authorisation process as amended; and

(c) actions taken after the determination is made in accordance with the framework as amended do not require approval under Part 9 for the purposes of a specified provision of Part 3.

(3) The Minister must publish a determination under subsection (1) in accordance with the regulations (if any).

(4) A determination under subsection (1) is not a legislative instrument.

Subdivision E—Other provisions relating to section 33 declarations

36B Exclusion determination

(1) The Minister may, by written instrument, determine that, despite a declaration in force under section 33 in relation to actions in a class of actions, a specified action in the class that a person proposes to take is excluded from the declaration.

(2) For the purposes of this Act, the action specified in the determination is taken not to be an action in the class of actions specified in the declaration.

Note: The action is also taken to have been referred to the Minister under subsection 68(1) (see section 69A).

(3) As soon as practicable after the determination is made, the Minister must give the following persons a copy of it, together with a written notice that the action is taken to have been referred to the Minister under section 68:

(a) the person proposing to take the action;

(b) the body administering the management or authorisation framework to which the declaration relates.

(4) A determination made under subsection (1) is not a legislative instrument.

36C Review of declaration

(1) The CEO must arrange for a review of a declaration made under section 33 to be started:

(a) within 3 years of the declaration taking effect; and

(b) within 5 years of the day a report of the previous review was given to the Minister under subsection (2).

(2) The persons undertaking a review must give the CEO a report of the review within 6 months of the review starting or within a longer period agreed in writing by the CEO.

(3) The CEO must give a copy of the report of a review to the Minister.

(4) The Minister must publish a copy of the report:
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

36D Assurance reviews into declarations made under section 33

(1) The CEO may from time to time cause an authorised officer to conduct an assurance review into a declaration made under section 33.

(2) The assurance review may cover any or all of the following matters:
  (a) whether the conditions mentioned in paragraphs 33(3)(d) to (j) continue to be met in relation to any management or authorisation framework accredited for the purposes of the declaration;
  (b) whether the administration of any such framework is consistent with the framework as accredited;
  (c) whether the administration of any such framework accords with the objects of the Act;
  (d) if a matter protected by a provision of Part 3 covered by any such framework is relevant to Australia's obligations under an international agreement—whether the administration of the framework is not inconsistent with those obligations;
  (e) any other matter prescribed by the regulations.

(3) Before the assurance review commences, the CEO must give the body administering any such framework a written notice setting out the matters to be covered by the review.

(4) The CEO must give the Minister a report of the assurance review as soon as possible after conducting the review.

(5) The report of the assurance review may include recommendations in relation to the declaration to which the review relates.

(6) Without limitation, recommendations under subsection (5), may include a recommendation on whether to vary, suspend or revoke the declaration to which the review relates.

36E Duty to provide all reasonable facilities and assistance

A body administering a management or authorisation framework that is accredited for the purposes of a declaration to which an assurance review under subsection 36D(1) relates must provide the CEO, and any persons assisting the CEO, with all reasonable facilities and assistance necessary for the effective exercise of the CEO's duties in relation to the review.

36F Request for information or documents

If the CEO reasonably believes that a person has information or documents relevant to the subject matter of an assurance review conducted under subsection 36D(1), the CEO may request the person, in writing, to give the CEO any such information or documents (or copies of any such documents).

Division 2A—Actions covered by Ministerial declarations and NOPSEMA management or authorisation frameworks

36G Actions approved under declared framework do not need Part 9 approval

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

(a) the action has been approved in accordance with a NOPSEMA management or authorisation framework; and

(b) the action is taken in accordance with the framework; and

(c) a declaration under section 36H specifying the framework and a class of actions to which the action belongs was in operation at the time of the approval.

(2) A ***NOPSEMA management or authorisation framework*** is a management or authorisation framework that is set out in, or includes, either or both of the following:

(a) the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;

(b) regulations made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* that are prescribed by the regulations for the purposes of this paragraph.

(3) For the purposes of this Act, a reference in this Division to an action approved, or an approval of an action, under a NOPSEMA management or authorisation framework is a reference to an action approved (however described), or an approval (however described), of an action under such a framework.

36H Making declaration that actions do not need approval under Part 9

(1) The Minister may declare, in writing, in relation to a specified class of actions, that the actions do not require approval under Part 9 for the purposes of a provision of Part 3 because the taking of the actions has been approved in accordance with a specified NOPSEMA management or authorisation framework.

(2) The Minister must not make a declaration unless the Minister is satisfied that the following conditions are met in relation to the specified class of actions and the specified NOPSEMA management or authorisation framework:

(a) the framework is not inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph;

(b) approving an action in accordance with the framework will not be inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph;

(c) actions approved in accordance with the framework will not have unacceptable impacts on matters protected by provisions of Part 3 to which the declaration relates;

Note: See the definition of ***unacceptable impacts*** in section 527F.

(d) actions approved in accordance with the framework will not have or be likely to have a residual significant impact on a matter protected by a provision of Part 3 to which the declaration relates;

Note: See the definition of ***residual significant impact*** in section 527J.

(e) the framework requires decision makers to not act inconsistently with any of the following in deciding whether to approve an action:

(i) Australia's obligations under a designated international agreement;

(ii) any protection statement the decision maker considers relevant;

(iii) any recovery plan the decision maker considers relevant;

Note: In considering whether a recovery plan is relevant, the decision maker may choose to have regard to whether a protection statement applies to the same species or community.

(iv) any threat abatement plan the decision maker considers relevant;

(v) a designated environmental instrument;

(f) the framework requires decision makers to have regard to the following in deciding whether to approve an action:

(i) any bioregional plan, or bioregional guidance plan, the decision maker considers relevant;

(ii) any approved conservation advice the decision maker considers relevant;

(g) the framework includes objects that are consistent with the principles of ecologically sustainable development.

(3) The declaration must specify the framework by identifying the instruments that together comprise the whole of the framework (including any part of the framework that is not set out in, or made under, the Act and regulations mentioned in paragraphs 36G(2)(a) and (b)).

(4) A declaration takes effect on the day specified in the declaration, which must not be earlier than the day the declaration is made.

(5) The Minister must, as soon as practicable after making a declaration:

(a) give a copy of the declaration to NOPSEMA and to the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and

(b) publish a copy of the declaration on the Department's website.

(6) A declaration made under subsection (1) is not a legislative instrument.

36J Declaration may apply, adopt or incorporate other instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, a declaration under section 36H may apply, adopt or incorporate (with or without modifications) any matter contained in an instrument or other writing:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time.

36K Suspension of declaration

(1) The Minister may, by written instrument, suspend a declaration in force under section 36H, either generally or in relation to a specified class of actions, if the Minister is satisfied that a condition mentioned in subsection 36H(2) is not met in relation to the declaration.

(2) As soon as practicable after suspending the declaration, the Minister must:

(a) give written notice of the suspension to NOPSEMA and to the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and

(b) publish a copy of the notice on the Department's website.

(3) The notice must specify:

(a) the reasons for the suspension; and

(b) the things that must be done for the suspension to end.

(4) The suspension takes effect:

(a) on the day that is 30 days after the notice is published under paragraph (2)(b); or

(b) if a later day is specified in the notice—on the later day.

(5) An instrument made under subsection (1) is not a legislative instrument.

36L Reinstatement of suspended declaration

(1) The Minister must, by written instrument, revoke an instrument suspending a declaration under section 36H, if the Minister is satisfied that the things that must be done for the suspension to end (see paragraph 36K(3)(b)) have been done.

(2) The Minister must:
  (a) give a copy of the instrument to NOPSEMA and to the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* as soon as practicable after revoking the suspension; and
  (b) publish a copy of the instrument on the Department's website.

(3) The instrument must specify the day the revocation takes effect (which must not be earlier than the day the instrument is made). The suspension of the declaration ends at the end of that day.

(4) An instrument made under subsection (1) is not a legislative instrument.

36M Revocation of suspended declaration by Minister

(1) The Minister may, by written instrument, revoke a suspended declaration, if the Minister is satisfied that the things that must be done for the suspension to end (see paragraph 36K(3)(b)) have not been done after a reasonable period.

(2) As soon as practicable after revoking the declaration, the Minister must:
  (a) give written notice of the revocation to NOPSEMA and to the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and
  (b) publish a copy of the notice on the Department's website.

(3) The notice must specify the reasons for the revocation.

(4) The revocation takes effect on the day specified in the instrument (which must not be earlier than the day the instrument is made).

(5) An instrument made under subsection (1) is not a legislative instrument.

36N Automatic revocation of suspended declaration

A suspended declaration is, by force of this section, revoked at the end of the period of 18 months from the day the suspension took effect.

Division 3—Actions covered by bioregional plans

37 Registered priority actions under bioregional plans

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

(a) the action is taken in a development zone specified in a bioregional plan that is in force; and

(b) the action is a priority action in a priority class of actions specified for the development zone; and

(c) the matter protected by the provision is an impacted protected matter for the priority action; and

(d) the action is a registered priority action in relation to the person; and

(e) the action is taken in accordance with any conditions that:

(i) are attached by the bioregional plan to the taking of the priority action; and

(ii) relate to the impacted protected matter; and

(iii) apply to the taking of the priority action by the person.

Division 3A—Actions covered by conservation agreements

37M Actions declared by conservation agreement not to need approval

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

(a) the action is included in a class of actions declared in a conservation agreement, in accordance with section 306A, not to require approval under Part 9 for the purposes of the provision; and

(b) the conservation agreement is in operation when the action is taken; and

(c) the action is taken in accordance with the conditions (if any) specified in the declaration.

Division 4—Forestry operations in certain regions

Subdivision A—Regions covered by regional forest agreements

38 Part 3 not to apply to certain RFA forestry operations

(1) Part 3 does not apply to an RFA forestry operation that:
  (a) is undertaken in accordance with an RFA; and
  (b) is completed prior to the sunset day.

Note: The effect of this subsection is that Part 3 will apply to an RFA forestry operation that commences on or after the sunset day.

(2) In this Division:

RFA or ***regional forest agreement*** has the same meaning as in the *Regional Forest Agreements Act 2002*.

RFA forestry operation has the same meaning as in the *Regional Forest Agreements Act 2002*.

sunset day means the day after the end of the period of 12 months beginning on 1 July 2026.

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

Subdivision C—Limits on application

42 This Division does not apply to some forestry operations

Subdivision A of this Division, and subsection 6(4) of the *Regional Forest Agreements Act 2002*, do not apply to RFA forestry operations, or to forestry operations, that are:
  (a) in a property included in the World Heritage List; or
  (b) in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or
  (c) incidental to another action whose primary purpose does not relate to forestry.

Note: The effect of this section is that Part 3 applies to an RFA forestry operation mentioned in this section irrespective of when the operation commences.

42A Meaning of *forestry operations*

In this Subdivision:

forestry operations means any of the following done for commercial purposes:

(a) the planting of trees;

(b) the managing of trees before they are harvested;

(c) the harvesting of forest products;

and includes any related land clearing, land preparation and regeneration (including burning) and transport operations. For the purposes of paragraph (c), ***forest products*** means live or dead trees, ferns or shrubs, or parts thereof.

Division 5—Actions in the Great Barrier Reef Marine Park

43 Actions taken in accordance with zoning plan

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

(a) the action is taken in a zone (within the meaning of the *Great Barrier Reef Marine Park Act 1975*) of the Great Barrier Reef Marine Park; and

(b) it is for a purpose for which, under the zoning plan for the zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

Division 6—Actions with prior authorisation

43A Actions with prior authorisation

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

(a) the action consists of a use of land, sea or seabed; and

(b) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and

(c) immediately before the commencement of this Act, no further specific environmental authorisation was necessary to allow the action to be taken lawfully; and

(d) at the time the action is taken, the specific environmental authorisation continues to be in force.

(1A) For the purposes of paragraphs (1)(c) and (d), a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation unless:

(a) the action that is authorised by the authorisation following the renewal or extension is the same as the action that was authorised by the authorisation before the commencement of this Act; and

(b) the renewal or extension could properly be made or given without any further consideration of the environmental impacts of the action.

Note: If a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation, the condition in paragraph (1)(c) or (d) would not be met.

(2) In this Act:

environmental authorisation means an authorisation under a law of the Commonwealth, a State or a self-governing Territory that has either or both of the following objects (whether express or implied):

(a) to protect the environment;

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

specific environmental authorisation means an environmental authorisation that:

(a) identifies the particular action by reference to acts and matters uniquely associated with that action; or

(b) was issued or granted following a consideration of the particular action by reference to acts and matters uniquely associated with that action.

43B Actions which are lawful continuations of use of land etc.

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act.

(2) However, subsection (1) does not apply to an action if:

(a) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and

(b) at the time the action is taken, the specific environmental authorisation continues to be in force.

Note: In that case, section 43A applies instead.

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

(a) the action consists of, or involves, clearing vegetation from land; and

(b) the land is within 50 metres of any of the following in a catchment area of the Great Barrier Reef Marine Park:

(i) a watercourse (within the meaning of the *Water Act 2007*);

(ii) a wetland;

(iii) a drainage line.

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

(a) the action consists of, or involves, clearing vegetation from land; and

(b) at the time the action is taken, the land has not been cleared of vegetation for a period of at least 15 years; and

(c) the action is not a forestry operation.

Definitions and interpretation

(2C) In this section:

catchment area of the Great Barrier Reef Marine Park means the area falling within the boundary described in the dataset that:

(a) is titled Great Barrier Reef catchment and river basins; and

(b) has a dataset scale of 1:100,000; and

(c) specifies the boundaries of all river basins draining to the Great Barrier Reef; and

(d) is dated 5 May 2018; and

(e) is held by the government of Queensland.

Note 1: An indicative map of this area is set out in Schedule 2.

Note 2: The dataset could in 2025 be viewed on the Queensland Spatial Catalogue's website (https://qldspatial.information.qld.gov.au/catalogue/).

forestry operations means any of the following done for commercial purposes:

(a) the planting of trees;

(b) the managing of trees before they are harvested;

(c) the harvesting of forest products;

and includes any related land clearing, land preparation and regeneration (including burning) and transport operations. For the purposes of paragraph (c), ***forest products*** means live or dead trees, ferns or shrubs, or parts thereof.

(3) For the purposes of this section, neither of the following is a ***continuation*** of a use of land, sea or seabed:

(a) an enlargement, expansion or intensification of use;

(b) either:

(i) any change in the location of where the use of the land, sea or seabed is occurring; or

(ii) any change in the nature of the activities comprising the use;

that results in a substantial increase in the impact of the use on the land, sea or seabed.

Chapter 3—Bilateral agreements

Part 5—Bilateral agreements

Division 1—Object of Part

44 Object of this Part

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

(a) protect the environment; and

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

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

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

Division 2—Making bilateral agreements

Subdivision A—Power to make bilateral agreements

45 Minister may make agreement

Making bilateral agreement

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

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

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

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

(2) A ***bilateral agreement*** is a written agreement between the Commonwealth and a State or a self-governing Territory that:

(a) provides for one or more of the following:

(i) protecting the environment;

(ii) promoting the conservation and ecologically sustainable use of natural resources;

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

(iv) minimising duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (or vice versa); and

(b) is expressed to be a bilateral agreement.

Limitation on entering bilateral agreement that includes declaration under section 46

(3) However, the Minister must not enter into a bilateral agreement with a State or a self-governing Territory that includes a declaration under section 46 unless:

(a) at the time the agreement is entered into, there is in force a bilateral agreement with that State or Territory that includes a declaration under section 47; or

(b) the agreement replaces a bilateral agreement that was in force immediately before the entry into the agreement and that included a declaration under section 46 or 47; or

(c) the class of actions specified in the declaration is a class of RFA forestry operations.

Publishing bilateral agreements and related material

(4) As soon as practicable after entering into a bilateral agreement, the Minister must publish in accordance with the regulations:

(a) the agreement; and

(b) a statement of the Minister's reasons for entering into the agreement; and

(c) a report on the comments (if any) received on the draft of the agreement published under Subdivision B.

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

Declaration of actions not needing approval

(1) A bilateral agreement may declare, in relation to a specified class of actions, that the actions do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E, because the taking of the actions has been approved in accordance with a management or authorisation framework that is accredited for the purposes of the agreement.

Minister may accredit management or authorisation framework

(2) The Minister may, by written instrument, ***accredit*** a management or authorisation framework for the purposes of a bilateral agreement.

Note: The Minister's power to accredit a framework is affected by other provisions of this section and sections 46A and 46B.

Requirements for accrediting management or authorisation frameworks

(3) The Minister must not accredit a management or authorisation framework for the purposes of a bilateral agreement with a State or self-governing Territory unless the Minister is satisfied that:

(a) the framework is wholly or partly set out in, or wholly or partly made under:

(i) a law of the State or Territory; or

(ii) an instrument made under a law of the State or Territory; and

(b) if subparagraph (a)(i) applies to the framework—the law mentioned in that subparagraph:

(i) is identified in the declaration; and

(ii) meets any criteria prescribed by the regulations; and

(c) if subparagraph (a)(ii) applies to the framework—the law and the instrument mentioned in that subparagraph:

(i) are identified in the declaration; and

(ii) each meet any criteria prescribed by the regulations; and

(d) the framework meets any criteria prescribed by the regulations; and

(e) the framework is consistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and

(f) approving an action or class of actions in accordance with the framework will be consistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and

(g) there has been or will be adequate assessment of the impacts that actions or classes of actions approved in accordance with the framework have, will have, or are likely to have, on each matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1) (a ***declared protected matter***); and

(h) actions or classes of actions approved or taken in accordance with the framework will not have unacceptable impacts on a declared protected matter; and

Note: See the definition of ***unacceptable impacts*** in section 527F.

(i) the taking of an action or class of actions will only be approved under the framework if the approval would, assuming it were required to pass the net gain test, pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have, or is likely to have, on a declared protected matter; and

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

(j) the framework provides for appropriate disclosure of the greenhouse gas emissions information for actions taken in accordance with the framework; and

(k) the bilateral agreement requires the State or Territory:

(i) to act in accordance with the framework; and

(ii) not to approve the taking of actions, or classes of actions, that would be inconsistent with the framework; and

(l) the Minister has considered any other relevant matter.

Note 1: Subdivision B sets out more prerequisites for accrediting a management or authorisation framework.

Note 2: For paragraph (l), matters that the Minister might consider relevant may include, for example, the terms of the bilateral agreement or State or Territory policies or plans.

Identification of law or instrument framework is set out in or made under

(4) The instrument accrediting the framework must identify:

(a) if subparagraph (3)(a)(i) applies to the framework—the law mentioned in that subparagraph; or

(b) if subparagraph (3)(a)(ii) applies to the framework—the law and the instrument mentioned in that subparagraph.

No preference

(5) In accrediting a management or authorisation framework for the purposes of a bilateral agreement making a declaration relating to an action:

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

(b) by a constitutional corporation;

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

Instruments are not legislative instruments

(6) The following are not legislative instruments:

(a) a declaration made under subsection (1);

(b) an instrument accrediting a management or authorisation framework under subsection (2).

Instruments to be published

(7) The Minister must publish a copy of an instrument mentioned in paragraph (6)(a) or (b):

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

46A Tabling and opposition of accreditation of management or authorisation framework

(1) If the Minister proposes to accredit a management or authorisation framework for the purposes of a bilateral agreement under subsection 46(1), the Minister must cause the following documents

(the ***relevant documents***) to be tabled in each House of the Parliament:

(a) a copy of the documents that together comprise the whole of the framework (including any part of the framework that is not set out in, or made under, a law or instrument);

(b) a notice that the Minister proposes to accredit the framework for the purposes of the agreement.

When Minister must not accredit

(2) The Minister must not accredit the framework if:

(a) notice of a motion to oppose accreditation of the framework is given in a House of the Parliament within the applicable opposition period; and

(b) within 15 sitting days of the House after the giving of the notice, the House passes a resolution, in pursuance of the motion, opposing accreditation of the framework.

When Minister may accredit

(3) The Minister may accredit the framework only if:

(a) no notice of a motion to oppose accreditation of the framework is given in a House of the Parliament within the applicable opposition period; or

(b) if such a notice is given in a House of the Parliament within the applicable opposition period:

(i) the notice is withdrawn or otherwise disposed of within 15 sitting days of the House after the notice is given; and

(ii) the applicable opposition period has ended.

Extended time for opposition after dissolution, expiry or prorogation

(4) If:

(a) notice of a motion to oppose the accreditation of the framework is given in a House of the Parliament (the

opposing House) within the applicable opposition period; and

(b) before the end of 15 sitting days of the opposing House after the notice is given:

(i) the House of Representatives is dissolved or expires; or

(ii) the Parliament is prorogued; and

(c) at the time of the dissolution, expiry or prorogation (as the case requires):

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the relevant documents are taken, for the purposes of subsections (2) and (3), to have been tabled in the opposing House on the first sitting day of the House after the dissolution, expiry or prorogation (as the case requires).

*Meaning of **applicable opposition period***

(5) In this section:

applicable opposition period, for a House of the Parliament, means the period of 15 sitting days of the House after the relevant documents are tabled in the House under subsection (1).

46B Advice from CEO before accreditation

(1) Before accrediting a management or authorisation framework under subsection 46(2) for the purposes of a bilateral agreement with a State or self-governing Territory, the Minister must:

(a) seek advice from the CEO in relation to the decision whether to accredit the framework; and

(b) have regard to that advice in making the decision.

(2) If the Minister has not previously accredited a management or authorisation framework for the purposes of a bilateral agreement with the State or self-governing Territory, the advice the Minister

seeks from the CEO must include advice on the operation of any existing or previous bilateral agreement with the State or self-governing Territory that includes or included a declaration under subsection 47(1).

(3) However, subsection (2) does not apply if:

(a) the bilateral agreement includes a declaration under subsection 46(1); and

(b) the class of actions specified in the declaration is a class of RFA forestry operations.

Note: Advice given under this subsection may include advice on the kinds of matters mentioned in paragraphs 65D(2)(b) to (f).

46BA Advice from CEO on accredited management or authorisation framework

(1) This section applies if:

(a) a bilateral agreement includes the declaration described in subsection 46(1) in relation to a management or authorisation framework that is accredited for the purposes of the agreement; and

(b) the agreement is in force.

(2) If the CEO becomes aware that the framework has been amended, the CEO must provide advice to the Minister about the agreement and the framework as amended.

(3) The advice:

(a) must include the CEO's opinion about whether the conditions in paragraphs 46(3)(a) to (k) continue to be met in relation to the framework as amended; and

(b) may include recommendations in relation to the agreement.

(4) Without limitation, recommendations under paragraph (3)(b) may include a recommendation to the Minister on the following:

(a) whether to vary the agreement or suspend or cancel the effect of the agreement, either generally or in relation to actions in a

specified class or in relation to a specified provision of Part 3;

(b) whether to make a determination under subsection 56B(2) in relation to the framework as amended.

Minister must have regard to advice

(5) In deciding whether to vary the agreement, suspend or cancel the effect of the agreement or make a determination under subsection 56B(2) in relation to the framework as amended, the Minister must have regard to any advice received from the CEO in accordance with this section.

46C Agreement must not result in approval of certain nuclear installations

(1) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement only if the Minister is satisfied the framework will not result in the approval of an action consisting of or involving the construction or operation of any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;

(b) a nuclear power plant;

(c) an enrichment plant;

(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

47 Agreement may declare classes of actions do not need assessment

Declaration of actions that do not need further assessment

(1) A bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have

been assessed in a specified manner need not be assessed under Part 8.

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

Prerequisite to declaration

(2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if the Minister is satisfied that assessment of an action in the specified manner:

(a) will include assessment of the impacts the action has or will have, or is likely to have, on each matter protected by a provision of Part 3; and

(b) will be consistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph.

Assessment approaches that may be accredited

(3) The manner of assessment of actions that may be specified in a bilateral agreement between the Commonwealth and a State or Territory for the purposes of subsection (1) includes:

(a) assessment by any person under a law of the State or Territory; and

(b) assessment by any person under an agreement or other instrument made under a law of the State or Territory; and

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

This does not limit subsection (1).

Report on actions that do not need further assessment

(4) If a bilateral agreement has (or could have) the effect that an action need not be assessed under Part 8 but the action must still be approved under Part 9, the agreement must provide for the Minister

to receive a report including, or accompanied by, enough information about the relevant impacts of the action to let the Minister make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

47A Advice from CEO on manner of assessment

(1) This section applies if:

(a) a bilateral agreement includes the declaration described in subsection 47(1) in relation to actions in a class of actions by reference to a specified manner in which the actions are assessed; and

(b) the agreement is in force.

(2) If the CEO becomes aware that the specified manner in which the actions are assessed for the purposes of the agreement is amended, the CEO must provide advice to the Minister about the agreement and the manner of assessing actions as amended.

(3) The advice:

(a) must include the CEO's opinion about whether the conditions in paragraphs 47(2)(a) and (b) continue to be met in relation to the manner of assessing actions as amended; and

(b) may include recommendations in relation to the agreement.

(4) Without limitation, recommendations under paragraph (3)(b) may include a recommendation to the Minister on the following:

(a) whether to vary the agreement or suspend or cancel the effect of the agreement, either generally or in relation to actions in a specified class or in relation to a specified provision of Part 3;

(b) whether to make a determination under subsection 56C(2) in relation to the manner of assessing actions as amended.

Minister must have regard to advice

(5) In deciding whether to vary the agreement, suspend or cancel the effect of the agreement or make a determination under subsection 56C(2) in relation to the manner of assessing actions, the Minister must have regard to any advice received from the CEO in accordance with this section.

48 Other provisions of bilateral agreements

(1) A bilateral agreement may include:

(a) provisions for State accreditation of Commonwealth processes and decisions; and

(b) other provisions for achieving the object of this Part; and

(c) provisions for the provision of information by one party to the agreement to the other party; and

(d) provisions for the publication of information relating to the agreement; and

(e) provisions relating to the operation of the whole agreement or particular provisions of the agreement, such as:

(i) provisions for the commencement of all or part of the agreement; or

(ii) provisions for auditing, monitoring and reporting on the operation and effectiveness of all or part of the agreement; or

(iii) provisions for review of all or part of the agreement; or

(iv) provisions for rescission of all or part of the agreement; or

(v) provisions for expiry of the agreement; and

(f) provisions varying or revoking another bilateral agreement between the same parties; and

(g) a provision dealing with a matter that another section of this Act permits a bilateral agreement to deal with.

Note: Section 65B (exclusion determination) also deals with provisions that may be included in bilateral agreements that include the declaration mentioned in subsection 46(1).

Consistency with Act and regulations

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

Relationship with sections 46 and 47

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

48AAA Accreditation may apply, adopt or incorporate other instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, an accreditation of a management or authorisation framework may apply, adopt or incorporate (with or without modifications) any matter contained in an instrument or other writing:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time.

48A Mandatory undertakings for bilateral agreement that includes section 46 declaration

Agreement has no effect if required undertakings are not included

(1) A bilateral agreement with a State or self-governing Territory that includes the declaration mentioned in subsection 46(1) (declaration of actions that do not need approval), in relation to a management or authorisation framework that is accredited for the purposes of the agreement, has no effect for the purposes of this Act unless, in the agreement, the State or Territory makes the undertakings specified in this section.

Undertaking in relation to impacts on matters not protected by Part 3

(2) For the purposes of subsection (1), the undertaking is that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have on a thing that is not a matter protected by a provision of Part 3 for which the declaration has effect will be assessed to the greatest extent practicable:

(a) actions taken in the State or Territory by a constitutional corporation;

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

(c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;

(d) actions taken in the Territory (if applicable).

Undertaking in relation to consistency with prescribed national environmental standards

(3) For the purposes of subsection (1), the undertaking is that a decision approving the taking of an action or class of actions in accordance with the framework will be consistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 46(3)(e) or (f).

Undertaking in relation to unacceptable impacts

(4) For the purposes of subsection (1), the undertaking is that an action or class of actions will be approved under the framework only if the approver is satisfied that the taking of the action or class of actions, in accordance with the framework, will not have an unacceptable impact on a matter protected by a provision of Part 3 specified in the declaration.

Note: See the definition of ***unacceptable impacts*** in section 527F.

Undertaking in relation to residual significant impacts

(5) For the purposes of subsection (1), the undertaking is that the taking of an action or class of actions will only be approved under the framework if the approval would, assuming it were required to pass the net gain test, pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have, or is likely to have, on a matter protected by a provision of Part 3 specified in the declaration.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

48C Mandatory undertaking for bilateral agreement that includes section 47 declaration

Agreement has no effect if required undertakings are not included

(1) A bilateral agreement with a State or self-governing Territory that includes the declaration mentioned in subsection 47(1) (declaration of actions that do not need further assessment) has no effect for the purposes of this Act unless, in the agreement, the State or Territory makes the undertakings specified in this section.

Undertaking in relation to impacts on matters not protected by Part 3

(2) For the purposes of subsection (1), the undertaking is that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:

(a) actions taken in the State or Territory by a constitutional corporation;

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

(c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;

(d) actions taken in the Territory (if applicable).

Undertaking in relation to consistency with prescribed national environmental standards

(3) For the purposes of subsection (1), the undertaking is that any assessment, in the specified manner, of actions in the class of actions covered by the declaration will be consistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 47(2)(b).

48D Mandatory provision recognising Auditor-General role

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

49 Certain limits on scope of bilateral agreements

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

(1A) A provision of a bilateral agreement does not have any effect in relation to an action in the Great Barrier Reef Marine Park, unless the agreement expressly provides otherwise.

(2) A provision of a bilateral agreement does not have any effect in relation to an action in Booderee National Park, Kakadu National Park or Uluru-Kata Tjuta National Park.

(3) ***Booderee National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Booderee National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

Subdivision B—Prerequisites for making bilateral agreements

49A Consultation on draft agreement

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

(a) has published in accordance with the regulations:

(i) a draft of the agreement; and

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

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

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

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

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

(a) accords with the objects of this Act; and

(b) meets the requirements (if any) prescribed by the regulations.

51 Agreements relating to declared World Heritage properties

(1) The Minister may enter into a bilateral agreement containing a provision relating to a declared World Heritage property only if:

(a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the World Heritage Convention; and

(b) the Minister is satisfied that the agreement is not inconsistent with the Australian World Heritage management principles; and

(ba) the Minister is satisfied that the provision is not inconsistent with any plan prepared for the management of the property under section 316 or as mentioned in section 321; and

(c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared World Heritage property only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) Australia's obligations under the World Heritage Convention;

(b) the Australian World Heritage management principles;

(c) any plan prepared for the management of the property under section 316 or as mentioned in section 321.

51A Agreements relating to National Heritage places

(1) The Minister may enter into a bilateral agreement containing a provision relating to a National Heritage place only if:

(a) the Minister is satisfied that the agreement is not inconsistent with the National Heritage management principles; and

(aa) the Minister is satisfied that the agreement is not inconsistent with any plan prepared for the management of the place under section 324S or as mentioned in section 324X; and

(ab) the Minister is satisfied that the agreement is not inconsistent with any agreement to which the Commonwealth is party in relation to the National Heritage place; and

(b) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement containing a provision relating to a National Heritage place only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) the National Heritage management principles;

(b) any plan prepared for the management of the place under section 324S or as mentioned in section 324X;

(c) any agreement to which the Commonwealth is party in relation to the National Heritage place.

52 Agreements relating to declared Ramsar wetlands

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

(a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the Ramsar Convention; and

(b) the Minister is satisfied that the agreement is not inconsistent with the Australian Ramsar management principles; and

(ba) the Minister is satisfied that the agreement is not inconsistent with any plan prepared for the management of the wetland as mentioned in section 333; and

(c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared Ramsar wetland only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) Australia's obligations under the Ramsar Convention;

(b) the Australian Ramsar management principles;

(c) any plan prepared for the management of the wetland as mentioned in section 333.

53 Agreements relating to listed threatened species and ecological communities

Declarations in bilateral agreements

(1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if the Minister is satisfied the provision is not inconsistent with the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES;

(b) a threat abatement plan;

(c) a protection statement;

(d) a recovery plan.

(2) If there is a protection statement for the whole or one or more parts of the species or community:

(a) the requirement in paragraph (1)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(3) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

Accreditation of management or authorisation frameworks

(4) The Minister may accredit a management or authorisation framework for the purposes of a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if the Minister is satisfied the framework is not inconsistent with the following:

(a) Australia's obligations under:
  (i) the Biodiversity Convention; or
  (ii) the Apia Convention; or
  (iii) CITES;
(b) a threat abatement plan;
(c) a protection statement;
(d) a recovery plan.

(5) If there is a protection statement for the whole or one or more parts of the species or community:
(a) the requirement in paragraph (4)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and
(b) the Minister may have regard to any such recovery plan; and
(c) the Minister may have regard to an approved conservation advice for the species or community.

(6) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

54 Agreements relating to migratory species

(1) The Minister may enter into a bilateral agreement containing a provision relating to a listed migratory species only if:
(a) the Minister is satisfied that the provision is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
  (i) the Bonn Convention;
  (ii) CAMBA;
  (iii) JAMBA;
  (iv) an international agreement approved under subsection 209(4); and

(c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed migratory species only if the Minister is satisfied that the framework is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

(a) the Bonn Convention;

(b) CAMBA;

(c) JAMBA;

(d) an international agreement approved under subsection 209(4).

55 Agreements relating to radiological exposure actions

The Minister must not enter into a bilateral agreement or accredit a management or authorisation framework for the purposes of a bilateral agreement, containing a provision that:

(a) relates to a radiological exposure action; and

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

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

(ii) by a constitutional corporation.

56 Agreements relating to prescribed actions

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

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

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

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

(ii) by a constitutional corporation.

Subdivision C—Other matters relating to bilateral agreements

56A Ministerial determination of minor amendments to bilateral agreements

(1) This section applies if:

(a) the Minister intends to develop a draft amendment to a bilateral agreement (the ***principal agreement***); and

(b) the Minister is satisfied that the amendment will not have a significant effect on the operation of the principal agreement; and

(c) the Minister makes a determination, in writing, to that effect.

(2) If the Minister makes a determination under paragraph (1)(c):

(a) the following provisions of this Part do not apply in relation to the amendment to the principal agreement:

(ii) paragraphs 45(4)(b) and (c);

(iii) section 49A; and

(b) the Minister must publish the principal agreement, as amended by the amending agreement, at the same time as publishing the amending agreement under paragraph 45(4)(a).

(3) A determination made under paragraph (1)(c) is not a legislative instrument.

56B Determinations that amended management or authorisation frameworks continue to be accredited

(1) This section applies if a management or authorisation framework that is accredited for the purposes of a bilateral agreement with a State or self-governing Territory is amended.

Continuation of accredited management or authorisation frameworks

(2) Despite subsections 46(3) and (4) and section 46A, the Minister may determine, in writing, that the management or authorisation framework as amended continues to be accredited for the purposes of the agreement, without further accreditation, if the Minister is satisfied that:

(a) the amendment will not or is not likely to:

(i) have a significant effect on the operation of the framework; or

(ii) result in a material adverse impact on a matter protected by a provision of Part 3 specified in relation to which the agreement makes a declaration; or

(iii) have a material adverse effect on a person's ability to participate in the process provided for by the framework; and

(b) the following provisions would continue to be satisfied in respect of the framework:

(i) paragraphs 46(3)(d) to (k) and subsection 46(5);

(ii) section 46C ;

(iii) subsections 51(2), 51A(2), 52(2), 53(4) and 54(2);

(iv) section 55;

(v) section 56.

Determination to be published

(3) If the Minister makes a determination under subsection (2), the Minister must publish the determination on the Department's website as soon as practicable.

Application of determinations

(4) A determination under subsection (2) in relation to a management or authorisation framework as amended, applies in relation to an action that is approved in accordance with the framework as amended, even if the action is approved at a time when the framework has been amended but the determination has not yet been made.

Determination not a legislative instrument

(5) A determination made under subsection (2) is not a legislative instrument.

*Meaning of **amend***

(6) In this section:

amend includes repeal and remake.

56C Minister may make determinations relating to minor amendments to the manner in which actions are assessed

(1) This section applies in respect of a bilateral agreement with a State or self-governing Territory including a declaration described in section 47 if the specified manner in which actions are assessed for the purposes of the agreement is amended.

Continuation of manner of assessment for purposes of bilateral agreement

(2) Despite subsections 47(2) to (4), the Minister may determine, in writing, that the manner of assessing actions, as amended, continues to be a specified manner of assessment for the purposes of the agreement if the Minister is satisfied that:

(a) the amendment will not or is not likely to:

(i) have a significant effect on the operation of the manner of assessment; or

(ii) have a material adverse impact on the assessment of the impacts actions have, will have or are likely to have on a matter protected by a provision of Part 3 in relation to which the agreement makes a declaration; or

(iii) have a material adverse effect on a person's ability to participate in the process for assessment; and

(b) the following provisions would continue to be satisfied in respect of the amended manner of assessment:

(i) subsections 47(2), 51A(1), 52(1), 53(1) and 54(1);

(ii) sections 50, 55 and 56.

Determination to be published

(3) If the Minister makes a determination under subsection (2), the Minister must publish the determination on the Department's website as soon as practicable.

Application of determinations

(4) A determination under subsection (2) in relation to an amended manner of assessment applies in relation to an action assessed in accordance with the amended manner of assessment, even if the action was assessed before the determination is made.

(5) For the purposes of subsection (1), it does not matter when the bilateral agreement is entered into.

Determination not a legislative instrument

(6) A determination made under subsection (2) is not a legislative instrument.

*Meaning of **amend***

(7) In this section:

amend includes repeal and remake.

Division 3—Suspending and ending the effect of bilateral agreements

Subdivision A—Suspension and cancellation of effect

57 Representations about suspension or cancellation

Representations

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

Minister must decide whether agreement has been contravened

(2) The Minister must:
  (a) decide whether or not the bilateral agreement has been contravened; and
  (b) decide what action he or she should take in relation to any contravention.

Publication of decision and reasons

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

Minister need not decide on vexatious referrals

(4) Despite subsection (2), the Minister need not make a decision under that subsection if he or she is satisfied that:
  (a) the referral was vexatious, frivolous, or not supported by sufficient information to make a decision; or
  (b) the matter referred is the same in substance as a matter that has been referred before; or
  (c) if the alleged contravention of the bilateral agreement were a contravention of the Act, the person referring the matter would not be entitled to apply under section 475 for an injunction in relation to the contravention.

58 Consultation before cancellation or suspension

(1) The Minister (the ***Environment Minister***) must consult the appropriate Minister of a State or Territory that is party to a bilateral agreement if the Environment Minister reasonably believes that a situation mentioned in subsection (2) exists or will arise in relation to the agreement.

(2) The situations are that the State or Territory:

(a) has not complied with the agreement; or

(b) has not given effect to the agreement in a way that:

(i) accords with the objects of this Act and the objects of this Part; and

(ii) promotes the discharge of Australia's obligations under any agreement with one or more other countries relevant to a matter covered by the agreement; or

(c) for an agreement that includes the declaration mentioned in subsection 46(1)—has given effect to the agreement in a way that is inconsistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 46(3)(e) or (f); or

(d) for an agreement that includes the declaration mentioned in subsection 47(1)—has given effect to the agreement in a way that is inconsistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 47(2)(b); or

(e) for an agreement that includes the declaration mentioned in subsection 46(1)—has given effect to the agreement in a way that has resulted or will result in an unacceptable impact on a matter protected by a provision of Part 3 specified in the agreement; or

Note: See the definition of ***unacceptable impacts*** in section 527F.

(f) for an agreement that includes the declaration mentioned in subsection 46(1)—has given effect to the agreement in a way that has resulted or is likely to result in approvals of actions or classes of actions that, assuming the approvals were required to pass the net gain test, would not pass the net gain

test in relation to any residual significant impact the action or class of actions has had, will have, or is likely to have, on a matter protected by a provision of Part 3 specified in the agreement.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

(3) Subsection (1) operates whether the Environment Minister's belief relates to a matter referred to the Environment Minister under section 57 or not.

59 Suspension or cancellation

Minister may give notice of suspension or cancellation

(1) If, after consultation in accordance with section 58 in relation to a situation mentioned in subsection 58(2), the Environment Minister is not satisfied that the situation does not exist and will not arise, the Minister may give the appropriate Minister of the State or Territory a written notice described in subsection (2) or (3) of this section.

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

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

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

Notice of suspension

(2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or

specified provisions of Part 3 is suspended, either generally or in relation to actions in a specified class, for a period:

(a) starting on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given; and

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

Notice of cancellation

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

Effect suspended or cancelled in accordance with notice

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

Reasons for giving notice

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

Publishing notice and reasons

(6) As soon as practicable after the suspension or cancellation occurs, the Environment Minister must publish in accordance with the regulations:

(a) notice of the suspension or cancellation; and

(b) reasons for the suspension or cancellation.

60 Emergency suspension of effect of bilateral agreement

(1) This section applies if the Minister is satisfied that:

(a) the State or Territory that is party to a bilateral agreement is not complying with it, or will not comply with it; and

(b) as a result of the non-compliance, a significant impact is occurring or imminent on any matter protected by a provision of Part 3 that is relevant to an action in a class of actions to which the agreement relates.

(2) The Minister may suspend the effect of the agreement or specified provisions of the agreement for the purposes of this Act or specified provisions of Part 3, by notice:

(a) given to the appropriate Minister of the State or Territory; and

(b) published in accordance with the regulations.

(3) The suspension continues for the shorter of the following periods:

(a) 3 months;

(b) the period that is specified in the notice (either by reference to time or by reference to the occurrence of an event).

(4) Subsection (3) has effect subject to section 62.

(5) As soon as practicable after the Minister (the ***Environment Minister***) gives the appropriate Minister of the State or Territory (the ***State or Territory Minister***) notice of the suspension, the Environment Minister must consult the State or Territory Minister about the non-compliance.

(6) To avoid doubt, this section has effect despite sections 58 and 59.

61 Cancellation during suspension

(1) The Minister may give notice of the cancellation of the effect of a bilateral agreement even while its effect is suspended under section 59 or 60.

(2) The cancellation may occur even though the period of suspension has not ended.

(3) This section applies whether the cancellation or suspension has effect generally or in relation to actions in a specified class.

62 Revocation of notice of suspension or cancellation

(1) This section applies if the Minister:

(a) has given the appropriate Minister of a State or Territory a notice under section 59 or 60 to suspend or cancel the effect of a bilateral agreement that the State or Territory is party to; and

(b) either:

(i) for a notice given under section 59 because the Minister was not satisfied that a situation mentioned in subsection 58(2) did not exist and would not arise—is later satisfied that the situation does not exist and will not arise; or

(ii) for a notice given under section 60—is later satisfied that the State or Territory will comply with the agreement and give effect to it in a way that accords with the objects of this Act and the objects of this Part, and promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement.

(2) The Minister must revoke the notice of suspension or cancellation by another written notice:

(a) given to the appropriate Minister of the State or Territory; and

(b) published in accordance with the regulations.

However, the Environment Minister must not revoke the notice of cancellation after cancellation of the effect of the agreement occurs.

(3) Suspension or cancellation of the effect of the agreement does not occur if the notice of suspension or cancellation is revoked before the suspension or cancellation would otherwise occur.

(4) Suspension of the effect of the agreement ends when the notice of suspension is revoked.

63 Cancellation or suspension at request of other party

Minister must give notice of cancellation or suspension

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

Notice of suspension

(2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of Part 3 is suspended, either generally or in relation to actions in a specified class, for a period:
  (a) starting on a specified day after the day on which the notice is given; and
  (b) ending on a specified later day or on the occurrence of a specified event.

Notice of cancellation

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

Effect suspended or cancelled in accordance with notice

(4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of Part 3, either generally or in relation to actions in a specified class, in accordance with the notice.

Publishing notice and reasons

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

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

Application

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

Actions approved in specified manner may be taken

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

Subdivision B—Expiry of bilateral agreements

65 Expiry of bilateral agreements

A bilateral agreement ceases to have effect for the purposes of this Act at the time when the agreement provides for it to cease to so have effect.

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

65A Expiry of bilateral agreement does not affect certain actions

Application of subsection (2)

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

Actions already approved may be taken

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

Division 4—Other provisions relating to bilateral agreements

65B Exclusion determination

(1) A bilateral agreement that includes the declaration mentioned in subsection 46(1) in relation to actions in a class of actions:

(a) must include provisions that authorise the Minister to determine, in writing, that a specified action in the class of actions that a person proposes to take is excluded from the agreement; and

(b) may include provisions that authorise the Minister of the State or Territory concerned to make such a determination.

(1A) The bilateral agreement must not include a provision that prevents the Minister from making a determination mentioned in paragraph (1)(a) or limits the circumstances in which such a determination may be made.

(2) If a determination is made in accordance with the provisions, then, for the purposes of this Act, the specified action is taken not to be an action in the class of actions to which the declaration mentioned in subsection 46(1) relates.

Note: The action is also taken to have been referred to the Minister under subsection 68(1) (see section 69A).

(3) As soon as practicable after the determination is made, the Minister must give the following persons a copy of it, together with a written notice that the action is taken to have been referred under section 68:

(a) the person proposing to take the action;

(b) unless the determination was made by a Minister of the State or Territory concerned—the appropriate Minister of the State or Territory concerned.

(4) If the determination was made by a Minister of the State or Territory concerned, that Minister must give the Commonwealth

Minister a copy of the determination as soon as practicable after the determination is made.

65C Review of bilateral agreements

(1) The CEO must arrange for a review of a bilateral agreement to be started:
  (a) within 3 years of the bilateral agreement commencing; and
  (b) within 5 years of the day a report of the previous review was given to the Minister under subsection (3).

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

(2) The persons undertaking a review must give the CEO a report of the review within 6 months of the review starting or within a longer period agreed in writing by the CEO.

(3) The CEO must give a copy of the report of a review to the Minister.

(4) The Minister must publish a copy of the report:
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

65D Assurance reviews into bilateral agreements

(1) The CEO may from time to time cause an authorised officer to conduct an assurance review into a bilateral agreement with a State or self-governing Territory.

(2) The assurance review may cover any or all of the following matters:
  (a) if the bilateral agreement includes a declaration under subsection 46(1):
    (i) whether the conditions in paragraphs 46(3)(d) to (j) continue to be met in relation to any management or authorisation framework accredited for the purposes of the agreement; and

(ii) whether the administration of any such management or authorisation framework is consistent with the framework as accredited;

(b) if the bilateral agreement includes a declaration under subsection 47(1):

(i) whether the conditions in paragraphs 47(2)(a) and (b) continue to be met in relation to the manner of assessment specified in the declaration; and

(ii) whether the administration of the manner of assessment of actions is consistent with the manner as specified in the declaration;

(c) whether the State or Territory is complying with the bilateral agreement;

(d) whether the State or Territory is giving effect to the bilateral agreement in a way that accords with the objects of the Act;

(e) if a matter protected by a provision of Part 3 covered by the bilateral agreement is relevant to Australia's obligations under an international agreement—whether the State or Territory is giving effect to the bilateral agreement in a way that is not inconsistent with those obligations;

(f) any other matter prescribed by the regulations.

(3) Before the assurance review commences, the CEO must give the appropriate Minister of the State or Territory a written notice setting out the matters to be covered by the review.

(4) The CEO must give the Minister a report of the assurance review as soon as possible after conducting the review.

(5) The report of the assurance review may include recommendations in relation to the bilateral agreement to which the review relates.

(6) Without limitation, recommendations under subsection (5) may include a recommendation to the Minister on whether to vary the bilateral agreement or suspend or cancel the effect of the bilateral agreement, either generally or in relation to actions in a specified class or in relation to a specified provision of Part 3.

65E Duty to provide all reasonable facilities and assistance

The appropriate Minister of a State or self-governing Territory that is party to a bilateral agreement into which an assurance review is conducted under subsection 65D(1) must provide the CEO, and any persons assisting the CEO, with all reasonable facilities and assistance necessary for the effective exercise of the CEO's duties in relation to the review.

65F Request for information or documents

If the CEO reasonably believes that a person has information or documents relevant to the subject matter of an assurance review conducted under subsection 65D(1), the CEO may request the person, in writing, to give the CEO any such information or documents (or copies of any such documents).

Section 66

Chapter 4—Environmental assessments and approvals

Part 6—Simplified outline of this Chapter

66 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

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

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

(a) whether his or her approval is needed to take the action; and

(b) how to assess the impacts of the action to be able to make an informed decision whether or not to approve the action.

A proposal to take an action is taken to be referred if a determination is made excluding the action from a class of actions to which a declaration made under section 33, or a bilateral agreement, relates.

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

(d) preliminary documentation provided by the proponent; or

(e) a streamlined assessment; 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.

If approval of the taking of an action is dealt with in another way under this Act (for example, under a bilateral agreement or in a bioregional plan), then generally the action cannot be referred for assessment and approval under Parts 7 to 9 of this Chapter.

Part 7—Deciding whether approval of actions is needed

Division 1—Referral of proposals to take action

67 What is a *controlled action*?

An action that a person proposes to take is a ***controlled action*** if the taking of the action by the person without approval under Part 9 for the purposes of a provision of Part 3 would be (or would, but for section 25AA or 28AB, or but for a determination made under section 79E, be) prohibited by the provision. The provision is a ***controlling provision*** for the action.

67A Prohibition on taking controlled action without approval etc.

A person must not take a controlled action, unless:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the relevant provision of Part 3; or

(b) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

(c) the action is an action to which subsection 74AA(1) does not apply because of subsection 74AA(2), (2A), (2C) or (2D).

Note: A person can be restrained from contravening this section by an injunction under section 475.

68 Referral by person proposing to take action

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

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

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

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

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

(6) This section is affected by section 68A.

68A Actions proposed to be taken under a contract etc.

(1) This section applies in relation to an action that is proposed to be taken under a contract or an agreement, arrangement or understanding, other than:

(a) a subcontract; or

(b) an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding.

Note: A person proposing to take an action under a subcontract, or an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding, is not required or permitted to refer the proposal to take the action to the Minister under section 68.

(2) For the purposes of section 68 including as it applies because of section 69A and subject to subsection (3), a reference to, or relating to, a person proposing to take the action is a reference to, or relating to, any of the following persons:

(a) a party to the contract, agreement, arrangement or understanding for whose benefit the action is proposed to be taken;

(b) a person who:

(i) requested or procured, or proposes to request or procure, the creation of the contract, agreement, arrangement or understanding; and

(ii) is to be responsible for controlling and directing the taking of the proposed action.

(3) If a person (the ***first person***) referred to in paragraph (2)(a) or (b) refers a proposal to take the action to the Minister under section 68:

(a) no other person is required or permitted to refer a proposal to take the action to the Minister under section 68; and

(b) for the purposes of this Chapter, a reference to, or relating to, the person proposing to take the action is a reference to, or relating to, the first person.

(4) For the purposes of this section, a reference to a contract or subcontract or an agreement, arrangement or understanding includes a reference to a proposed contract, proposed subcontract, proposed agreement, proposed arrangement or proposed understanding.

(5) Nothing in this section is intended to affect the capacity of a person to refer a proposal to take an action to the Minister under subsection 68(1) or (2) on behalf of the person proposing to take the action.

69 State or Territory may refer proposal to Minister

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

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

Note: Section 68 applies instead.

69A Deemed referral of proposal to take action covered by exclusion determination

(1) A person proposing to take an action is taken to have referred the proposal to the Minister under subsection 68(1) if:

(a) the action is specified in a determination made under section 36B; or

(b) the action is specified in a determination made in accordance with a bilateral agreement as mentioned in section 65B.

(2) The referral is taken to have been made at the time the determination is made.

(3) Subsection 68(3) and section 72 do not apply to the referral.

(4) Section 74 applies to the referral as if subsections 74(3), (3A) and (3B) were replaced with subsections (5) and (6) of this section.

(5) As soon as practicable after the determination is made, the Minister must publish a copy of the determination, together with a statement that the action specified in the determination is taken to have been referred to the Minister under section 68:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

Note: If the action is also the subject of a permit application under section 200, 215, 237 or 257 and the application is made at or around the same time as a referral is taken to have been made under section 69A, the determination and invitation for comments that must be published under this subsection may be published together with the application and invitation for comments that must be published under section 200, 215, 237 or 257.

(6) The Minister may publish, together with the determination, an invitation for anyone to give the Minister comments, within 10 business days (measured in Canberra), on whether the action is a controlled action.

70 Minister may request referral of proposal

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

(a) the person; or

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

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

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

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

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

Deemed referral of proposal

(3) If:

(a) the Minister has made a request under subsection (1); and

(b) the period for compliance with the request has ended; and

(c) the requested person has not referred the proposal to the Minister in accordance with the request;

the Minister may, within 20 business days after the end of that period, determine in writing that this Act has effect as if:

(d) if paragraph (1)(a) applies—the requested person had referred the proposal to the Minister under subsection 68(1) at the time the determination was made; or

(e) if paragraph (1)(b) applies—the requested person had referred the proposal to the Minister under subsection 69(1) at the time the determination was made.

(4) A determination under subsection (3) has effect accordingly.

(5) A copy of a determination under subsection (3) is to be given to the requested person.

(6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.

(8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

71 Commonwealth agency may refer proposal to Minister

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

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

Note: Section 68 applies instead.

71A Relationship of Part 7 referrals to other authorisations

(1) A person must not refer a proposal to take an action to the Minister for the Minister's decision whether or not the action is a controlled action at a time when an alternate pathway applies to the action.

(2) If, at a time when no alternate pathway applies to an action, a proposal to take the action is referred to the Minister under this

Part, then, regardless of whether an alternate pathway starts to apply, or starts to apply again, to the action:

(a) this Chapter continues to apply in relation to the action; and

(b) the action is taken not to be an action to which the alternate pathway applies.

(3) Despite paragraph (2)(b), if a person withdraws the referral of the proposal to take the action under section 170C, the action is, from that time, taken to be, or taken to be again, an action to which the alternate pathway applies.

Alternate pathway—Chapter 3 declaration

(4) If:

(a) an action is in a class of actions specified in a declaration made under section 33 or 36H not to require approval under Part 9 for the purposes of any of the provisions of Part 3; and

(b) the declaration is in operation in relation to the class of actions; and

(c) the action is not specified in a determination under section 36B(exclusion determination);

then an ***alternate pathway***, which is the provisions of this Act that apply in relation to such a declaration, applies to the action.

Note: For paragraph (b), a declaration is not in operation in relation to a class of actions if, for example, the declaration is suspended either wholly or in relation to the class of actions.

(5) If:

(a) an action is in a class of actions specified in a declaration included in a bilateral agreement in accordance with section 46 not to require approval under Part 9 for the purposes of any of the provisions of Part 3, other than sections 24D and 24E; and

(aa) the action is not an action mentioned in section 24D or 24E; and

(b) the bilateral agreement is in operation in relation to the declaration and the class of actions; and

(c) the action is not specified in a determination under section 65B (exclusion determination);

then an ***alternate pathway***, which is the provisions of this Act that apply in relation to a bilateral agreement that includes such a declaration, applies to the action.

Note: For paragraph (b), a bilateral agreement is not operation in relation to a declaration and a class of actions if, for example, the provision of the agreement making the declaration is suspended.

(6) However, the alternate pathway in subsection (4) or (5) does not apply to an action (the ***larger action***) that a person proposes to take if a declaration mentioned in that subsection is in force that covers a component of the larger action but the larger action itself is not covered by such a declaration that is in force.

Alternate pathway—action covered by Part 10 approval

(7) If subsection 146D(2) applies in relation to an action, then an ***alternate pathway***, which is the provisions of this Act that apply in relation to actions to which an approval under section 146B applies, applies to the action.

Note: If a determination is in force under section 146N (action that is component of larger action) or 146P (exclusion determination) in relation to an action, then subsection 146D(2) does not apply and the action may be referred.

Restricted action in conservation zone

(8) If:

(a) an action is taken in a conservation zone specified in a bioregional plan; and

(b) the action is a restricted action for the bioregional plan; and

(c) subsection 177CC(1) applies to the action taken by the person;

then an ***alternate pathway***, which is the provisions of this Act that apply in relation to restricted actions taken in a conservation zone specified in a bioregional plan, applies to the action.

Priority action in bioregional plan

(9) If:

(a) an action is taken in a development zone specified in a bioregional plan; and

(b) the action is a priority action that can be taken in the development zone;

then an ***alternate pathway***, which is the provisions of this Act that apply in relation to priority actions taken in a development zone specified in a bioregional plan, applies to the action.

Note: If a determination under subsection 177CE(1) or 177CF(1) provides that an action is taken not to be a priority action, this subsection does not apply and the action may be referred.

72 Form and content of referrals

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

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

(3) A referral of a proposal to take an action may include alternative proposals relating to any of the following:

(a) the location where the action is to be taken;

(b) the time frames within which the action is to be taken;

(c) the activities that are to be carried out in taking the action.

(4) The referral may (but need not) include the greenhouse gas emissions information for the action.

73 Informing person proposing to take action of referral

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

(a) inform the person of the referral; and

(b) invite the person to give the Minister relevant information about whether the action is a controlled action, within 10 business days.

73A Informing Great Barrier Reef Marine Park Authority of proposal affecting Great Barrier Reef Marine Park

If:

(a) a proposal to take an action is referred to the Minister; and

(b) the action, or a component of the action, is to be taken in the Great Barrier Reef Marine Park;

the Minister must, as soon as practicable after receiving the referral, give a copy of the referral to the Great Barrier Reef Marine Park Authority.

74 Inviting provision of information on referred proposal

Inviting other Commonwealth Ministers to provide information

(1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the ***Environment Minister***) may:

(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and

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

Inviting comments from the Australian Heritage Council

(1A) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 15B or 15C could be a controlling provision for the proposed action because of National Heritage values of a National Heritage place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Note: Sections 15B and 15C protect the National Heritage values of National Heritage places.

(1B) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 23, 24A, 24B, 24C, 26, 27A, 27B, 27C or 28 could be a controlling provision for the proposed action because of heritage values of a place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Note: Sections 23, 24A, 24B, 24C, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of ***environment*** in section 528.

Inviting comments from appropriate State or Territory Minister

(2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister may, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):

(a) inform the appropriate Minister of the State or Territory; and

(b) invite that Minister to give the Environment Minister within 10 business days:

(i) comments on whether the proposed action is a controlled action; and

(ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

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

Inviting public comment

(3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the internet:

(a) the referral; and
(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Non-disclosure of commercial-in-confidence information

(3A) The Environment Minister may refuse to cause to be published on the internet, under subsection (3), so much of the information included in a referral as the Minister is satisfied is commercial-in-confidence.

(3B) The Environment Minister must not be satisfied that particular information included in a referral is commercial-in-confidence unless a person demonstrates to the Minister that:
(a) release of the information would cause competitive detriment to the person; and
(b) the information is not in the public domain; and
(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
(d) the information is not readily discoverable.

74A Minister may request referral of a larger action

(1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.

(2) If the Minister decides to not accept a referral under subsection (1), the Minister:
(a) must give written notice of the decision to the person who referred the proposal to the Minister; and
(b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and

(c) may, under section 70, request of the person proposing to take the action that was the subject of the referral, that they refer the proposal, to take the larger action, to the Minister.

(3) To avoid doubt, sections 73 and 74 do not apply to a referral that has not been accepted in accordance with subsection (1).

(4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:
(a) give written notice of the decision to the person who referred the proposal to the Minister;
(b) publish in accordance with the regulations (if any), a copy or summary of the decision.

74AA Offence of taking action before decision made in relation to referral etc.

Referral made: taking action while decision making process still going on

(1) A person commits an offence if:
(a) the person takes an action; and
(b) any of the following circumstances exist:
(i) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68 (other than a proposal that is taken to have been referred because of section 69A);
(ii) the person has been notified under subsection 36B(3) or 65B(3) that a proposal to take the action (or a larger action of which the action is a component) is taken to have been referred to the Minister under section 68;
(iii) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister under section 69 or 71 and the person has been informed of the referral under section 73; and
(c) the referral has not been withdrawn under section 170C; and

(d) the Minister has not decided under subsection 74A(1) not to accept the referral; and

(e) provisions of this Chapter are not stopped by Division 1A from applying in relation to the referral; and

(f) provisions of this Chapter are not stopped by section 155 from applying because of the referral in relation to the action (or a larger action of which the action is a component); and

(g) no decision that the action (or a larger action of which the action is a component) is not a controlled action is in operation under section 75 in relation to the referral; and

(ga) either:

(i) no determination that the action may continue to be taken is in force under section 79E; or

(ii) such a determination is in force, but the action has been taken otherwise than in accordance with one or more of the conditions (if any) specified in the determination; and

(h) no decision is in operation under Part 9 in relation to the referral approving, or not approving, the taking of the action (or a larger action of which the action is a component).

Penalty: 500 penalty units.

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

Defences

(2) Subsection (1) does not apply to the taking of the action by the person if:

(a) the taking of the action is reasonably necessary in order to comply with a requirement or request made under this Part or Part 8 or 9 in relation to the action (or a larger action of which the action is a component); and

(b) before taking the action, the person gave the Minister written notice of the taking of the action; and

(c) the notice was given in accordance with any applicable requirements of the regulations.

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

(2A) Subsection (1) does not apply to the taking of the action by the person if:

(a) the action is a minor or preparatory component of a larger action; and

(b) the person has obtained the Minister's written agreement, in accordance with any regulations prescribed for the purposes of this paragraph, to take the action.

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

Note 2: This means that subsection (1) does not prohibit the person from taking a minor or preparatory action that is a component of a larger action that has been referred.

(2B) Regulations prescribed for the purposes of paragraph (2A)(b) may make provision for and in relation to the following:

(a) applications to the Minister for agreement to take an action;

(b) matters the Minister is to be satisfied of or have regard to in deciding whether to agree;

(c) notice and publication of the Minister's decision;

(d) when the Minister's decision has effect.

(2C) Subsection (1) does not apply to the taking of the action by the person if a decision approving the taking of the action is in operation under Part 9.

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

Note 2: This means that subsection (1) does not prohibit the person from taking an approved action that is a component of a larger action that has been referred.

(2D) Subsection (1) does not apply to the taking of the action by the person if:

(a) a decision that the action is not a controlled action is in operation under section 75; and

(b) if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner.

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

Note 2: This means that subsection (1) does not prohibit the person from taking an action that the Minister has decided is not a controlled action even if the action is a component of a larger action that has been referred.

Referral requested: taking action before requested referral is made

(3) A person commits an offence if:

(a) the person takes an action; and

(b) the Minister, under section 70, has requested the referral by the person of a proposal to take the action (or a larger action of which the action is a component) to the Minister; and

(c) the request has not been revoked; and

(d) the referral has not been made.

Penalty: 500 penalty units.

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

Division 1A—Decision that action is clearly unacceptable

74B Application of this Division

(1) This Division applies to the referral of a proposal to take an action if, within 20 business days after the Minister receives the referral:

(a) the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and

(b) the Minister decides that this Division should apply to the referral.

Note: See the definition of ***unacceptable impacts*** in section 527F.

(2) If this Division applies to a referral, any other provisions of this Chapter that would, apart from this subsection, have applied to the referral cease to apply to the referral.

(3) Subsection (2) has effect subject to paragraph 74D(6)(a).

74C Informing person proposing to take action that action is clearly unacceptable

(1) As soon as practicable after making the decision under paragraph 74B(1)(b) in relation to a referral, the Minister must give written notice of the decision to:

(a) the person proposing to take the action that is the subject of the referral; and

(b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action that is the subject of the referral).

(2) The notice must:

(a) state that the Minister considers that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and

(b) set out the reasons for the Minister's decision.

Note: See the definition of ***unacceptable impacts*** in section 527F.

(3) After receiving the notice under subsection (1), the person proposing to take the action may:

(a) withdraw the referral and take no further action in relation to the proposed action; or

(b) withdraw the referral and refer a new proposal to take a modified action to the Minister in accordance with Division 1; or

(c) request the Minister, in writing, to reconsider the referral.

Note 1: Section 170C sets out the procedure for withdrawing a referral.

Note 2: A referral of a proposal to take a modified action will be a new referral for the purposes of this Chapter.

74D Procedure if Minister is requested to reconsider referral

(1) This section applies if the Minister receives a request under paragraph 74C(3)(c) to reconsider a referral.

Inviting public comment

(2) The Minister must, within 10 business days after receiving the request, publish on the internet:

(a) a notice stating that the Minister proposes not to approve the taking of the action that is the subject of the referral; and

(b) the reasons for the Minister's decision; and

(c) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing on:

(i) the impacts that the action would have on a matter protected by a provision of Part 3; and

(ii) the Minister's proposal to refuse to approve the taking of the action.

Report about relevant impacts of action

(3) Within 10 business days after the end of the period for comment under paragraph (2)(c), the Secretary must:

(a) prepare a written report about the relevant impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3; and

(b) give the Minister:

(i) the report; and

(ii) a copy of any comments received by the Secretary within the period for comment.

In preparing the report, the Secretary must have regard to the comments referred to in subparagraph (b)(ii).

Decision following reconsideration

(4) Within 20 business days after receiving the report under subsection (3), the Minister must:

(a) if the Minister still considers that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3—decide to refuse to approve the taking of the action; or

(b) decide that the referral is to be dealt with under the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral.

Note: See the definition of ***unacceptable impacts*** in section 527F.

(5) If the Minister decides to refuse to approve the taking of the action, the Minister must, within 10 business days after making the decision, give notice of the decision to:

(a) the person proposing to take the action; and

(b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action).

Note: The person proposing to take the action may request reasons for the refusal and the Minister must give them. See section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.

(6) If the Minister makes a decision under paragraph (4)(b):

(a) the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral start to apply to the referral; and

(b) for the purposes of the application of those provisions, a day is not to be counted as a business day if it is:

(i) on or after the day the Minister received the referral; and

(ii) on or before the day the Minister makes the decision under paragraph (4)(b).

Note: If the Minister had already complied with section 74 in relation to the referral before the Minister made the decision under paragraph 74B(1)(b) in relation to the referral, the Minister is not required to comply with section 74 again.

Division 2—Ministerial decision whether action needs approval

75 Does the proposed action need approval?

Is the action a controlled action?

(1) The Minister must decide:

(a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and

(b) which provisions of Part 3 (if any) are controlling provisions for the action.

Note: The Minister may revoke a decision made under subsection (1) about an action and substitute a new decision. See section 78.

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

(1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and

(b) within the period specified in the invitation.

Considerations in decision

(2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:

(a) the Minister must consider all adverse impacts (if any) the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3; and

(b) must not consider any beneficial impacts the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3.

Note: ***Impact*** is defined in section 527E.

(2A) For the purposes of subsection (2), if the provision of Part 3 is subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 24D(3), 24E(3), 26(1) or 27A(1), then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:

(a) has or will have; or

(b) is likely to have;

on the matter.

(2AA) For the purposes of subsection (2), if the provision of Part 3 is subsection 24B(1) or 24C(1) or (3), then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:

(a) has or will have; or

(b) is likely to have;

on the matter.

(2B) Without otherwise limiting any adverse impacts that the Minister must consider under paragraph (2)(a), the Minister must not consider any adverse impacts of any RFA forestry operation to which, under Division 4 of Part 4, Part 3 does not apply.

Designating a proponent of the action

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

Consent to designation

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

Timing of decision and designation

(5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: If the Minister decides, under subsection 75(1), that the action is a controlled action, the Minister must, unless the Minister has requested more information under subsection 76(3) or section 89, decide on the approach to be used for assessment of the relevant impacts of the action on the same day as the Minister makes the decision under subsection 75(1)—see subsection 88(2).

Time does not run while further information being sought

(6) If the Minister has requested more information under subsection 76(1) or (2) for the purposes of making a decision, a day is not to be counted as a business day for the purposes of subsection (5) if it is:
  (a) on or after the day the Minister requested the information; and
  (b) on or before the day on which the Minister receives the last of the information requested.

Running of time may be suspended by agreement

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

75A Action excluded from section 146B approval taken to be national interest proposal

If:

(a) a determination is in force under section 146P in relation to an action (exclusion determination in relation to approval under section 146B); and

(b) the Minister decides that the action is a controlled action;

then, from the time the Minister makes that decision, the Minister is also taken to have made a determination under section 157A that the taking of the action is a national interest proposal.

Note: The national interest proposal determination the Minister is taken to have made is taken to be revoked if the exclusion determination is revoked (see section 146V).

75B Excluded priority action taken to be national interest proposal

If:

(a) a determination is in force under section 177CF in relation to an action (exclusion determination in relation to priority action); and

(b) the Minister decides that the action is a controlled action;

then, from the time the Minister makes that decision, the Minister is also taken to have made a determination under section 157A that the taking of the action is a national interest proposal.

Note: The national interest proposal determination the Minister is taken to have made is taken to be revoked if the exclusion determination is revoked (see section 177CK).

75C Certain restricted actions taken to be national interest proposal

If:

(a) an exemption from the operation of section 177CC in relation to the taking of a restricted action by a person in a conservation zone is in force; and

(b) the exemption was granted on the basis that the Minister was satisfied as mentioned in paragraph 177BV(1)(b)(which deals with the national interest); and

(c) the Minister decides that the restricted action is a controlled action;

the Minister is also taken, from the time the Minister makes that decision, to have made a determination under section 157A that the taking of the restricted action is a national interest proposal.

76 Minister may request more information for making decisions

Information for controlled action and controlling provisions decisions

(1) The Minister may, in writing, request the person proposing to take an action to provide specified further information if the Minister is satisfied that the further information is reasonably necessary in order for the Minister to make an informed decision as to:

(a) whether the action is a controlled action; or

(b) which provisions of Part 3 (if any) are controlling provisions for the action.

(2) Before the Minister makes the decisions under subsection 75(1) in relation to the action, the Minister may request the person proposing to take the action to provide information about whether or not the action is a component of a larger action that is proposed to be taken by the person.

Information for assessment approach decision

(3) The Minister may, in writing, request the person proposing to take an action to provide specified further information if the Minister is satisfied that the further information is reasonably necessary in order for the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action.

(4) Without limiting subsection (3), if the action is to be taken in a State or self-governing Territory, the Minister may request the person proposing to take the action to provide information about:
  (a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and
  (b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.

(5) The Minister may make a request under subsection (3) even if the Minister has not yet made the decisions under subsection 75(1) in relation to the action.

Requests must include reasons

(6) A request made under subsection (1) or (3) must include the Minister's reasons for being satisfied that the further information is reasonably necessary.

Requests must be published

(7) If the Minister makes a request under subsection (1) or (3), the Minister must publish a copy of the request as soon as practicable on the Department's website.

77 Notice and reasons for decision

Giving notice

(1) Within 10 business days after deciding whether an action that is the subject of a proposal referred to the Minister is a controlled action or not, the Minister must:
  (a) give written notice of the decision to:
    (i) the person proposing to take the action; and
    (ii) if the Minister has designated as proponent of the action a person who does not propose to take the action—that person; and
    (iii) if the Minister decided that the action is a controlled action because of Division 1 of Part 3 (which deals with

matters of national environmental significance)—the appropriate Minister of each State or self-governing Territory in which the action is to be taken; and

(b) publish notice of the decision in accordance with the regulations.

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

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

Notice must identify any applicable controlling provisions

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

Notice of decision that action is not a controlled action

(3) If the decision is that the action is not a controlled action, the notice must specify the date that the decision will cease to be in force if subsection 79F(1) applies (lapsing of decision that action is not a controlled action).

Reasons for decision

(4) The Minister must give reasons for the decision to a person who:

(a) has been given the notice; and

(b) within 28 days of being given the notice, has requested the Minister to provide reasons.

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

77A Action to be taken in a particular manner

(1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the ***component decision***) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner, the notice, to be provided under section 77, must set out the component decision, identifying the provision and the manner.

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

(2) A person must not take an action, that is the subject of a notice that includes a particular manner under subsection (1), in a way that is inconsistent with the manner specified in the notice.

Civil penalty:

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

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

Division 3—Reconsideration of decisions

78 Reconsideration of decision

Limited power to vary or substitute decisions

(1) The Minister may revoke a decision (the ***first decision***) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:

(a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3; or

(aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3; or

(b) the following requirements are met:

(i) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77;

(ii) the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or

(d) the Minister is requested under section 79 to reconsider the decision.

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

Note 2: A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (b). See section 78A.

Note 3: If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry out the processes referred to in sections 73 and 74 again before making the new decision.

Note 4: The Minister may also revoke a first decision and substitute a new decision under section 79C (reconsideration of decision that action is not controlled action because taken in particular manner).

Reversing decision that provision of Part 3 is not controlling provision

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

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

(3) The Minister must not revoke the first decision after:

(a) the Minister has granted or refused an approval of the taking of the action; or

(b) the action is taken.

Decision not to be revoked in certain circumstances

(3A) The Minister must not revoke the first decision if:

(a) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77; and

(b) the identified manner included that the action would be taken in accordance with a management arrangement made, approved or administered by the government of a State or self-governing Territory; and

(c) the action is being taken; and

(d) either:

(i) if the Minister is requested under subsection 78A(1) to reconsider the decision—at the time the request is made, the way in which the action is being taken has been ongoing or recurring for at least 5 years; or

(ii) otherwise—the way in which the action is being taken has been ongoing or recurring for at least 5 years.

General effect of change of decision

(4) When the first decision is revoked and a new decision is substituted for it:

(a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and

(b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

Change of designation of proponent

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

Consent to designation

(6) The Minister may designate the other person as proponent of the action only if:

(a) he or she consents to it and the person proposing to take the action agrees to it; or

(b) the other person is the person proposing to take the action.

Effect of change of designated proponent

(7) If the Minister revokes the designation of the first proponent and designates the later proponent:
  (a) the provisions of this Chapter that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent; and
  (b) for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and
  (c) for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

78A Request for reconsideration of decision by person other than State or Territory Minister

(1) A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) (the ***first decision***) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (b).

Note: Section 79 deals with requests for reconsideration by a Minister of a State or self-governing Territory.

(1A) A request made by a person other than the designated proponent must be made within 28 business days after the day the Minister publishes notice of the first decision in accordance with the regulations (see paragraph 77(1)(b)), if the first decision is either of the following:
  (a) a decision under subsection 75(1) that the action is a controlled action;
  (b) a decision under subsection 75(1) as to which provisions of Part 3 are controlling provisions for the action.

(2) A request under subsection (1) is taken not to have been made unless it satisfies the following requirements:
  (a) the request is in writing;

(b) the request sets out which of the matters referred to in paragraphs 78(1)(a) to (b) the request is based on and the basis on which the person thinks the decision should be reconsidered;

(c) for a request made on the basis of the matter referred to in paragraph 78(1)(a)—the Minister is satisfied that the additional requirements in subsection (2A) of this section are met;

(d) for a request made on the basis of the matter referred in paragraph 78(1)(aa)—the Minister is satisfied that the additional requirements in subsection (2B) of this section are met;

(e) for a request made on the basis of the matter referred in paragraph 78(1)(b)—the Minister is satisfied that the request includes information that establishes that the action is not being, or will not be, taken in the manner identified in the first decision.

(2A) For the purposes of paragraph (2)(c), the additional requirements are that:

(a) the request includes substantial new information that demonstrates that the impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3 are, or are likely to be, different from the impacts as assessed for the first decision; and

(b) there is a high degree of certainty associated with the quality and accuracy of the information.

(2B) For the purposes of paragraph (2)(d), the additional requirements are that:

(a) the request includes new information that:

(i) identifies a substantial change in circumstances that was not foreseen at the time of the first decision; and

(ii) sets out satisfactory reasons for the circumstances not being foreseen; and

(iii) demonstrates that, as a result of the identified substantial change in circumstances, the impacts that the

action has or will have, or is likely to have, on a matter protected by a provision of Part 3 are, or are likely to be, different from the impacts as assessed for the first decision; and

(b) there is a high degree of certainty associated with the quality and accuracy of the information.

(2C) For the purposes of subsections (2A) and (2B), information is not new information if the Minister considered it:

(a) in making the first decision; or

(b) in deciding whether to revoke and substitute the first decision on request under subsection (1).

(3) If a request is made under subsection (1) in relation to a decision that an action is a controlled action, or that particular provisions are controlling provisions for an action, then:

(a) if the request is made by the designated proponent of the action—Part 8 ceases to apply in relation to the action until the Minister makes a decision in relation to the request; but

(b) if the request is made by another person—the application of Part 8 in relation to the action is not affected by the making of the request (subject to the outcome of the reconsideration).

(4) If:

(a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and

(b) the Minister confirms the decision that is the subject of the request under subsection (1);

then:

(c) the application of Part 8 in relation to the action resumes (as does any assessment process under that Part that had previously commenced in relation to the action); and

(d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:

(i) on or after the day the Minister received the request; and

(ii) on or before the day the Minister confirms the decision.

78B Minister must inform interested persons of request and invite comments

(1) The Minister (the ***Environment Minister***) must comply with this section if he or she receives a request under section 78A to reconsider a decision made under subsection 75(1) about an action.

Informing designated proponent of request and inviting comments

(2) If the request is made by a person other than the designated proponent of the action, the Environment Minister must:
  (a) inform the designated proponent of the request in accordance with subsection (3); and
  (b) invite the designated proponent to give the Environment Minister, within 10 business days, comments on the request.

(3) For the purpose of paragraph (2)(a), the Environment Minister must inform the designated proponent of the request by giving the designated proponent such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

Inviting other Commonwealth Ministers to provide information

(4) The Environment Minister may:
  (a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the request; and
  (b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (b) is applicable in relation to the action.

Inviting comments from appropriate State or Territory Minister

(5) If the request relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of

Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister may:

(a) inform the appropriate Minister of the State or Territory of the request; and

(b) invite that Minister to give the Environment Minister, within 10 business days:

(i) comments on whether a matter referred to in any of paragraphs 78(1)(a) to (b) is applicable in relation to the action; and

(ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

Note: Subsection (5) also applies in relation to a request that relates to an action that is to be taken in an area offshore from a State or the Northern Territory. See section 157.

Inviting public comment

(6) The Environment Minister must publish on the internet:

(a) the request; and

(b) an invitation for anyone to give the Environment Minister, within 10 business days (measured in Canberra), comments in writing on whether a matter referred to in any of paragraphs 78(1)(a) to (b) is applicable in relation to the action.

78C Minister must reconsider decision and give notice of outcome

Reconsideration of decision

(1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in relation to a request under section 78A to reconsider a decision about an action, the Minister must:

(a) reconsider the decision; and

(b) either:

(i) confirm the decision; or

(ii) revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

(1A) To avoid doubt, the Minister must not revoke the decision if subsection 78(3) or (3A) applies in relation to it.

Notice of outcome of reconsideration

(2) The Minister must give written notice of the outcome of the reconsideration to:

(a) the person who requested the reconsideration; and

(b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and

(c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and

(d) if the reconsideration relates to an action referred to in subsection 78B(5)—the appropriate Minister of the State or Territory.

(3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

Reasons for outcome of reconsideration

(4) The Minister must give reasons for the outcome of the reconsideration to a person who:

(a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and

(b) within 28 days after being given the notice, has requested the Minister to provide reasons.

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

79 Reconsideration of decision on request by a State or Territory

(1) This section applies if the Minister (the ***Environment Minister***) has made a decision under subsection 75(1) about whether a provision of Division 1 of Part 3 is a controlling provision for an action proposed to be taken in a State or a self-governing Territory.

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

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

(2) Within 10 business days after the appropriate Minister of the State or Territory is notified of the decision under subparagraph 77(1)(a)(iii), that Minister may request the Environment Minister to reconsider the Environment Minister's decisions made under subsection 75(1).

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

(a) reconsider the decision; and

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

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

(i) the Minister who requested the reconsideration; and

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

(iii) the designated proponent of the action; and

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

Note: Section 156 sets out rules about time limits.

79A Application for reconsideration of decision that action is not controlled action because taken in particular manner

(1) If:

(a) a decision is in operation under subsection 75(1) that an action a person proposes to take or is taking is not a controlled action because the Minister believes the action will be taken in the manner identified under subsection 77A(1) in the notice given under section 77; and

(b) the person considers the identified manner is no longer appropriate for the action;

the person may apply to the Minister for reconsideration of the decision.

(2) The application must:

(a) be in writing; and

(b) if the person proposes to take the action in a manner different to the identified manner—set out the manner in which the person proposes to take the action; and

(c) include any other information prescribed by the regulations.

79B Minister must inform interested persons of application under section 79A and invite comments

Other Commonwealth Ministers

(1) If the Minister (the ***Environment Minister***) receives an application under section 79A, the Environment Minister may:

(a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the application; and

(b) invite each other Minister informed to give the Environment Minister, within 10 business days, any information the other Minister considers relevant to the reconsideration.

State and Territory Ministers

(2) If the application relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister may:

(a) inform the appropriate Minister of the State or Territory of the application; and

(b) invite that Minister to give the Environment Minister, within 10 business days:

(i) any comments the Minister considers relevant to the reconsideration; and

(ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

Note: Subsection (2) also applies in relation to an application that relates to an action that is to be taken in an area offshore from a State or the Northern Territory. See section 157.

Public

(3) The Environment Minister must publish on the Department's website:

(a) the application; and

(b) an invitation for anyone to give the Environment Minister, within 10 business days, comments in writing on any matters relevant to the reconsideration.

79C Reconsideration of decision on application under section 79A

(1) If the Minister receives an application under section 79A from a person for reconsideration of a decision (the ***first decision***), the Minister must reconsider the first decision and do one of the following:

(a) revoke the first decision and substitute a new decision under subsection 75(1) for the first decision;

(b) refuse the application.

(2) As soon as practicable after either revoking the first decision and substituting a new decision, or refusing the application, the Minister must:

(a) give the person written notice of the Minister's decision; and

(b) if the decision is to revoke the first decision and substitute a new decision—publish a copy of the notice on the Department's website.

(3) A provision of Part 3 letting an action be taken if the Minister has decided that a particular provision (the ***prohibiting provision***) of that Part is not a controlling provision for the action does not prevent the Minister from taking action under subsection (1) to revoke a decision that the prohibiting provision is not a controlling provision for an action and substitute a decision that the prohibiting provision is a controlling provision for the action.

(4) If the first decision is revoked and a new decision substituted for it:
(a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and
(b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

79D Withdrawal of application under section 79A

A person who makes an application under section 79A may, by written notice, withdraw the application at any time before the Minister does one of the things mentioned in paragraph 79C(1)(a) or (b).

79E Determination that certain reconsidered actions may continue to be taken

When determination may be made

(1) If all of the following apply:
(a) the Minister makes a decision (the ***first decision***) under subsection 75(1) that an action that is the subject of a proposal (the ***original proposal***) referred to the Minister is not a controlled action;

(b) the Minister revokes the first decision under subsection 78(1) or 79C(1) and substitutes the first decision with a decision (the ***subsequent decision***) under subsection 75(1) that:
  (i) the action is a controlled action; and
  (ii) one or more provisions of Part 3 are controlling provisions for the action;
(c) the taking of the action commences before the subsequent decision is made;
(d) the Minister is satisfied, based on information before the Minister at the time of making the determination, that allowing the action to continue in accordance with any conditions specified under subsection (2) would not be inconsistent with Australia's obligations under a designated international agreement;

then the Minister may determine, in writing, that the action may continue to be taken.

Note: In some cases the first decision may have been that an action is not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77.

Content of determination

(2) The determination may specify conditions to which the taking of the action is subject.

(3) The Minister must be satisfied that any conditions specified for the purposes of subsection (2) are necessary or convenient for:
  (a) protecting from the action any matter protected by a provision of Part 3 of this Act that the Minister has decided is a controlling provision for the action; or
  (b) repairing or mitigating damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action.

(4) The determination must specify a day on which the determination ceases to be in force.

Note: The determination may cease to be in force earlier than the specified day (see paragraphs (7)(a) to (g)).

(5) The determination must specify a period within which the original proposal may be withdrawn and a new proposal referred.

Note: This period is relevant to the determination continuing despite withdrawal of the original proposal (see paragraph 170C(5)(b)).

Variation of determination

(6) The Minister may, in writing, vary the determination to specify:
(a) different conditions for the purposes of subsection (2); or
(b) a later day for the purposes of subsection (4) or (5).

When determination ceases to be in force

(7) The determination ceases to be in force at the time the first of the following occurs after the determination is made:
(a) the Minister decides under Part 9 whether to approve the taking of the action;
(b) if the Minister accepts a variation of the original proposal under section 156B—the Minister decides under Part 9 whether to approve the taking of the action that is the subject of the varied proposal;
(c) if subsection 170C(5) applies in relation to the determination—the Minister decides under section 75 that the new action referred to in subsection 170C(5) is not a controlled action;
(d) if subsection 170C(5) applies in relation to the determination—the Minister decides under Part 9 whether to approve the taking of the new action referred to in subsection 170C(5);
(e) if subsection 170C(5) applies in relation to the determination and a variation of the proposal to take the new action is accepted by the Minister under section 156B—the Minister decides under section 75 that the action that is the subject of the varied proposal is not a controlled action;

(f) if subsection 170C(5) applies in relation to the determination and a variation of the proposal to take the new action is accepted by the Minister under section 156B—the Minister decides under Part 9 whether to approve the taking of the action that is the subject of the varied proposal;

(g) the end of the day specified in the determination for the purposes of subsection (4).

Notice of making, or varying, determination

(8) Within 10 business days after making a determination under subsection (1), or varying a determination under subsection (6), in relation to the taking of an action, the Minister must give written notice of the making of the determination or variation to:

(a) the person taking the action; and

(b) the designated proponent of the action (if the designated proponent of the action is not the person taking the action).

Publication of determination

(9) The Minister must publish a copy of a determination made under subsection (1), or a variation made under subsection (6), on the Department's website as soon as practicable after giving notice of the determination or variation under subsection (8).

Determination or variation not a legislative instrument

(10) A determination under subsection (1), or a variation under subsection (6), is not a legislative instrument.

Division 4—Lapsing of decision that action is not a controlled action

79F Lapsing of decision that action is not a controlled action

(1) A decision under section 75 that an action is not a controlled action ceases to be in force, on the fifth anniversary of the date of the notice of the decision under section 77, if the taking of the action has not substantially commenced before that anniversary.

(1A) However, if the Minister decides under section 79G to extend the date on which a decision under section 75 ceases to be in force, the references in subsection (1) to the fifth anniversary of the date of the notice of the decision are taken to be references to the date decided by the Minister under section 79G.

(2) Subsection (1) applies regardless of whether the decision was made because the Minister believed the action would be taken in a particular manner.

(3) If a decision under section 75 ceases to be in force because of subsection (1), the action is taken never to have been referred to the Minister.

79G Extending date of lapsing of decision that action is not a controlled action

(1) At least 6 months before the fifth anniversary of the date of a notice given under section 77 (the ***initial notice***) of a decision under section 75 (the ***initial decision***) that an action is not a controlled action, the Minister must give the person to whom the initial notice was given written notice that, if the taking of the action has not substantially commenced before the fifth anniversary, the initial decision will cease to be in force under subsection 79F(1) on that anniversary.

(2) The person may request the Minister to extend the date on which the initial decision will cease to be in force under subsection 79F(1). The request must:
  (a) be in writing; and
  (b) be in the approved form (if any); and
  (c) be accompanied by the following:
    (i) the information or documents (if any) that the approved form specifies are required;
    (ii) the information or documents (if any) prescribed by the regulations.

(3) The request must be made at least 20 business days before the fifth anniversary.

(4) The Minister must make a decision on the request within 20 business days.

(5) The Minister may, if satisfied that it is appropriate to do so, extend the date on which the initial decision will cease to be in force under subsection 79F(1) to a later date specified by the Minister. The later date must not be later than the tenth anniversary of the date of the initial notice.

(6) If the Minister extends the date to a date that is sooner than the tenth anniversary of the date of the initial notice, the Minister may, if the Minister is satisfied that it is appropriate to do so, further extend the date, so long as the later date is not later than the tenth anniversary of the date of the initial notice.

(7) The Minister may further extend the date under subsection (6) on one or more occasions (so long as no further later date is later than the tenth anniversary of the date of the initial notice).

(8) As soon as practicable after the Minister decides a request under subsection (2), or extends a date under subsection (6), the Minister must:
  (a) give the person written notice of the Minister's decision; and
  (b) publish a copy of the decision on the Department's website.

Part 8—Assessing impacts of controlled actions

Division 1—Simplified outline of this Part

80 Simplified outline of this Part

The following is a simplified outline of this Part:

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

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

(a) an accredited assessment process;
(aa) an assessment on preliminary documentation (see Division 4);
(b) a streamlined assessment (see Division 5A);
(c) an environmental impact statement (see Division 6);
(d) a public inquiry (see Division 7).

The Minister may change the chosen approach in certain circumstances.

The designated proponent must provide information about the greenhouse gas emissions for the action.

Division 2—Application and general provisions

81 Application

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

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

(3) This section does not limit section 82.

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

If the Minister has decided the action is a controlled action

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

(a) has or will have; or

(b) is likely to have;

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

If the Minister has not decided whether the action is controlled

(2) If an action is a controlled action or would be apart from Division 1, 2, 3 or 3A of Part 4 (which provide that approval under Part 9 is not needed for an action covered by a bilateral agreement or declaration)—the ***relevant impacts*** of the action are impacts that the action:

(a) has or will have; or

(b) is likely to have;

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

Relationship between subsections (1) and (2)

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

(4) For the purposes of subsections (1) and (2), if subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 24D(3), 24E(3), 26(1) or 27A(1) is, or would be, a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:

(a) has or will have; or

(b) is likely to have;

on the matter.

(5) For the purposes of subsections (1) and (2), if subsection 24B(1) or 24C(1) or (3) is or would be a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:

(a) has or will have; or

(b) is likely to have;

on the matter.

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

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

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

(b) a bilateral agreement between the Commonwealth and the State or Territory declares that actions in a class that includes the action need not be assessed under this Part; and

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

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

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

Note 2A: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the bilateral agreement.

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

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

84 This Part does not apply if action covered by declaration

When this Part does not apply

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

(a) the Minister has declared in writing that actions in a class that includes the action need not be assessed under this Part; and

(b) the declaration is in operation.

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

Declaration

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

Prerequisites for making a declaration

(3) The Minister may make a declaration only if he or she is satisfied that:

(a) assessment of an action in the specified manner will include assessment of the impacts the action:

(i) has or will have; or

(ii) is likely to have;

on each matter protected by a provision of Part 3; and

(b) the specified manner of assessment meets the standards (if any) prescribed by the regulations; and

(c) if the taking of an action assessed in the specified manner must be approved under Part 9, he or she will receive a report including, or accompanied by, enough information about the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purpose of each controlling provision) the taking of the action.

Further requirements for making a declaration

(3A) Sections 34A, 34B, 34BA, 34C, 34D, 34E and 34F apply in relation to the making of a declaration under this section in the same way that they apply to the making of a declaration under section 33.

Specified manner of assessment

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

Publishing declaration

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

Revoking declaration

(6) The Minister may, by instrument in writing published in accordance with the regulations, revoke a declaration.

Minister must not give preference

(7) In making or revoking a declaration relating to an action taken:
   (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
   (b) by a constitutional corporation;

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

84A Greenhouse gas emissions information

(1) The requirements in this Part that relate to giving greenhouse gas emissions information for actions apply regardless of whether the information relates to the relevant impacts of the action.

Greenhouse gas emissions information

(2) The following is the ***greenhouse gas emissions information*** for an action:
   (a) either:
      (i) a reasonable estimate of the likely amount of scope 1 greenhouse gas emissions of the action; or
      (ii) if an amount is prescribed by the regulations for the purposes of this subparagraph and a reasonable estimate of the likely amount of scope 1 greenhouse gas emissions of the action is below the amount—a statement that scope 1 greenhouse gas emissions of the action are below the prescribed amount; and
   (b) either:
      (i) a reasonable estimate of the likely amount of scope 2 greenhouse gas emissions of the action; or
      (ii) if an amount is prescribed by the regulations for the purposes of this subparagraph and a reasonable estimate of the likely amount of scope 2 greenhouse gas emissions of the action is below the amount—a

statement that scope 2 greenhouse gas emissions of the action are below the prescribed amount; and

(c) in relation to emissions for which a reasonable estimate is provided in accordance with subparagraph (a)(i) or (b)(i)—the strategies and measures the designated proponent will implement to manage those emissions; and

(d) how those strategies and measures are consistent with the laws and relevant government policies of the Commonwealth.

Scope 1 greenhouse gas emissions

(3) The release of greenhouse gas into the atmosphere is a ***scope 1 greenhouse gas emission*** of an action if it is a direct result of taking the action.

Scope 2 greenhouse gas emissions

(4) The release of greenhouse gas into the atmosphere is a ***scope 2 greenhouse gas emission*** of an action if it is a direct result of any activity that:

(a) generates electricity, heating, cooling or steam that is used or disposed of by the taking of the action; but

(b) does not form part of the action.

Method for estimating the likely amount of emissions

(5) The regulations may prescribe a method for making a reasonable estimate of the likely amount of a type of emission mentioned in paragraph (2)(a) or (b).

(6) Regulations made for the purposes of subsection (5) may make provision in relation to a matter by applying, adopting, or incorporating, with or without modification, any instrument or other writing as in force from time to time.

(7) Subsection (6) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

(8) The designated proponent of an action must use the prescribed method (if any) in making a reasonable estimate of the likely amount of that type of emission for the action.

84B Designated report writer for recommendation reports

The Minister must, by written instrument, declare that the ***designated report writer*** for recommendation reports under Division 4 (assessment on preliminary documentation), Division 5A (streamlined assessment) or Division 6 (assessment by environmental impact statement) is:

(a) the Secretary; or

(b) the CEO.

Division 3—Decision on assessment approach

Subdivision A—Simplified outline of this Division

85 Simplified outline of this Division

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

(a) an accredited assessment process;
(aa) an assessment on preliminary documentation;
(b) a streamlined assessment;
(c) an environmental impact statement;
(d) a public inquiry.

Subdivision B—Deciding on approach for assessment

87 Minister must decide on approach for assessment

Minister must choose one assessment approach

(1) The Minister must decide which one of the following approaches must be used for assessment of the relevant impacts of an action that the Minister has decided is a controlled action:

(a) assessment by an accredited assessment process;
(b) assessment on preliminary documentation under Division 4;
(c) assessment by streamlined assessment under Division 5A;
(d) assessment by environmental impact statement under Division 6;
(e) assessment by inquiry under Division 7.

Considerations in making choice

(3) In making the decision, the Minister must consider:

(a) information relating to the action given to the Minister in the referral of the proposal to take the action; and

(b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and

(c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and

(d) the matters (if any) prescribed by the regulations; and

(e) the guidelines (if any) published under subsection (6).

Accredited assessment process

(4) The Minister may decide on an assessment by an accredited assessment process only if the Minister is satisfied that:

(a) the process is to be carried out under a law of the Commonwealth, a State or a self-governing Territory; and

(b) the process and the law meet the standards (if any) prescribed by the regulations; and

(c) the process will ensure that the relevant impacts of the action are adequately assessed; and

(d) he or she will receive a report of the outcome of the process that will provide enough information on the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Assessment on preliminary documentation

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

Streamlined assessment

(5A) The Minister may decide on an assessment by streamlined assessment only if the Minister is satisfied (after considering the matters in subsection (3)) that:

(a) the action is not a fossil fuel action; and

(b) the approach will allow the Minister to make an informed decision whether or not to approve under Part 9, for the purposes of each controlling provision, the taking of the action; and

(c) the greenhouse gas emissions information for the action has been provided.

(5B) If the greenhouse gas emissions information for the action is provided for the purposes of paragraph (5A)(c) other than by being included in the referral of the action, the Secretary must publish the information on the Department's website as soon as practicable after it is provided to the Minister.

Guidelines for choosing assessment approach

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

87A Additional considerations and decisions if assessment started under certain management or authorisation frameworks

(1) In making the decision under section 87 in relation to an action, the Minister must also comply with this section if, at a time before the Minister decided the action is a controlled action:

(a) an alternate pathway applied to the action as mentioned in:

(i) subsection 71A(4) (about declarations made under section 33 or 36H); or

(ii) subsection 71A(5) (about bilateral agreements that include a declaration in accordance with section 46); and

(b) an assessment of the relevant impacts of the action had started in accordance with a management or authorisation framework that was:

(i) if the alternate pathway related to a declaration made under section 33—accredited for the purposes of the declaration; or

(ii) if the alternate pathway related to a declaration made under section 36H—specified in the declaration; or

(iii) if the alternate pathway related to a declaration included in a bilateral agreement in accordance with section 46—accredited for the purposes of the bilateral agreement.

Note: An action cannot be referred under Part 7 at a time when an alternate pathway applies to it, but if it ceases to apply, even temporarily, the action may be referred (see sections 69A and 71A).

(2) If the assessment mentioned in paragraph (1)(b) was completed at a time when the alternate pathway applied to the action, then:

(a) the Minister must consider whether the completed assessment should be used for the purposes of this Part; and

(b) if the Minister is satisfied that it should be—the Minister may determine, in writing, that the completed assessment is an assessment for the purposes of this Part.

(3) The Minister must not determine, under paragraph (2)(b), that the completed assessment is an assessment for the purposes of this Part unless the Minister is satisfied that:

(a) the body that carried out the assessment has provided or will provide the Minister with an assessment report; and

(b) the report includes or will include sufficient information to enable the Minister to decide whether to approve the taking of the action for the purposes of each provision of Part 3 that is a controlling provision for the action.

(4) If the assessment mentioned in paragraph (1)(b) was not completed by the time the alternate pathway ceased to apply to the action, then:

(a) the Minister must consider the extent to which the partly completed assessment should be completed under an

approach for assessment set out in this Part and used for the purposes of this Part; and

(b) if the Minister is satisfied that it should be, to any extent—the Minister may determine, in writing, that the partly completed assessment is to be completed using the approach for assessment under this Part that the Minister decides to use; and

(c) if the Minister makes the determination—the determination must specify:

(i) the steps of the partly completed assessment that are to be used for the purposes of the assessment under this Part; and

(ii) the remaining steps to be carried out to complete the partly completed assessment as an assessment under this Part.

(5) A determination made under paragraph (2)(b) or (4)(b) is not a legislative instrument.

88 Timing of decision on assessment approach

Initial decision

(1) The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: Section 156 sets out rules about time limits.

When initial decision must be made

(2) The Minister must make the decision under subsection (1) on the same day as the Minister has decided, under subsection 75(1), that the action is a controlled action, unless the Minister has requested more information under subsection 76(3) or section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.

Time does not run while further information sought

(4) If the Minister has requested more information in relation to the action under subsection 76(1), (2) or (3) or section 89, a day is not to be counted as a business day for the purposes of subsection (1) if it is:

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

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

Running of time may be suspended by agreement

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

89 Minister may request more information for making decision

(1) The Minister may request the designated proponent of an action to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action.

(2) Without limiting subsection (1), if the action is to be taken in a State or self-governing Territory, the Minister may request the designated proponent of the action to provide information about:

(a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and

(b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.

(3) The Minister may make a request in relation to an action under this section even if the Minister has made a request under subsection 76(3) in relation to the action.

(4) A request made under this section must include the Minister's reasons for being satisfied that the further information is reasonably necessary.

(5) If the Minister makes a request under this section, the Minister must publish a copy of the request as soon as practicable on the Department's website.

91 Notice of decision on assessment approach

(1) Within 10 business days after making a decision on the approach to be used for assessment of the relevant impacts of an action, the Minister must:

(a) give written notice of the decision to:

(i) the person proposing to take the action; and

(ia) the designated proponent of the action (if the designated proponent is not the person proposing to take the action); and

(ii) if the action is to be taken in a State or self-governing Territory and a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of the State or Territory; and

(b) publish notice of the decision:

(i) on the Department's website; and

(ii) in accordance with any other requirements prescribed by the regulations.

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

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

(1A) In the written notice of the decision, the Minister must also advise the person proposing to take the action that the person may elect under section 132B to submit an action management plan for approval.

Note: An action management plan is approved after a decision is made approving the taking of the action.

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

(3) If a determination is in force under paragraph 87A(2)(b) or (4)(b) in relation to an assessment started under a management or authorisation framework, the written notice and the published notice must include a copy of the determination.

Subdivision C—Changing assessment approach

92 Changing assessment approach

(1) The Minister may revoke a decision under section 87 (the ***first decision***) on the approach to be used to assess the relevant impacts of an action, and substitute it with another decision (the ***new decision***) under that section on the approach to be used, if:

(a) the first decision is to use an approach specified in an item in column 1 of the table; and

(b) the new decision is to use an approach specified in that item in column 2 of the table.

Note: See subsections (2) and (3) for limitations on the Minister's powers to revoke a first decision.

Changing assessment approach

Item	Column 1: First decision approach	Column 2: Substituted decision approach
1A	assessment on preliminary documentation	(a) environmental impact statement; or (b) inquiry; or (c) accredited assessment process
1	streamlined assessment	(aa) assessment on preliminary documentation; or (a) environmental impact statement; or (b) inquiry; or (c) accredited assessment process
2	by environmental impact	(a) inquiry; or

Changing assessment approach		
Item	**Column 1:** **First decision approach**	**Column 2:** **Substituted decision approach**
	statement	(b) accredited assessment process
3	by accredited assessment process	(a) environmental impact statement; or (b) inquiry

(2) If the first decision is to use the approach of streamlined assessment or environmental impact statement, the Minister must not revoke that decision after the time a recommendation report is given to the Minister under section 95C, 100B or 105.

(3) If the first decision is to use the approach of accredited assessment process, the Minister must not revoke that decision after the time an assessment report is given to the Minister as mentioned in subsection 87(4).

(4) Section 91 does not apply in relation to the new decision. Instead, the Minister must, as soon as practicable after making the new decision:

(a) give written notice of the revocation and the new decision to:

(i) the person proposing to take the action; and

(ii) the designated proponent of the action (if the designated proponent is not the person proposing to take the action); and

(iii) if the action is to be taken in a State or self-governing Territory and a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of the State or Territory; and

(b) publish a copy of the revocation and the new decision:

(i) on the Department's website; and

(ii) in accordance with any other requirements prescribed by the regulations.

(5) From the time the first decision is revoked and substituted with the new decision:

(a) the provisions of this Part that apply in relation to the assessment approach to be used under the first decision cease to apply in relation to the action; and

(b) the provisions of this Part that apply in relation to the assessment approach to be used in the new decision apply instead.

Division 4—Assessment on preliminary documentation

94 Application of this Division

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

95 Direction to publish referral information and invitation to comment—no further information required

(1) This section applies if the Minister was satisfied, at the time of making the decision (the ***assessment approach decision***) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.

(2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:

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

(b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and

(ba) the greenhouse gas emissions information for the action; and

(c) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.

(3) The designated proponent must comply with the direction.

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

(4) A direction given under subsection (2) is not a legislative instrument.

95A Direction to publish referral information and invitation to comment—further information required

(1) This section applies if the Minister was not satisfied, at the time of making the decision (the ***assessment approach decision***) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.

(2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts.

(3) Within 10 business days after receiving the information requested under subsection (2), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:

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

(b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and

(c) specified information relating to the action that was received in response to the Minister's request under subsection (2); and

(ca) the greenhouse gas emissions information for the action; and

(d) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.

(4) The designated proponent must comply with the direction.

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

(5) A direction given under subsection (3) is not a legislative instrument.

95B Procedure after end of period for comment

Procedure if comments are received

(1) If comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as practicable after the end of that period:

(a) prepare a document that:

(i) sets out the information given to the Minister previously in relation to the action, with any changes or additions needed to take account of the comments; and

(ii) contains a summary of the comments received and how those comments have been addressed; and

(b) give the Minister:

(i) a copy of the document prepared under paragraph (a); and

(ii) a copy of the comments received.

(1A) The designated proponent is taken not to have given the Minister the documents referred to in paragraph (1)(b) if the required fee has not been paid.

(2) Within 10 business days after the designated proponent has given the Minister the documents referred to in paragraph (1)(b), the designated proponent must publish, in accordance with the regulations, a copy of the document prepared under paragraph (1)(a).

Procedure if no comments are received

(3) If no comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as

practicable after the end of that period, give the Minister a written statement to that effect.

(3A) The designated proponent is taken not to have given the Minister the statement referred to in subsection (3) if the required fee has not been paid.

(4) Within 10 business days after the designated proponent has given the Minister the statement referred to in subsection (3), the designated proponent must publish, in accordance with the regulations, a copy of the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires.

Copy of greenhouse gas emissions information in either case

(4A) The designated proponent must give the Minister, together with a copy of the documents and comments mentioned in paragraph (1)(b) or the statement mentioned in subsection (3), the greenhouse gas emissions information for the action.

Definition

(5) In this section:

period for comment means the period within which comments may be given under 95(2)(c) or 95A(3)(d), as the case requires.

95C Recommendation report

(1) The designated report writer must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:

(a) whether the taking of the action should be approved under Part 9; and

(b) if approval is recommended, any conditions that should be attached to the approval.

Note: The designated report writer will be either the Secretary or the CEO, depending on the declaration made by the Minister under section 84B.

(2) The recommendation report must be given to the Minister after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires, and before the end of the period applicable under paragraph 130(1B)(ba) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

Division 5A—Streamlined assessment

100A Application

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

100B Recommendation report

(1) The designated report writer must prepare and give to the Minister a recommendation report relating to the action. The report must include recommendations on:

(a) whether the taking of the action should be approved under Part 9 for the purposes of each provision of Part 3 that is a controlling provision for the action; and

(b) if approval is recommended—any conditions that should be attached to the approval.

Note: The designated report writer will be either the Secretary or the CEO, depending on the declaration made by the Minister under section 84B.

(2) The recommendation report must be given to the Minister as soon as practicable after the Minister decides under section 87 that the relevant impacts of the action must be assessed by streamlined assessment.

Division 6—Environmental impact statements

101 Application

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

101A Minister must give designated proponent written guidelines for preparation of draft environmental impact statement

(1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft environmental impact statement about the relevant impacts of the action. The guidelines so given are referred to as the ***EIS guidelines***.

(2) The EIS guidelines must be:

(a) one or more sets of standard guidelines prepared under section 101B that the Minister decides are appropriate for the preparation of the draft statement in relation to the action; or

(b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to the action—tailored guidelines prepared under section 102.

(3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft statement in relation to the action, the Minister must seek to ensure that the draft statement, if prepared in accordance with those guidelines, will:

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

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

Note: Similar considerations apply in relation to tailored guidelines: see subsection 102(2).

(4) The Minister must give the EIS guidelines to the designated proponent:

(a) within 20 business days after the assessment approach decision was made under section 87; or

(b) if the Minister, under section 102, invites a person to comment on a draft of tailored guidelines for the preparation of the draft statement within a specified period—within 20 business days after:

(i) the end of that period; or

(ii) if there is more than one such period, the end of the later or latest of those periods.

(5) The Secretary must, within 10 business days of the day the Minister gave the EIS guidelines to the designated proponent, publish them:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

101B Standard guidelines

(1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft environmental impact statements about the relevant impacts of actions.

Note: See also subsection 101A(3).

(2) A set of standard guidelines must set out requirements for the content and presentation of draft environmental impact statements about the relevant impacts of actions.

(3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:

(a) actions that are proposed to be taken by a specified industry sector; or

(b) actions for which a specified provision of Part 3 is a controlling provision.

(4) A set of standard guidelines made under this section is not a legislative instrument.

102 Tailored guidelines

(1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft environmental impact statement about the relevant impacts of an action if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to that action.

(1A) Tailored guidelines must set out requirements for the content and presentation of the draft statement in relation to the action.

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

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

(b) address any matters specified by the regulations.

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

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

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft statement includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

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

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

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

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

(a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft statement includes information about those other impacts for the purposes of deciding whether to grant the permission.

(4) Division 2 does not limit:

(a) subsection (3) or (3A); or

(b) section 103 so far as it relates to tailored guidelines prepared in reliance on that subsection.

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

(a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and

(b) take account of the comments (if any) received.

(6) Tailored guidelines made under this section are not a legislative instrument.

103 Designated proponent must invite comment on draft environmental impact statement

Designated proponent's obligations

(1) The designated proponent of the action must:

(a) prepare a draft environmental impact statement in accordance with the EIS guidelines about:
(i) the relevant impacts of the action; and
(ii) if the EIS guidelines are tailored guidelines that require the draft statement to include information about other impacts—those other impacts; and
(aa) include in the draft environmental impact statement the greenhouse gas emissions information for the action; and
(ab) give the draft statement to the Minister; and
(b) obtain the Minister's approval for publication of the draft statement; and
(c) publish in accordance with the regulations:
(i) the draft statement; and
(ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft statement or the action within the period specified in the invitation.

Approval of publication of draft statement

(2) The Minister may approve the publication of the draft statement only if the Minister is satisfied that the draft statement:
(a) is in accordance with the EIS guidelines; and
(b) includes the greenhouse gas emissions information for the action.

Period for comment

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

Publishing of notice by Secretary of Minister's approval and designated proponent's invitation

(4) The Secretary must publish notice of the Minister's approval of the publication of the draft statement, and the details of the designated proponent's invitation as mentioned in subparagraph (1)(c)(ii):
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

104 Finalising environmental impact statement

(1) After the end of the period specified in the invitation to comment under section 103, the designated proponent must finalise the draft environmental impact statement.

(2) The finalised statement must:
  (a) take account of any comments received within the period for comment; and
  (b) contain a summary of any such comments and how those comments have been addressed.

(3) As soon as practicable after finalising the draft statement, the designated proponent must give the Minister:
  (a) the finalised statement; and
  (b) either:
    (i) a copy of any comments received within the period for comment; or
    (ii) if no comments were received within that period—a written statement to that effect.

Note: If the designated proponent does not do this within a reasonable time, the Minister may take action under section 155.

(3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.

(4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the Secretary must publish the finalised statement:
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

105 Recommendation report

(1) The designated report writer must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
  (a) whether the taking of the action should be approved under Part 9 for the purposes of each provision of Part 3 that is a controlling provision for the action; and
  (b) if approval is recommended, any conditions that should be attached to the approval.

Note: The designated report writer will be either the Secretary or the CEO, depending on the declaration made by the Minister under section 84B.

(2) The recommendation report must be given to the Minister after the Minister receives the finalised environmental impact statement under section 104 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

Division 7—Inquiries

Subdivision A—Preliminary

106 Simplified outline

The following is a simplified outline of this Division:

> This Division provides for the Minister to appoint commissions to carry out inquiries in a flexible way into the impacts of actions.
>
> Commissioners have powers to call witnesses, obtain documents and inspect places for the purposes of their inquiries.
>
> Commissioners must report to the Minister and publish their reports.

Subdivision B—Establishment of inquiries

107 Appointing commissioners and setting terms of reference

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

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

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

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

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

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

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

(2) If the Minister appoints 2 or more commissioners for an inquiry, the Minister must appoint one of them to preside at the inquiry.

(3) In specifying in the terms of reference the matters relating to the action that are to be the subject of the inquiry and report, the Minister:

(a) must specify the relevant impacts of the action; and

(b) if subsection (4) or (4A) applies—may specify other certain or likely impacts of the action.

(4) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:

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

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the inquiry reports on those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

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

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

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

(4A) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:

(a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the report includes information about those other impacts for the purposes of deciding whether to grant the permission.

(5) The Minister may also specify in the terms of reference the manner in which the commission is to carry out the inquiry.

107A Greenhouse gas disclosure requirements

(1) The designated proponent of the action must give the commission the greenhouse gas emissions information for the action before the end of the period specified for the purposes of subparagraph 107(1)(b)(ii) (the period within which the commission must report to the Minister).

(2) The commission must include the greenhouse gas emissions information in the commission's report to the Minister under section 121.

108 Publicising inquiry

(1) As soon as practicable, the commission must publish in accordance with the regulations and in any other way it thinks fit:
(a) the terms of reference; and
(b) the information relating to the action given to the Minister under this Chapter before the Minister made the decision under Division 3 to use an inquiry to assess the relevant impacts of the action.

(2) The commission need not publish the information described in paragraph (1)(b) if, before the Minister appointed the commission, the designated proponent of the action published a draft statement under section 103 (which deals with draft environmental impact statements). However, in this case the commission must publish as described in subsection (1) notice of the fact that the draft statement has already been published.

Subdivision C—Conduct of inquiries

109 Procedure of inquiries

(1) A commission must comply with the terms of reference in conducting its inquiry.

(2) Subject to this Division, a commission:
  (a) may determine the procedure to be followed in its inquiry; and
  (b) is not subject to any directions by an employee of the Commonwealth or by a Commonwealth agency; and
  (c) is not bound by the rules of evidence.

110 Inquiry to be public

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

(2) The commission must make publicly available (in any way the commission thinks fit) the content of any submission or evidence given to the commission in writing, except so far as the commission directs otherwise.

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

111 Calling witnesses

Summoning witnesses

(1) A commissioner may, by writing signed by the commissioner, summon a person to appear before the commission at a time and

place specified in the summons to give evidence and produce any documents mentioned in the summons.

Failure of witness to attend

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

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

Offence

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

Allowances for witnesses

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

112 Dealing with witnesses

Power to administer oath or affirmation

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

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

Refusal to be sworn or to answer questions

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

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

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

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

Offence

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

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

No privilege against self-incrimination

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

Answers and documents cannot be used in criminal proceedings

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

(a) the answer to the question;

(b) the production of the document;

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

Sworn witnesses may also give written evidence on oath

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

113 Dealing with documents given to commission

Inspecting and copying documents produced or given at inquiry

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

Keeping documents produced or given at inquiry

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

114 Inspections of land, buildings and places

(1) If a commissioner, or a person authorised by a commissioner, enters any land, building or place by consent as described in section 115 or under a warrant issued under section 116, the commissioner or person may:
  (a) inspect the land, building or place; and
  (b) inspect any material on the land, or on or in the building or place.

(2) However, the commissioner or authorised person may not make the inspection if:
  (a) the person occupying or in charge of the land, building or place asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and

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

(3) A person (the ***offender***) commits an offence punishable on conviction by imprisonment for not more than 6 months if:

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

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

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

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

115 Entering premises by consent

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

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

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

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

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

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

116 Entering premises under warrant

(1) A commissioner may apply to a magistrate for a warrant authorising the commissioner or a person authorised by the commissioner to enter any land, building or place if the commissioner has reason to believe that it is necessary or desirable for the purposes of an inquiry for the commissioner or person to enter the land, building or place for the purposes of the inquiry.

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

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

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

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

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

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

117 Warrants by telephone or other electronic means

Application

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

(a) in an urgent case; or

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

Voice communication

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

Information

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

Issue of warrant

(4) The magistrate may complete and sign the same form of warrant that would be issued under section 116 if, after considering the information and having received and considered any further information he or she required, the magistrate is satisfied that:
  (a) a warrant in the terms of the application should be issued urgently; or
  (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Notification

(5) If the magistrate decides to issue the warrant, the magistrate must inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

Form of warrant

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

(7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
  (a) the form of warrant completed by the applicant; and
  (b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

Attachment

(8) The magistrate must attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

Presumption

(9) If:
  (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
  (b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

118 Identity cards

(1) The Minister may cause to be issued to a commissioner or a person authorised by a commissioner an identity card:
  (a) in a form approved by the Minister; and
  (b) containing a recent photograph of the person to whom it is issued.

(2) As soon as practicable after the commission to which the commissioner was appointed has reported to the Minister on its inquiry, the commissioner or authorised person must return his or her identity card to the Minister.

(3) A person must not contravene subsection (2).

Penalty: 1 penalty unit.

119 Contempt

(1) A person commits an offence punishable on conviction by a fine of not more than 30 penalty units if:
  (a) the person insults, disturbs or uses insulting language towards another person; and
  (b) the person knows the other person is a commissioner exercising the powers or performing the functions or duties of a commissioner.

(2) A person commits an offence punishable on conviction by a fine of not more than 30 penalty units if:
  (a) the person creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place; and
  (b) the person knows the place is a place where a commission is holding an inquiry.

(3) A person must not:
  (a) interrupt an inquiry by a commission; or
  (b) do any other act or thing that would, if a commission were a court of record, constitute a contempt of that court.

Penalty: 30 penalty units.

120 Protection of commissioners and witnesses

Protection of commissioners

(1) In performing his or her duties as a commissioner, a commissioner has the same protection and immunity as a Justice of the High Court.

Rights and obligations of witnesses

(2) A person appearing before a commission as a witness at an inquiry:

(a) has the same protection as a witness in proceedings in the High Court; and

(b) is subject to the same liabilities in any civil or criminal proceedings as such a witness (in addition to the penalties provided by this Division).

Interfering with witness is an offence

(3) A person must not:

(a) use violence to or inflict injury on; or

(b) cause or procure violence, damage, loss or disadvantage to; or

(c) cause or procure the punishment of;

another person (the ***witness***) because the witness will appear or did appear as a witness at an inquiry or because of any submission or evidence the witness gave to a commission.

Interference with a witness' employment

(4) An employer must not dismiss an employee, or prejudice an employee in his or her employment, because the employee appeared as a witness or gave any submission or evidence at an inquiry by a commission.

Interference with employee who proposes to give evidence

(5) An employer must not dismiss or threaten to dismiss an employee or prejudice, or threaten to prejudice, an employee in his or her employment, because the employee proposes to appear as a witness or to give a submission or evidence at an inquiry by a commission.

Offences

(6) A person who contravenes subsection (3), (4) or (5) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Burden of proof in proceedings relating to witness

(7) In proceedings arising out of subsection (4), the employer has the burden of proving that the employee was not dismissed or prejudiced because the employee appeared as a witness or gave a submission or evidence at an inquiry by a commission, if it is established that:
  (a) the employee was dismissed from, or prejudiced in, his or her employment; and
  (b) before the employee was dismissed or prejudiced, the employee appeared as a witness, or gave any submission or evidence, at an inquiry by a commission.

Burden of proof in proceedings relating to employee proposing to give evidence

(8) In any proceedings arising out of subsection (5), the employer has the burden of proving that the employee was not dismissed, prejudiced in his or her employment or threatened with dismissal or prejudice because the employee proposed to appear as a witness or give evidence at an inquiry by a commission, if it is established that:
  (a) the employee was dismissed, prejudiced or threatened; and
  (b) the employee made the proposal before the employee was dismissed, prejudiced or threatened.

Relationship of subsections (3), (4) and (5)

(9) Subsections (4) and (5) do not limit subsection (3).

Subdivision D—Inquiry reports

121 Timing of report

The commission must report to the Minister on the inquiry within the period specified by the Minister in the terms of reference.

122 Publication of report

(1) After reporting to the Minister, the commission must publish the report in accordance with the regulations.

(2) However, the commission must not publish the report so far as it sets out any submission or evidence whose publication the commission prohibited or restricted by a direction under paragraph 110(3)(b).

Subdivision E—Commissioners' terms and conditions

123 Basis of appointment

(1) A commissioner is to be appointed on a full-time basis or a part-time basis.

(2) A commissioner appointed on a full-time basis must not engage in paid employment outside the duties of the commissioner's office without the Minister's approval.

(3) A commissioner appointed on a part-time basis must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the commissioner's duties.

124 Remuneration

(1) A commissioner who is not appointed or engaged under the *Public Service Act 1999* is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the commissioner is to be paid the remuneration that is prescribed.

(2) A commissioner is to be paid the allowances that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

125 Leave of absence

(1) A commissioner appointed on a full-time basis has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a commissioner appointed on a full-time basis leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The commissioner (the ***presiding commissioner***) appointed to preside at an inquiry may grant leave of absence to any other commissioner for the inquiry on the terms and conditions that the presiding commissioner determines, if the other commissioner has been appointed on a part-time basis.

126 Resignation

A commissioner may resign his or her appointment by giving the Minister a written resignation.

127 Termination of appointment

(1) The Minister may terminate a commissioner's appointment for misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of a commissioner if:
  (a) the commissioner:
    (i) becomes bankrupt; or
    (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with his or her creditors; or
    (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  (b) the commissioner fails, without reasonable excuse, to comply with section 128 (about disclosure of interests); or

(c) the Minister becomes aware that the commissioner has a pecuniary or other interest in the subject-matter of the inquiry and the Minister considers that the commissioner should not continue to participate in the conduct of the inquiry.

(3) The Minister must terminate the appointment of a commissioner on a full-time basis if:

(a) the commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(b) the commissioner engages, except with the Minister's approval, in paid employment outside the duties of his or her office.

(4) The Minister must terminate the appointment of a commissioner on a part-time basis if:

(a) the commissioner is absent, except on leave of absence, from 3 consecutive meetings of his or her commission (if it consists of 2 or more commissioners); or

(b) the commissioner engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of his or her office.

128 Disclosure of interests

(1) A commissioner must give written notice to the Minister of all direct and indirect pecuniary interests that he or she has or acquires in a business or in a body corporate carrying on a business.

(2) If a commissioner has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties, he or she must:

(a) inform the Minister of the interest; and

(b) ensure that the interest is disclosed in the report of his or her inquiry.

129 Other terms and conditions

A commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Part 9—Approval of actions

Division 1—Decisions on approval and conditions

Subdivision A—General

130 Timing of decision on approval

Basic rule

(1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.

(1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.

(1B) The ***relevant period***, in relation to a controlled action, is as follows:

(a) if the action is the subject of an assessment report and paragraph (b) does not apply—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;

(b) if the Minister has made a determination under paragraph 87A(2)(b) in relation to the action—the period of 40 business days beginning on the first business day after the Minister receives the assessment report;

(ba) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;

(c) if Division 5A of Part 8 (streamlined assessment) applies—the period of 30 business days beginning on the first business day after the day the Minister decides under section 87 that

the relevant impacts of the action must be assessed by streamlined assessment;

(d) if Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised environmental impact statement;

(e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

*What is an **assessment report**?*

(2) An ***assessment report*** is a report given to the Minister as described in:

(a) subsection 47(4) (about assessments under a bilateral agreement); or

(b) subsection 84(3) (about assessments in a manner specified in a declaration); or

(c) subsection 87(4) (about assessments by accredited assessment processes); or

(d) subsection 87A(3) (about assessments under certain management or authorisation frameworks).

Notice of extension of time

(4) If the Minister specifies a longer period for the purposes of subsection (1A), he or she must:

(a) give a copy of the specification to the person proposing to take the action; and

(b) publish the specification in accordance with the regulations.

Time does not run while awaiting advice from Independent Expert Scientific Committee

(4A) If, under section 131AB, the Minister is required to obtain advice from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining

Development before making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:

(a) on or after the day the Minister requested the advice; and

(b) on or before the day on which the Minister obtains the advice.

Time does not run while further information is sought

(5) If, under section 132, the Minister has requested more information for the purposes of making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

131 Inviting comments from other Ministers before decision

(1) Before the Minister (the ***Environment Minister***) decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she may:

(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action of the decision the Environment Minister proposes to make; and

(b) invite the other Minister to give the Environment Minister comments on the proposed decision within 10 business days.

(2) A Minister invited to comment may make comments that:

(a) relate to economic and social matters relating to the action; and

(b) may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

This does not limit the comments such a Minister may give.

131AA Inviting comments before decision from person proposing to take action and designated proponent

(1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:

(a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:

(i) the decision the Minister proposes to make; and

(ii) if the Minister proposes to approve the taking of the action—any conditions the Minister proposes to attach to the approval; and

(b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

(2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):

(a) a copy of whichever of the following documents applies to the action:

(i) an assessment report;

(ii) a recommendation report given to the Minister under section 95C, 100B or 105; and

(b) any information relating to economic and social matters that the Minister has considered; and

(c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and

(d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.

(3) The Minister is not required to provide under subsection (2):

(a) information that is in the public domain; or

(b) a copy of so much of a document as is in the public domain; or

(c) in the case of information referred to in paragraph (2)(b) or (c)—any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.

(4) The Minister must not provide under subsection (2):

(a) a copy of so much of a document as:

(i) is an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or

(ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(ii) the Minister is satisfied contains information that is commercial-in-confidence; or

(b) information that:

(i) is of such a nature that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a)(i); or

(ii) the Minister is satisfied is commercial-in-confidence.

(5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:

(a) release of the information would cause competitive detriment to the person; and

(b) the information is not in the public domain; and

(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information is not readily discoverable.

(6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).

(7) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to:

(a) the Minister's decision under section 133 whether or not to approve, for the purposes of a controlling provision, the taking of the action; and

(b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides, under section 134, to attach conditions to the approval—the Minister's decision under section 134 to attach those conditions to the approval.

131AB Minister must obtain advice from Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development

(1) This section applies if:

(a) the taking of an action, for the purposes of a controlling provision, involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(b) the Minister believes that the taking of the action:

(i) is likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity; and

(ii) may have an adverse impact on a matter protected by a provision of Part 3.

(2) Before the Minister decides whether or not to approve, for the purposes of the controlling provision, the taking of the action, the Minister must obtain the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development.

131A Inviting public comment before decision

Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she may publish on the internet:

(a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and

(b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

132 Requesting further information for approval decision

(1) The Minister may request any of the following persons to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision as to whether or not to approve the taking of an action for the purposes of a controlling provision:

(a) the person proposing to take the action;

(b) the designated proponent of the action;

(c) if a commission has conducted an inquiry under Division 7 of Part 8 relating to the action—the commission;

(d) if:

(i) the action is to be taken in a State or self-governing Territory; and

(ii) a controlling provision for the action is in Division 1 of Part 3 (about matters of national environmental significance); and

(iii) the relevant impacts of the action have been assessed under a law of the State or Territory;

the appropriate Minister of that State or Territory;

(e) any other person the Minister considers appropriate.

(2) A request made under subsection (1) must include the Minister's reasons for being satisfied that the information is reasonably necessary.

(3) If the Minister makes a request under subsection (1), the Minister must publish a copy of the request as soon as practicable on the Department's website.

132A Requesting notice from appropriate State or Territory Minister about certain actions

(1) This section applies to an action that is to be taken in a State or self-governing Territory only if the action:

(a) is to be taken by a person for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(b) is to be taken by a constitutional corporation; or

(c) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: This section also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(2) However, this section does not apply to an action if:

(a) the action:

(i) is a radiological exposure action; or

(ii) is to be taken entirely in a Commonwealth marine area; or

(iii) is to be taken entirely on Commonwealth land; or

(iv) is to be taken by the Commonwealth or a Commonwealth agency; and

(b) the relevant impacts of the action have been assessed under Part 8.

(3) Before the Minister (the ***Environment Minister***) decides whether or not to approve for the purposes of a controlling provision the taking of the action, and what conditions (if any) to attach to an approval, the Environment Minister may request the appropriate Minister of the State or Territory to give the Environment Minister a notice stating the method that has been used to assess the certain and likely impacts of the action on things other than matters protected by the controlling provisions for the action.

132B Election to have an action management plan approved after approval of the taking of an action granted

(1) A person proposing to take an action may, at any time before an approval of the taking of the action is granted under section 133, elect to submit an action management plan for approval.

(2) An election must:
  (a) be in writing; and
  (b) be given to the Minister before the Minister grants an approval under section 133.

(3) If, after making an election, the person (the ***first person***) notifies the Minister under section 156F that another person (the ***second person***) proposes to take the action instead, the second person may revoke the election made by the first person under this section.

(4) An election cannot be revoked once the Minister has granted an approval under section 133.

133 Grant of approval

Approval

(1) After receiving the assessment documentation relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.

(1A) If the referral of the proposal to take the action included alternative proposals relating to any of the matters referred to in subsection 72(3), the Minister may approve, for the purposes of subsection (1), one or more of the alternative proposals in relation to the taking of the action.

Content of approval

(2) An approval must:
  (a) be in writing; and
  (b) specify the action (including any alternative proposals approved under subsection (1A)) that may be taken; and
  (c) name the person to whom the approval is granted; and
  (d) specify each provision of Part 3 for which the approval has effect; and
  (e) specify the period for which the approval has effect; and
  (f) set out the conditions attached to the approval.

Note: The period for which the approval has effect may be extended. See Division 5.

Persons who may take action covered by approval

(2A) An approval granted under this section is an approval of the taking of the action specified in the approval by any of the following persons:
  (a) the holder of the approval;
  (b) a person who is authorised, permitted or requested by the holder of the approval, or by another person with the consent or agreement of the holder of the approval, to take the action.

Notice of approval

(3) The Minister must:
  (a) give a copy of the approval to the person named in the approval under paragraph 133(2)(c); and

(b) provide a copy of the approval to a person who asks for it (either free or for a reasonable charge determined by the Minister).

Limit on publication of approval

(4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

Notice of refusal of approval

(7) If the Minister refuses to approve for the purposes of a controlling provision the taking of an action by the person who proposed to take the action, the Minister must give the person notice of the refusal.

Note: Under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, the person may request reasons for the refusal, and the Minister must give them.

Publication of reasons for decision on national interest proposal

(7A) If the taking of the action is a national interest proposal, the Minister must, as soon as practicable, publish on the Department's website the Minister's reasons for the decision to approve or not to approve the taking of the action.

(7B) However, the Minister must not publish under subsection (7A) so much of the reasons as:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

Definition

(8) In this section:

assessment documentation, in relation to a controlled action, means:

(a) if the action is the subject of an assessment report—that report; or

(c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

(i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and

(ii) the recommendation report relating to the action given to the Minister under section 95C; or

(da) if Division 5A of Part 8 (streamlined assessment) applies to the action:

(i) the referral of the proposal to take the action; and

(ii) the information provided in response to any request for further information made under section 76 or 89; and

(iii) the greenhouse gas emissions information for the action (if not covered by subparagraph (i) or (ii)); and

(iv) the recommendation report given to the Minister under section 100B; or

(e) if Division 6 of Part 8 (environmental impact statements) applies to the action:

(i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and

(ii) the recommendation report relating to the action given to the Minister under section 105.

134 Conditions of approval

Condition to inform persons taking action of conditions attached to approval

(1A) An approval of the taking of an action by a person (the ***first person***) is subject to the condition that, if the first person authorises, permits or requests another person to undertake any part of the action, the first person must take all reasonable steps to ensure:

(a) that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and

(b) that the other person complies with any such condition.

For the purposes of this Chapter, the condition imposed by this subsection is attached to the approval.

Generally

(1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:

(a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or

(b) mitigating, repairing or compensating for damage to a matter protected by a provision of Part 3 for which the approval has

effect (whether or not the damage has been, will be or is likely to be caused by the action).

Conditions to protect matters from the approved action

(2) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:

(a) protecting from the action any matter protected by a provision of Part 3 for which the approval has effect; or

(b) mitigating, repairing or compensating for damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 for which the approval has effect.

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

(3) The conditions that may be attached to an approval include:

(aa) conditions requiring specified activities to be undertaken for:

(i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or

(ii) mitigating, repairing or compensating for damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage may or will be, or has been, caused by the action); and

(ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and

(ac) conditions requiring the holder of the approval to pay a restoration contribution charge in relation to a residual significant impact of the action; and

(a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:

(i) to comply with this Act and the regulations; and

(ii) not to contravene a condition attached to the approval; and

(iii) to meet any liability of a person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and

(b) conditions requiring the holder of the approval to insure against any specified liability of the holder to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and

(c) conditions requiring a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and

(d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the action is approved; and

(e) if an election has been made, or is taken to have been made, under section 132B in respect of the approval—conditions requiring:

(i) an action management plan to be submitted to the Minister for approval, accompanied by the fee (if any) prescribed by the regulations; and

(ii) implementation of the plan so approved; and

(f) conditions requiring specified environmental monitoring or testing to be carried out; and

(g) conditions requiring compliance with a specified industry standard or code of practice; and

(h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

This subsection does not limit the kinds of conditions that may be attached to an approval.

Note: Paragraph (e)—an election is taken to have been made if an approval is varied to add a condition requiring an action management plan, see subsection 143(1A).

Conditions that must not be attached

(3AA) Despite paragraphs (1)(b) and (2)(b), the Minister must not attach a condition to the approval for the purposes of compensating for damage that will or may be caused by an unacceptable impact on a matter protected by a provision of Part 3 for which the approval has effect (except so far as allowed by subsection (3AB)).

Note: See the definition of ***unacceptable impacts*** in section 527F.

(3AB) The Minister may attach a condition to the approval for the purposes of compensating for damage that will or may be caused by an unacceptable impact if:

(a) the taking of the action is a national interest proposal to which the exception in subsection 136B(2) applies; and

(b) the Minister is satisfied that the condition would assist in mitigating or repairing damage as mentioned in paragraph 136B(3)(b).

(3AC) Despite paragraphs (1)(b) and (2)(b), the Minister must not attach a condition mentioned in paragraph (3F)(a) or (b) to the approval of the action in relation to a matter prescribed by the regulations for the purposes of this subsection.

(3AD) Despite paragraphs (1)(b) and (2)(b), the Minister must not attach a condition to the approval requiring the holder of the approval to pay a restoration contribution charge in relation to a residual significant impact that the action has, will have or likely to have on a matter protected by a provision of Part 3 for which the approval has effect if the matter is declared in a legislative instrument under section 134AA.

Certain conditions require consent of holder of approval

(3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:

(a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;

(b) a condition referred to in paragraph (3)(ab);

(c) a condition referred to in paragraph (3)(ac).

(3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:

(a) the holder cannot withdraw that consent after the condition has been attached to the approval; and

(b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition, and cannot withdraw that consent.

Conditions attached under paragraph (3)(c)

(3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time;

even if the instrument does not yet exist at the time the approval takes effect.

Conditions attached under paragraph (3)(e)

(3D) When making a decision whether to approve an action management plan, if the Minister believes on reasonable grounds that the Minister does not have enough information to make a decision, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

Conditions compensating for damage to ecological character of declared Ramsar wetland

(3E) A condition attached to an approval for the purposes of compensating for damage to the ecological character of a declared Ramsar wetland is not required to compensate for damage to the particular component of the ecological character that has been, is being or is likely to be damaged.

Conditions relating to residual significant impacts

(3F) In deciding whether to attach a condition to an approval of an action requiring:

(a) compensation for damage that may or will be, or has been, caused by a residual significant impact of the action on a matter protected by a provision of Part 3 for which the approval has effect; or

(b) payment of a restoration contribution charge in relation to a residual significant impact of the action on a matter protected by a provision of Part 3 for which the approval has effect;

the Minister must consider whether the designated proponent of the action has taken appropriate measures (including through the location or design of the action) to avoid, mitigate or repair the impact or damage.

(3G) In considering whether appropriate measures have been taken, the Minister may have regard to:

(a) the action as a whole; and

(b) any other impact the action will have, or is likely to have, on a matter protected by a provision of Part 3; and

(c) any other matter the Minister considers relevant.

Considerations in deciding on condition

(4) In deciding whether to attach a condition to an approval, the Minister must consider:

(a) any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a

State or self-governing Territory or another law of the Commonwealth on the taking of the action; and

(aa) information provided by the person proposing to take the action or by the designated proponent of the action; and

(b) the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition.

Effect of conditions requiring compliance with conditions specified in another instrument

(4A) If:

(a) a condition (the ***principal condition***) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the ***other conditions***) specified in an instrument of a kind referred to in that paragraph; and

(b) the other conditions are in excess of the power conferred by subsection (1);

the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.

Validity of decision

(5) A failure to consider information as required by paragraph (4)(aa) does not invalidate a decision about attaching a condition to the approval.

134AA Declaration of protected matters for which a restoration contributions charge condition must not be attached

(1) The Minister may, by legislative instrument, declare a matter protected by a provision of Part 3 for the purposes of subsection 134(3AD).

(2) If the Minister:

(a) makes a protection statement that includes information that payment of a restoration contribution charge should not be available in relation to a residual significant impact that the action has, will have or is likely to have on a listed threatened species or listed threatened community or part of a species or community; or

(b) varies a protection statement to include that information for a species or community or part of a species or community;

the Minister must declare the species or community or the part of the species or community under subsection (1).

Note 1: See paragraph 298B(2)(ca) in relation to information in protection statements about payment of restoration contribution charge.

Note 2: Listed threatened species and listed threatened ecological communities are matters protected by provisions of Part 3 (see Subdivision C of that Part).

(3) Before making or varying a legislative instrument under subsection (1), the Minister:

(a) must consult with:

(i) the Restoration Contributions Holder and the Restoration Contributions Advisory Committee; and

(ii) the Threatened Species Scientific Committee established by section 502

(b) may consult with:

(i) any other committee established under Part 19; or

(ii) the Australian Heritage Council; and

(c) must have regard to any advice received as a result of those consultations.

(4) Subsection (3) does not apply if the Minister is required by subsection (2) to declare a matter.

(5) The Minister must notify the Restoration Contributions Holder and the Restoration Contributions Advisory Committee and the Threatened Species Scientific Committee if the Minister makes or varies a legislative instrument under subsection (1).

134A Inviting public comment before approving action management plan

(1) Before approving an action management plan, the Minister may publish:
  (a) the plan; and
  (b) an invitation for anyone to give the Minister, within 11 business days, written comments on the plan.

(2) The regulations may provide for requirements relating to the way the Minister must publish the plan and invitation to comment.

135 Certain approvals and conditions must not give preference

(1) This section deals with the approval:
  (a) for the purposes of section 21 or 22A of a radiological exposure action:
    (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
    (ii) by a constitutional corporation; or
  (b) for the purposes of section 25 of an action that is prescribed for the purposes of subsection 25(1) and is taken:
    (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
    (ii) by a constitutional corporation.

(2) The Minister must not grant the approval, or attach a condition to the approval, that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

135A Publication of recommendation reports

(1) This section applies in relation to a recommendation report given to the Minister under section 95C, 100B or 105.

(2) The Secretary must publish the recommendation report:
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

(3) The Secretary is not required to publish the recommendation report until after the Minister has decided, for the purposes of each controlling provision, whether or not to approve the taking of the action concerned.

(4) Despite subsection (2), the Secretary is not required to publish so much of the report as:
  (a) is:
    (i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
    (ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
  (b) the Secretary is satisfied is commercial-in-confidence.

(5) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
  (a) release of the information in that part would cause competitive detriment to the person; and
  (b) the information in that part is not in the public domain; and
  (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  (d) the information in that part is not readily discoverable.

Subdivision B—Considerations for approvals and conditions

136 General considerations

Mandatory considerations

(1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:

(a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action;

(b) economic and social matters.

Factors to be taken into account

(2) In considering those matters, the Minister must take into account:

(a) the principles of ecologically sustainable development; and

(b) the assessment report (if any) relating to the action; and

(bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

(i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and

(ii) the recommendation report relating to the action given to the Minister under section 95C; and

(bd) if Division 5A of Part 8 (streamlined assessment) applies to the action:

(i) the referral of the proposal to take the action; and

(ii) the information provided in response to any request for further information made under section 76 or 89; and

(iii) the recommendation report given to the Minister under section 100B; and

(ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:

(i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and

(ii) the recommendation report relating to the action given to the Minister under section 105; and

(d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action—the report of the commissioners; and

(e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and

(f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and

(fa) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development in accordance with section 131AB; and

(g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice; and

(h) any bioregional plan, and any bioregional guidance plan, that the Minister considers relevant.

Note: The Minister must also take into account any relevant comments given to the Minister in response to an invitation under paragraph 131AA(1)(b). See subsection 131AA(6).

Person's environmental history

(4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

Minister not to consider other matters

(5) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by this Division to consider.

136A Approval must be consistent with prescribed national environmental standards

Approval must be consistent with prescribed national environmental standards

(1) The Minister must not approve the taking of an action unless the Minister is satisfied that, taking into account any conditions to be attached to the approval, the approval of the taking of the action is consistent with any national environmental standards prescribed by the regulations for the purposes of this subsection.

Exception—national interest proposals

(2) Despite subsection (1), the Minister may approve the taking of an action if:

(a) the action is a national interest proposal; and

(b) the Minister is satisfied that, so far as the approval of the taking of the action is inconsistent with one or more national environmental standards prescribed by the regulations for the purposes of subsection (1), the inconsistencies are reasonably necessary for the taking of the action to result, or be likely to result, in the intended outcome for the national interest proposal.

Note: See the definition of ***intended outcome*** in section 528.

(3) For the purposes of subsection (2), in deciding whether an inconsistency is reasonably necessary, the Minister must take into account the following:

(a) the extent to which the inconsistency could be reduced or removed without changing whether the taking of the action would be likely to result in the intended outcome;

(b) the extent to which any conditions to be attached to the approval would reduce or remove the inconsistency.

136B Action must not have unacceptable impact

Action must not have unacceptable impact

(1) The Minister must not approve the taking of an action unless the Minister is satisfied that, taking into account any conditions to be attached to the approval, the taking of the action will not have an unacceptable impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action.

Note: See the definition of ***unacceptable impacts*** in section 527F.

Exception—national interest proposals

(2) Despite subsection (1), the Minister may approve the taking of an action if:

(a) the action is a national interest proposal; and

(b) the Minister is satisfied that, so far as the taking of the action will have one or more unacceptable impacts on matters protected by provisions of Part 3 that the Minister has decided are controlling provisions for the action, the impacts are reasonably necessary for the taking of the action to result, or be likely to result, in the intended outcome for the national interest proposal.

Note: See the definition of ***intended outcome*** in section 528.

(3) For the purposes of subsection (2), in deciding whether an unacceptable impact on a protected matter is reasonably necessary, the Minister must take into account the following considerations relating to the damage likely to be caused by the impact on the matter:

(a) the extent to which that damage could be reasonably mitigated or repaired without changing whether the taking of the action would be likely to result in the intended outcome;

(b) the extent to which any conditions to be attached to the approval would assist in mitigating or repairing that damage.

136C Approval for action with residual significant impact must pass net gain test

Approvals must pass net gain test

(1) The Minister must not approve the taking of an action that will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action unless the Minister is satisfied that, taking into account any conditions to be attached to the approval, the approval passes the net gain test in relation to the residual significant impact on the matter.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

Exception—national interest proposals

(2) Despite subsection (1), the Minister may approve the taking of an action if:

(a) the action is a national interest proposal; and

(b) the Minister is satisfied that, so far as the taking of the action will have or be likely to have a residual significant impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action, requiring the approval to pass the net gain test in relation to that impact on that matter would prevent or be likely to prevent the intended outcome for the national interest proposal.

Note: See the definition of ***intended outcome*** in section 528.

(3) For the purposes of subsection (2), in determining whether the Minister is satisfied, the Minister must take into account the reasons why the approval would not pass the net gain test in relation to the residual significant impact on the protected matter.

137 Requirements for decisions about World Heritage

In deciding whether or not to approve, for the purposes of section 12 or 15A, the taking of an action and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) Australia's obligations under the World Heritage Convention; or

(b) the Australian World Heritage management principles; or

(c) a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321.

137A Requirements for decisions about National Heritage places

In deciding whether or not to approve for the purposes of section 15B or 15C the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

(a) the National Heritage management principles; or

(b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or

(c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

138 Requirements for decisions about Ramsar wetlands

In deciding whether or not to approve for the purposes of section 16 or 17B the taking of an action, and what conditions to

attach to such an approval, the Minister must not act inconsistently with any of the following:

(a) Australia's obligations under the Ramsar Convention;

(b) the Australian Ramsar management principles;

(c) any plan prepared for the management of the wetland as mentioned in section 333.

139 Requirements for decisions about threatened species and endangered communities

(1) This section applies in relation to the taking of an action that has or will have, or is likely to have, a significant impact on a listed threatened species or listed threatened ecological community.

(2) In deciding whether or not to approve the taking of an action for the purposes of a subsection of section 18 or 18A, and what conditions to attach to such an approval, the Minister must not act inconsistently with any of the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; or

(b) a threat abatement plan;

(c) a protection statement;

(d) a recovery plan.

Effect of protection statement

(3) If there is a protection statement for the whole or one or more parts of the species or community:

(a) the requirement in paragraph (2)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(4) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

140 Requirements for decisions about migratory species

In deciding whether or not to approve for the purposes of section 20 or 20A the taking of an action relating to a listed migratory species, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under whichever of the following conventions and agreements because of which the species is listed:

(a) the Bonn Convention;
(b) CAMBA;
(c) JAMBA;
(d) an international agreement approved under subsection 209(4).

140A No approval for certain nuclear installations

(1) The Minister must not approve an action consisting of or involving the construction or operation of any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;
(b) a nuclear power plant;
(c) an enrichment plant;
(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

Division 2—Requirement to comply with conditions

142 Compliance with conditions on approval

(1) A person whose taking of an action has been approved under this Part must not contravene any condition attached to the approval.

(1AA) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of subsection (1), see section 481A.

(1A) Subsection (1) does not apply to a person who is not the holder of the approval if:

(a) the person was not informed of the condition; and

(b) the person could not reasonably have been expected to be aware of the condition.

(2) A contravention of a condition attached to an approval under this Part does not invalidate the approval.

142A Offence of breaching conditions on approval

(1) A person whose taking of an action has been approved under this Part commits an offence if:

(a) the person takes an action or omits to take an action; and

(b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and

(c) the action or omission results or will result in a significant impact on a matter protected by a provision of Part 3.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Strict liability applies to paragraph (1)(c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) A person whose taking of an action has been approved under this Part commits an offence if:

(a) the person takes an action or omits to take an action; and
(b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and
(c) the action or omission is likely to have a significant impact on a matter protected by a provision of Part 3 and the person is reckless as to that fact.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4) An offence against subsection (1) or (3) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 1,000 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

142B Strict liability offence for breach of approval condition

(1) A person whose taking of an action has been approved under this Part commits an offence if:
(a) the person takes an action or omits to take an action; and
(b) the action or omission contravenes a condition attached to the approval.

Penalty: 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 3: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 4: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(2) Subsection (1) does not apply to a person who is not the holder of the approval if:

(a) the person was not informed of the condition; and

(b) the person could not reasonably have been expected to be aware of the condition.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

(3) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Division 3—Variation of conditions and suspension, revocation and surrender of approvals

143 Variation of conditions attached to approval

(1) The Minister may, by written instrument, revoke, vary or add to any conditions (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if:

(a) any condition attached to the approval has been contravened; or

(b) both of the following conditions are satisfied:

(i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;

(ii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or

(ba) all of the following conditions are satisfied:

(i) the action has had a significant impact on a matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;

(ii) the Minister is satisfied that the impact is substantially greater than the impact that was identified in assessing the action;

(iii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or

(c) the holder of the approval agrees to the proposed revocation, variation or addition, or the Minister has extended the period for which the approval has effect under section 145D, and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:

(i) protecting a matter protected by any provision of Part 3 for which the approval has effect; or

(ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).

(1A) If, under paragraph (1)(c), the holder of an approval agrees to conditions mentioned in paragraph 134(3)(e) (about an action management plan) being added and attached to the approval, the holder is taken to have made an election under section 132B before the approval was granted.

(1B) The holder of an approval may request the Minister, in writing, to vary a condition attached to an approval of an action.

(2) The Minister may, by written instrument, revoke any condition (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of Part 3 for which the approval has effect.

(2A) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister must be satisfied that the decision the Minister is to make:

(a) will be consistent with a national environmental standard prescribed by the regulations for the purposes of section 136A; and

(b) will not result in the action having an unacceptable impact (see section 527F) on a matter protected by a provision of Part 3 for which the approval has effect; and

(c) if the action has had, will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 for which the approval has effect—will continue to ensure that the approval passes the net gain test in relation to the residual significant impact on the matter (see section 136C).

Note: See section 143AA for modified considerations for a national interest proposal.

(2B) Sections 137 to 140 (other than subsection 139(4)) apply to the decision whether or not to revoke, vary or add to any condition attached to the approval in the same way as they apply to a decision whether or not to approve the taking of an action.

(3) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

(4) The revocation, variation or addition takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.

(5) As soon as possible after making the instrument, the Minister must:

(a) give a copy of it to the holder of the approval; and

(b) publish the instrument in accordance with the regulations.

Note: If the holder is not satisfied with changed conditions attached to the approval of the holder's action, he or she can ask the Minister to reverse the change by making another change to the conditions under this section.

(6) However, the Minister must not publish so much of the instrument as:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would,

on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in the national interest not to publish.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

143AA Modifications affecting national interest proposals

(1) In making the following decisions in relation to an approval of a national interest proposal, the Minister must be satisfied that the decision the Minister is to make meets the requirements specified in the table:

(a) in deciding, under section 143, whether or not to revoke, vary or add to any conditions attached to the approval;

(b) in deciding, under section 145D, whether or not to extend the period for which the approval has effect.

Modifications affecting national interest proposals

Item	The decision the Minister is to make …	Except to this extent…
1	will be consistent with a national environmental standard prescribed by the regulations for the purposes of section 136A	except to the extent of any inconsistency that, in approving the taking of the action, the Minister was satisfied as to, as mentioned in paragraph 136A(2)(b)
2	will not result in the action having an unacceptable impact (see section 527F) on a matter protected by a provision of Part 3 for which the approval has effect	except to the extent of any unacceptable impact that, in approving the taking of the action, the Minister was satisfied as to, as mentioned in paragraph 136B(2)(b)
3	if the action has had, will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 for which the	except to the extent that, in approving the taking of the action, the Minister was satisfied as mentioned in paragraph 136C(2)(b) that requiring

Modifications affecting national interest proposals		
Item	**The decision the Minister is to make …**	**Except to this extent…**
	approval has effect—will continue to ensure that the approval passes the net gain test in relation to the residual significant impact on the matter (see section 136C)	the approval to pass the net gain test in relation to a particular residual significant impact on a particular matter protected by a provision of Part 3 would prevent or be likely to prevent the intended outcome for the national interest proposal

(2) This section has effect in relation to a national interest proposal despite subsections 143(2A) and 145D(3A).

143A Variation of action management plan

Written application required

(1) If an action management plan is a condition of an approval of an action, the holder of the approval may, at any time, apply to the Minister for a variation of the action management plan.

(2) An application for a variation must be:
  (a) in writing; and
  (b) accompanied by:
    (i) any information or documents required by the regulations; and
    (ii) the application fee (if any) prescribed by the regulations.

Minister may approve a variation of action management plan

(3) The Minister may approve a variation to an action management plan if requested to do so.

(4) When making a decision whether to vary an action management plan, if the Minister believes on reasonable grounds that the application does not include enough information, the Minister may

request the applicant to provide specified information relevant to making the decision.

(5) If the holder of an approval applies for a variation of an action management plan, the Minister must notify the person, in writing, of the Minister's decision.

144 Suspension of approval

(1) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of Part 3 for a specified period (which must not start before the day on which the instrument is made) if the Minister believes on reasonable grounds that:

(a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or

(b) the conditions specified in subsection (2) are satisfied.

(2) The conditions are that:

(a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and

(b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.

(2A) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of Part 3 for a specified period (which must not start before the day on which the instrument is made) if:

(a) either:

(i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or

(ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within

a particular time—the Minister believes on reasonable grounds that the thing has not been done within that time; and

(b) the Minister is satisfied that:

(i) the approval would not have been granted without that condition being attached; or

(ii) because of the failure to comply with the requirement, the suspension is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.

(2B) In deciding whether or not to suspend an approval of the taking of an action by a person, the Minister must have regard to the risks (if any) of suspending the approval to matters protected by a provision of Part 3 for which the approval has effect.

(2C) Sections 137 to 140 (other than subsection 139(4)) apply to the decision whether or not to suspend the approval in the same way as they apply to a decision whether or not to approve the taking of an action.

(3) In deciding whether or not to suspend an approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

(4) During the specified period, the specified provision of Part 3 applies as if the Minister had not given the approval.

(5) As soon as possible after making the instrument, the Minister must:

(a) give a copy of it to the holder of the approval; and

(b) publish the instrument in accordance with the regulations.

145 Revocation of approval

(1) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:

(a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or

(b) the conditions specified in subsection (2) are satisfied.

(2) The conditions are that:

(a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and

(b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.

(2A) The Minister may, by written instrument, revoke an approval under this Part of an action for the purposes of a specified provision of Part 3 if he or she believes that:

(a) the impacts that the action has had, will have or is likely to have were not accurately identified in information available to the Minister when the approval was given; and

(b) the information did not accurately identify those impacts because of negligence or a deliberate act or omission by the person proposing to take the action or the designated proponent of the action.

(2B) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:

(a) either:

(i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or

(ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within

a particular time—the Minister believes on reasonable grounds that the thing has not been done within that time; and

(b) the Minister is satisfied that:

(i) the approval would not have been granted without that condition being attached; or

(ii) because of the failure to comply with the requirement, the revocation is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.

(2C) In deciding whether or not to revoke an approval under this Part for the purposes of a specified provision of Part 3, the Minister must have regard to the risks (if any) of revoking the approval to the matter protected by the provision.

(2D) Sections 137 to 140 (other than subsection 139(4)) apply to the decision whether or not to revoke the approval in the same way as they apply to a decision whether or not to approve the taking of an action.

(3) In deciding whether or not to revoke an approval of the taking of an action by a person, the Minister may have regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

(4) The revocation takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.

(5) As soon as possible after making the instrument, the Minister must:

(a) give a copy of it to the person who was the holder of the approval; and

(b) publish the instrument in accordance with the regulations.

145A Reinstating suspended or revoked approval

Application

(1) This section applies if the Minister has, by written instrument:
   (a) suspended an approval under this Part of the taking of an action by a person; or
   (b) revoked an approval under this Part of the taking of an action by a person.

Requesting reinstatement of approval

(2) Within 2 months after receiving a copy of the instrument under this Division, the person who was the holder of the approval may request the Minister to reinstate the approval.

Deciding whether to reinstate approval

(3) Within 20 business days of receiving the request, the Minister must decide whether or not to reinstate the approval.

Considerations for decision

(4) Subdivision B of Division 1 applies to the decision whether or not to reinstate the approval in the same way as it applies to a decision whether or not to approve the taking of an action.

Extra time for decision

(5) A day is not to be counted for the purposes of subsection (3) if:
   (a) the Minister and the person who was the holder of the approval agree in writing that it should not be counted; or
   (b) the Minister has requested the person to provide information under subsection (6) and the day is on or before the day on which the Minister receives the last of the information requested.

Requesting information for decision

(6) If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to reinstate the approval, the Minister may request the person who was the holder of the approval to provide specified information relevant to making the decision.

Reversal of decision to suspend or revoke approval

(7) If the Minister decides to reinstate the approval, it and any conditions attached to it immediately before the suspension or revocation have effect on and after the day of the decision (subject to any future suspension or revocation under this Division).

Notice of decision about reversal

(8) The Minister must:
  (a) give the person who was the holder of the approval written notice of the Minister's decision; and
  (b) publish notice of the decision in accordance with the regulations.

145AA Surrender of approval

(1) The holder of an approval of the taking of an action may, in writing, request the Minister to accept the surrender of the approval.

(2) The Minister must decide whether or not to accept the surrender.

(3) In deciding whether or not to accept the surrender, the Minister may have regard to:
  (a) whether the taking of the action has substantially commenced; and
  (b) any matter mentioned in subsection 145(3); and
  (c) the risks (if any) of the surrender to matters protected by a provision of Part 3 for which the approval has effect; and

(d) any other matter the Minister considers relevant.

(4) The Minister must give the holder written notice of the Minister's decision as soon as practicable after making the decision.

(5) If the Minister decides to accept the surrender, the Minister must publish the notice:
   (a) on the Department's website; and
   (b) in accordance with any other requirements prescribed by the regulations.

(6) If the Minister decides to accept the surrender, the approval is taken to be revoked with effect from the day specified in the notice. The day must not be earlier than the day the notice is published on the Department's website.

Division 4—Transfer of approvals

145B Transfer with Minister's consent

Transfer by written agreement

(1) A person (the ***transferor***) who is the holder of an approval under this Part for the purposes of a provision of Part 3 may transfer the approval to another person (the ***transferee***) by written agreement, subject to the Minister's consent.

Transfer ineffective until Minister consents

(2) The transfer does not have effect for the purposes of this Act until the Minister consents in writing to the transfer. To avoid doubt, the Minister's consent to a transfer cannot take effect before the Minister gives the consent.

Effect of consent

(3) If the Minister consents to the transfer:
  (a) this Act (except Division 3) operates in relation to the transferor as if the Minister had revoked the approval when the Minister's consent took effect; and
  (b) this Act operates in relation to the transferee as if, when the Minister's consent to the transfer took effect, he or she:
    (i) had approved under this Part for the purposes of the provision of Part 3 the taking of the action by the transferee; and
    (ii) had attached to the approval the conditions that were attached to the approval of the taking of the action by the transferor.

Considerations in deciding whether to consent

(3A) Sections 137 to 140 (other than subsection 139(4)) apply to the decision whether or not to consent to the transfer in the same way

as they apply to a decision whether or not to approve the taking of an action.

(4) In deciding whether or not to consent to the transfer, the Minister may consider:

(a) whether the transferee would be a suitable person to be granted the approval, having regard to:

(i) the transferee's history in relation to environmental matters; and

(ii) if the transferee is a body corporate—the history of its executive officers in relation to environmental matters; and

(iii) if the transferee is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers; and

(b) whether the transferee can comply with the conditions attached to the approval.

Giving copies of consents to transferor and transferee

(5) The Minister must give the transferor and the transferee a copy of the consent each.

Division 5—Extension of period of effect of approval

145C Application to Minister to extend period of effect of approval

(1) Subject to subsection (2), the holder of an approval under this Part may apply, in writing, to the Minister to extend the period (the ***approval period***) for which the approval has effect.

(2) Subsection (1) does not apply if:

(a) the approval has been suspended or revoked under this Part and has not been reinstated; or

(b) the approval has otherwise ceased to have effect.

(3) An application under subsection (1) must include the information (if any) prescribed by the regulations.

145D Minister must decide whether or not to extend approval period

(1) Within 20 business days after receiving an application under subsection 145C(1), the Minister must decide, in writing, whether or not to extend the approval period.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 145E.

(2) The Minister may decide to extend the approval period only if the Minister is satisfied that the extension will not result in a substantial increase in, or substantial change in the nature of, the adverse impacts (if any) the action:

(a) has or will have; or

(b) is likely to have;

on the matter protected by each provision of Part 3 for which the approval has effect.

(3) In considering the matter referred to in subsection (2), the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Division:

(a) matters relevant to any matter protected by a provision of Part 3 for which the approval has effect;

(b) economic and social matters.

(3A) In deciding whether or not to extend the approval period, the Minister must be satisfied that the decision the Minister is to make:

(a) will be consistent with any national environmental standard prescribed by the regulations for the purposes of section 136A; and

(b) will not result in the action having an unacceptable impact (see section 527F) on a matter protected by a provision of Part 3 for which the approval has effect; and

(c) if the action has had, will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 for which the approval has effect—will continue to ensure that the approval passes the net gain test in relation to the matter (see section 136C).

Note: See section 143AA for modified considerations for a national interest proposal.

(3B) Sections 137 to 140 (other than subsection 139(4)) apply to the decision whether or not to extend the approval period in the same way as they apply to a decision whether or not to approve the taking of an action.

(4) As soon as possible after deciding whether or not to extend the approval period, the Minister must:

(a) give a copy of the decision to the holder of the approval; and

(b) if the decision is to extend the approval period—publish the decision in accordance with the regulations.

145E Minister may request further information for making decision

(1) If the Minister believes on reasonable grounds that he or she does not have enough information to decide whether or not to extend the approval period, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

(2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 145D(1) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

Part 10—Strategic assessments

Division 1—Strategic assessments generally

Subdivision A—Assessment of actions to be taken in accordance with policy, plan or program

146 Minister may agree on strategic assessment

(1) The Minister may agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3.

(1A) The agreement may also provide for the assessment of other certain and likely impacts of actions under the policy, plan or program if:

(a) the actions are to be taken in a State or self-governing Territory; and

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the assessment deal with those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the actions; and

(c) the actions:

(i) are to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or

(ii) are actions whose regulation is appropriate and adapted to give effect to Australia's obligation under an agreement with one or more other countries.

Note: Paragraph (1A)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(1B) The agreement may also provide for the transfer of the responsibility for the adoption or implementation of the policy, plan or program from one person to another person.

(2) The agreement must provide for:

(aa) requirements that a draft of a report on the impacts to which the agreement relates must satisfy; and

(a) the preparation of a draft of a report on the impacts to which the agreement relates; and

(b) the publication of the draft report for public comment for a period of at least 28 days that is specified by the Minister; and

(c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and

(d) the provision of the report to the Minister; and

(da) the process for any variation of the policy, plan or program before the policy, plan or program is endorsed as mentioned in paragraph (f); and

(e) the making of recommendations by the Minister to the person about the policy, plan or program (including recommendations for modification of the policy, plan or program); and

(f) the endorsement of the policy, plan or program by the Minister if he or she is satisfied that:

(i) the report adequately addresses the impacts to which the agreement relates; and

(ia) if any such impacts on matters protected by a provision of Part 3 are residual significant impacts (see section 527J)—the report adequately addresses measures to compensate for them; and

(ii) either the recommended modifications of the policy, plan or program (if any) have been made or any modifications having the same effect have been made; and

(iii) the policy, plan or program includes a mechanism for persons taking an action in accordance with the policy, plan or program to be registered by the responsible person; and

(iv) the policy, plan or program requires persons taking an action in accordance with the policy, plan or program to be registered by the responsible person; and

(v) the policy, plan or program requires persons taking an action in accordance with the policy, plan or program to provide the responsible person with information relating to the matters mentioned in paragraph (2B)(b); and

(vi) the policy, plan or program requires the responsible person to provide the Minister with information relating to the matters mentioned in subsection (2B); and

(g) any other matter prescribed by the regulations.

Note 1: If the impacts of actions under a policy, plan or program are assessed under an agreement under this Part, the Minister may decide on a less onerous approach for an assessment relating to an individual action under the policy, plan or program. See section 87.

Note 2: If the Minister endorses a policy, plan or program embodied in a management or authorisation framework, the Minister may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the framework do not need approval for the purposes of a specified provision of Part 3.

(2A) Subparagraphs (2)(f)(iii) and (iv) do not apply in relation to a policy, plan or program that specifies the persons who may take an action in accordance with the policy, plan or program.

(2B) For the purposes of subparagraphs (2)(f)(v) and (vi), the matters are the following:

(a) the persons who are registered by the responsible person as persons taking an action in accordance with the policy, plan or program;

(b) the greenhouse gas emissions information for actions taken in accordance with the policy, plan or program.

(3) If the agreement relates to actions to be taken in a State or self-governing Territory, the Minister must tell the appropriate Minister of the State or Territory:

(a) that the agreement has been made; and

(b) what those actions are (in general terms).

146AA Publication of greenhouse gas emissions information provided in accordance with endorsed policy, plan or program

If the greenhouse gas emissions information for an action taken in accordance with an endorsed policy, plan or program is provided to the Minister in accordance with a requirement included in the policy, plan or program as mentioned in subparagraph 146(2)(f)(v), the Secretary must publish the information on the Department's website as soon as practicable after it is provided.

Subdivision B—Approval of taking of actions in accordance with endorsed policy, plan or program

146A Definitions

(1) In this Division:

endorsed policy, plan or program means a policy, plan or program that has been endorsed by the Minister in accordance with an agreement as mentioned in paragraph 146(2)(f) (including any variation of the policy, plan or program approved by the Minister under section 146DI).

(2) A reference in this Division (except subsection 146D(1) and paragraphs 146E(a) and (b)) to an approval under section 146B includes a reference to an approval under section 146B as varied.

146B Minister may approve taking of actions in accordance with endorsed policy, plan or program

(1) Subject to Subdivision C, the Minister may approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

Note 1: Subdivision C sets out matters that the Minister must take into account in deciding whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

Note 2: See sections 146DJ and 146DK for variation of the approval.

(2) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program must:

(a) be in writing; and

(b) specify the action or class of actions that may be taken in accordance with the endorsed policy, plan or program; and

(ba) name the person to whom the approval is granted; and

(c) specify each provision of Part 3 for which the approval has effect; and

(d) specify the period for which the approval has effect; and

(e) set out the conditions attached to the approval.

(2A) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program may specify the person or persons who may take the action or an action in the class of actions (which may include the holder of the approval).

(3) The Minister must:

(a) give a copy of the approval to:

(i) the holder of the approval; and

(ii) the responsible person for the endorsed policy, plan or program; and

(b) publish a copy of the approval:

(i) on the Department's website; and

(ii) in accordance with any other requirements prescribed by the regulations.

(4) However, the Minister must not give or publish under subsection (3) a copy of so much of the approval as:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in the national interest not to provide.

The Minister may consider the defence or security of the Commonwealth when determining what is in the national interest. This does not limit the matters the Minister may consider.

(5) An approval given under subsection (1) is not a legislative instrument.

146BA Exclusion of certain actions

Despite anything in an approval under section 146B, the approval does not apply in relation to an action if:

(a) an approval of the taking of the action is in operation under Part 9; or

(b) there is in force a decision of the Minister under Division 2 of Part 7 that the action is not a controlled action and, if the decision was made because the Minister believed the action would be taken in a particular manner, the action is being taken in that manner; or

(c) Part 4 lets the person who is taking the action take the action without an approval under Part 9; or

(d) a national interest exemption that allows the action to be taken without an approval is in force; or

(e) the action was referred to the Minister under section 68, 69 or 71 before the approval came into force and, immediately before the approval was granted:

(i) the Minister has not yet decided under section 75 whether the action is a controlled action; or

(ii) the Minister has not decided whether to approve the taking of the action under section 133; or

(f) the taking of the action commenced before the approval was granted.

146C Inviting comments from other Ministers about decisions relating to endorsed policy, plan or program

(1) Before the Minister (the ***Environment Minister***) decides whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, or to make a variation covered by paragraph 146DJ(2)(a), (b), (c) or (d) of an approval under section 146B, the Environment Minister may:

(a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action or class of actions to which the proposed decision relates; and

(b) invite each Minister informed to give the Environment Minister, within 10 business days, comments on the proposed decision.

(2) A Minister who is invited to comment may make comments:

(a) that relate to economic and social matters relating to the action or class of actions to which the proposed decision relates; and

(b) that may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

This does not limit the comments such a Minister may give.

146CA Minister must obtain advice from Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development

(1) This section applies if:

(a) the Minister is deciding whether or not to approve, under section 146B, the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and

(b) the taking of the action or class of actions involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(c) the Minister believes that the taking of the action or class of actions is likely to have a significant impact on water resources, including any impacts of associated salt production or salinity.

(2) Before the Minister decides whether or not to approve the taking of the action or class of actions, the Minister must obtain the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development.

146D Effect of approval of taking of actions in accordance with endorsed policy, plan or program

(1) Subject to section 146DL, if an approval under section 146B is in force, the following provisions have effect:

(a) the Minister is taken to have decided under Division 2 of Part 7 that:

(i) each action specified in the approval under paragraph 146B(2)(b), or each action in a class of actions specified in the approval under that paragraph, is a controlled action; and

(ii) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action;

(b) the Minister is taken to have approved under Part 9, for the purposes of each controlling provision for each controlled action, the taking of the action by any of the following:

(i) the person or persons (if any) specified in the approval under subsection 146B(2A) as the person or persons who may take the action;

(ia) if subparagraph (i) does not apply to the holder of the approval—the holder of the approval;

(ii) any other person who may take the action in accordance with the endorsed policy, plan or program.

(2) Parts 7 and 8 and paragraph 170A(c) do not apply in relation to an action if an approval of the taking of the action, or an approval of the taking of a class of actions that includes the action, in accordance with an endorsed policy, plan or program is in force under section 146B.

(3) Subsection (2) does not apply in relation to an action in respect of which a determination is in force under section 146N (action that is a component of a larger action) or 146P (exclusion determination).

146DA Initial conditions attached to approval under section 146B

(1) For the purposes of paragraph 146B(2)(e), section 134 (conditions of approval) (except subsection 134(1A) and paragraph 134(3)(e)) applies in relation to an approval under section 146B in a way corresponding to the way in which it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 134 applies as if a reference to an action were a reference to one or more actions covered by the approval under section 146B.

(3) For the purposes of paragraph 134(3)(ac) as applied by subsection (1), the conditions attached to the approval may specify that a person specified in the approval is the person required to pay a restoration contributions charge.

(4) For the purposes of paragraph 134(3A)(c) as applied by subsection (1), the consent of the person specified in the approval as the person required to pay restoration contributions charge is required.

146DB Compliance with conditions attached to approval under section 146B

Division 2 of Part 9 (requirement to comply with conditions) applies in relation to an approval under section 146B in a way corresponding to the way in which that Division applies in relation to an approval under Part 9.

146DC Variation of conditions attached to approval under section 146B

(1) Section 143 (variation of conditions attached to approval) (except subsections 143(1A), (2A) and (2B)) applies in relation to an approval under section 146B in a way corresponding to the way it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 143 applies as if:

(a) a reference to the holder of the approval included a reference to the responsible person for the relevant endorsed policy, plan or program; and

(b) a reference to an action were a reference to one or more actions covered by the approval under section 146B.

Consultation before revocation, variation or addition of conditions

(3) If, under section 143 as applied by subsection (1), the Minister proposes to revoke, vary or add a condition attached to an approval under section 146B, the Minister must:

(a) give the holder of the approval written notice of the proposed decision (unless the holder has agreed to or requested the revocation, variation or addition); and

(b) give the responsible person for the relevant endorsed policy, plan or program written notice of the proposed decision (unless that responsible person has agreed to or requested the revocation, variation or addition); and

(c) if the Minister proposes to make the revocation, variation or addition because a condition attached to the approval has

been contravened—give the person who contravened the condition written notice of the proposed decision; and

(d) in a notice under paragraph (a), (b) or (c), invite the person given the notice to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed decision; and

(e) publish on the Department's website an invitation for anyone to give the Minister, within the period specified in the invitation (which must be at least 10 business days after the day the invitation is given), written comments on the proposed decision; and

(f) take into account any relevant comments received in response to an invitation under paragraph (d) or (e).

Note: For ***holder*** and ***responsible person***, see section 528.

(4) Subsection (3) is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision whether or not to revoke, vary or add any conditions attached to an approval under section 146B.

Revocation, variation or addition of conditions does not apply to actions substantially commenced

(5) The revocation, variation or addition of any condition attached to an approval under section 146B does not apply in relation to an action covered by the approval if the taking of the action has substantially commenced by the time the revocation, variation or addition would, apart from this subsection, take effect, unless the action is specified in a determination made under subsection (6).

(6) The Minister may, in writing, determine that the revocation, variation or addition of a condition attached to an approval under section 146B applies to a specified action if the Minister is satisfied that it is appropriate for it to apply to the action despite the taking of the action having substantially commenced.

Consultation before making determination

(7) Before making a determination under subsection (6), the Minister must:

(a) give written notice to each person taking the action to which the contravention relates that the Minister is proposing to make the determination; and

(b) invite the person to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed determination; and

(c) take into account any relevant comments received in response to an invitation under paragraph (b).

(8) Subsection (7) is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision to make a determination under subsection (6).

Notification of determination

(9) The Minister must as soon as possible after making a determination under subsection (6):

(a) give each person taking the specified action:

(i) a copy of the determination; and

(ii) if a copy of the revocation, variation or addition was not given to the person under section 143—a copy of the revocation, variation or addition; and

(b) give the holder of the approval a copy of the determination; and

(c) give the responsible person for the relevant endorsed policy, plan or program a copy of the determination; and

(d) publish the determination on the Department's website.

The Minister may give notice of the determination in any other way that the Minister thinks fit.

Determination not a legislative instrument

(10) A determination under subsection (6) is not a legislative instrument.

146DD Suspension and revocation of approval under section 146B

(1) Sections 144 (suspension of approval) and 145 (revocation of approval) (except subsections 144(2C) and 145(2D)) apply in relation to an approval under section 146B in a way corresponding to the way they apply in relation to an approval under Part 9, with the modifications set out in this section.

(2) Sections 144 and 145 apply as if a reference to an action were a reference to one or more actions covered by the approval under section 146B.

(3) Sections 146G to 146L apply in relation to the Minister's decision, under section 144 or 145 as applied by subsection (1), whether or not to suspend or revoke an approval, in a way corresponding to the way in which they apply in relation to a decision whether or not to revoke, vary or add to any conditions attached to an approval under section 146B.

146DE Reinstating suspended or revoked approval under section 146B

(1) Section 145A (reinstating suspended or revoked approval) (except subsection 145A(4)) applies in relation to an approval under section 146B in a way corresponding to the way it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 145A applies as if a reference to an action were a reference to one or more actions covered by the approval under section 146B.

(3) Subdivision C of this Division (relevant considerations) applies to a decision under section 145A whether or not to reinstate an

approval under section 146B in the same way as it applies to a decision whether or not to give an approval under section 146B.

146DF Surrender of approval under section 146B

(1) Section 145AA (surrender of approval) applies in relation to an approval under section 146B in a way corresponding to the way in which it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 145AA applies as if:
  (a) a reference in that section to the holder of the approval included a reference to the responsible person for the relevant endorsed policy, plan or program; and
  (b) a reference to an action were a reference to one or more actions covered by the approval under section 146B.

Consultation before accepting surrender

(3) If, under section 145AA as applied by subsection (1), the Minister proposes to accept the surrender of an approval under section 146B, the Minister must:
  (a) give the holder of the approval written notice of the proposed decision (unless the holder made the request to accept the surrender); and
  (b) give the responsible person for the relevant endorsed policy, plan or program written notice of the proposed decision (unless the responsible person made the request to accept the surrender); and
  (c) in a notice under paragraph (a) or (b), invite the person given the notice to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed decision; and
  (d) publish on the Department's website an invitation for anyone to give the Minister, within the period specified in the invitation (which must be at least 10 business days after the

day the invitation is given), written comments on the proposed decision; and

(e) take into account any relevant comments received in response to an invitation under paragraph (c) or (d).

Note: For ***holder*** and ***responsible person***, see section 528.

(4) Subsection (3) is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision whether or not to accept the surrender of an approval under section 146B.

146DG Transfer of approval under section 146B

(1) Section 145B (transfer of approval) (except subsection 145B(3A)) applies in relation to an approval under section 146B in a way corresponding to the way in which it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 145B applies as if a reference to an action were a reference to one or more actions covered by the approval under section 146B.

(3) Sections 146G to 146L apply in relation to the Minister's decision, under section 145B as applied by this section, whether or not to consent to the transfer of the approval, in a way corresponding to the way in which they apply in relation to a decision whether or not to revoke, vary or add to any conditions attached to an approval under section 146B.

Subdivision BA—Minor variations to policies, plans or programs

146DH Request to approve minor variation of a policy, plan or program

(1) If a policy, plan or program has been endorsed by the Minister in accordance with an agreement as mentioned in

paragraph 146(2)(f), the responsible person for the policy, plan or program may, in writing, request the Minister to approve a minor variation of the policy, plan or program.

Note: For ***responsible person***, see section 528.

Content of request

(2) The request:
  (a) must include details of the proposed variation; and
  (b) must include the reasons for the request; and
  (c) must include the reasons why the responsible person considers the proposed variation is minor; and
  (d) may include any other matters the responsible person considers appropriate.

When a variation is minor

(3) For the purposes of this Subdivision, a variation of a policy, plan or program is minor if:
  (a) the adverse impacts (if any) on matters protected by a provision of Part 3 of actions under the policy, plan or program, as proposed to be varied, would not be greater than the adverse impacts on those matters of actions under the policy, plan or program as in force at the time of the request; and
  (b) the measures in the policy, plan or program, as proposed to be varied, to mitigate, repair, or compensate for, damage to matters protected by a provision of Part 3 would not be reduced as compared with such measures in the policy, plan or program as in force at the time of the request.

(4) For the purposes of paragraph (3)(a), disregard any proposed compensation for damage caused by impacts to matters protected by a provision of Part 3.

146DI Minister's decision on request

(1) If:

(a) a request is made under section 146DH; and

(b) the Minister is satisfied that the proposed variation is minor;

the Minister may, by written notice (the ***variation approval***), approve the variation.

(2) If the Minister approves the variation, the Minister must do the following as soon as practicable:

(a) give the responsible person a copy of the variation approval;

(b) if an approval under section 146B is in force in relation to the policy, plan or program—give a copy of the variation approval to:

(i) the holder of the approval; and

(ii) each person specified in the approval under section 146B as a person who may take an action covered by that approval; and

(c) publish a copy of the variation approval on the Department's website.

The Minister may give notice of the variation approval in any other way that the Minister thinks fit.

Note: For ***holder*** and ***responsible person***, see section 528.

(3) If the Minister approves the variation, the approval takes effect on the day specified in the notice of the approval (which must not be earlier than the day the notice is published).

(4) The Minister must refuse to approve the variation if the Minister is not satisfied that the proposed variation is minor. If the Minister refuses to approve the variation, the Minister must give the responsible person written notice of the refusal and the reasons for the refusal as soon as practicable.

(5) A notice under subsection (1) is not a legislative instrument.

Subdivision BB—Variations of approvals under section 146B

146DJ Variation of approval under section 146B as a result of a variation of a policy, plan or program

(1) If under section 146DI the Minister approves a variation of an endorsed policy, plan or program, the Minister may, by written notice, vary an approval under section 146B that is in force in relation to the policy, plan or program in a way that the Minister considers appropriate as a result of the approval of the variation of the policy, plan or program.

(2) Without limiting subsection (1), the variation of the approval may be one or more of the following:

(a) a variation of an action specified in the approval as an action that may be taken in accordance with the endorsed policy, plan or program;

(b) specifying another action, or removing an action, that may be taken in accordance with the endorsed policy, plan or program;

(c) a variation of a class of actions specified in the approval as a class of actions that may be taken in accordance with the endorsed policy, plan or program;

(d) specifying another class of actions, or removing a class of actions, that may be taken in accordance with the endorsed policy, plan or program;

(e) a variation of the persons who may take an action in accordance with the endorsed policy, plan or program;

(f) the revocation, variation or addition of a condition attached to the approval.

Note: The Minister may invite comments from other relevant Ministers before making a variation covered by paragraph (a), (b), (c) or (d): see section 146C.

Consultation

(3) Before making the variation of the approval the Minister must:

(a) give the holder of the approval written notice of the proposed variation; and

(b) give the responsible person for the endorsed policy, plan or program written notice of the proposed variation; and

(c) in a notice under paragraph (a) or (b), invite the person given the notice to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed variation; and

(d) publish on the Department's website an invitation for anyone to give the Minister, within the period specified in the invitation (which must be at least 10 business days after the day the invitation is given), written comments on the proposed variation; and

(e) take into account any relevant comments received in response to an invitation under paragraph (c) or (d).

Note: For ***holder*** and ***responsible person***, see section 528.

Notification of variation

(4) The Minister must do the following as soon as practicable after making the variation of the approval:

(a) give a copy of the variation to the holder of the approval;

(b) give a copy of the variation to the responsible person for the endorsed policy, plan or program;

(c) give a copy of the variation to each person specified in the approval as a person who may take an action covered by the approval;

(d) publish the variation on the Department's website.

The Minister may give notice of the variation in any other way that the Minister thinks fit.

Effect of variation

(5) The variation takes effect on the day specified in the variation (which must not be earlier than the day the variation is published).

(6) The variation does not take effect in relation to an action covered by the approval if the taking of the action has substantially commenced by the time the variation would, apart from this subsection, take effect, unless the action is specified in a determination made under subsection (7).

(7) The Minister may, in writing, determine that the variation applies to a specified action if the Minister is satisfied that it is appropriate for it to apply to the action despite the taking of the action having substantially commenced.

Consultation before making determination

(8) Before making a determination under subsection (7), the Minister must:
  (a) give written notice to the person taking the specified action; and
  (b) invite the person to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed determination; and
  (c) take into account any relevant comments received in response to an invitation under paragraph (b).

Notification of determination

(9) The Minister must as soon as possible after making a determination under subsection (7):
  (a) give the person taking the specified action:
    (i) a copy of the determination; and
    (ii) if a copy of the variation was not given to the person under subsection (4)—a copy of the variation; and
  (b) give the holder of the approval a copy of the determination; and
  (c) give the responsible person for the relevant endorsed policy, plan or program a copy of the determination; and
  (d) publish the determination on the Department's website.

The Minister may give notice of the determination in any other way that the Minister thinks fit.

Exhaustive statement of natural justice hearing rule

(10) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision to make a variation under subsection (1) or a determination under subsection (7).

Notice not a legislative instrument

(11) The following instruments made under this section are not legislative instruments:
  (a) a notice made under subsection (1);
  (b) a determination made under subsection (7).

146DK Variation of approval under section 146B on request

(1) If an approval under section 146B is in force in relation to the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, the Minister may, on request under subsection (2) of this section, by written notice, vary the approval by:
  (a) if the approval does not specify the person or persons who may take the action or an action in the class of actions—specifying the person or persons who may take the action or an action in the class of actions; or
  (b) if the approval specifies the person or persons who may take the action or an action in the class of actions—specifying one or more additional persons who may take the action or an action in the class of actions.

Note: Subsection 146B(2A) deals with specifying the person or persons who may take the action or an action in the class of actions.

(2) A request for a variation under subsection (1) may be made, in writing, by:
  (a) the holder of the approval; or

(b) the responsible person for the endorsed policy, plan or program.

Note: For ***holder*** and ***responsible person***, see section 528.

Consultation

(3) Before making the variation the Minister must:

(a) if the request was under paragraph (2)(a)—give the responsible person for the endorsed policy, plan or program written notice of the proposed variation; and

(b) if the request was under paragraph (2)(b)—give the holder of the approval written notice of the proposed variation; and

(c) in a notice under paragraph (a) or (b), invite the person given the notice to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed variation; and

(d) take into account any relevant comments received in response to an invitation under paragraph (c).

Notification of variation

(4) The Minister must do the following as soon as practicable after making the variation:

(a) give a copy of the variation to the holder of the approval;

(b) give a copy of the variation to the responsible person for the endorsed policy, plan or program;

(c) give a copy of the variation to each person who, after the variation is made, is specified in the approval as a person who may take an action covered by the approval;

(d) give a copy of the variation to a person who asks for it;

(e) publish the variation on the Department's website.

The Minister may give notice of the variation in any other way that the Minister thinks fit.

Effect of variation

(5) The variation takes effect on the day specified in the variation (which must not be earlier than the day the variation is published).

Exhaustive statement of natural justice hearing rule

(6) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision to make a variation under subsection (1).

Notice not a legislative instrument

(7) A notice under subsection (1) is not a legislative instrument.

Subdivision BC—Effect of actual decisions on decisions the Minister is taken to have made

146DL Effect of actual decisions on decisions the Minister is taken to have made

Decisions taken to have been made under Division 2 of Part 7

(1) If:

(a) the Minister, under section 146DJ, varies an approval under section 146B; and

(b) the effect of the variation is to vary an action, or vary a class of actions, that may be taken in accordance with the endorsed policy, plan or program;

then, at the time the variation of the approval takes effect, the Minister is taken to have decided under Division 2 of Part 7 that:

(c) the action as varied, or each action in the class of actions as varied, is a controlled action; and

(d) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action.

(2) If:

(a) the Minister, under section 146DJ, varies an approval under section 146B; and

(b) the variation specifies another action, or another class of actions, that may be taken in accordance with the endorsed policy, plan or program;

then, at the time the variation of the approval takes effect, the Minister is taken to have decided under Division 2 of Part 7 that:

(c) the action, or each action in the class of actions, is a controlled action; and

(d) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action.

Approval taken to have been given under Part 9

(3) The following things done in relation to an approval under section 146B are also taken to have been done in relation to the approval that is taken to have been given under Part 9 because of paragraph 146D(1)(b):

(a) a thing done under section 134 or Division 3 or 4 of Part 9 (as applied by Subdivision B);

(b) a variation under section 146DJ or 146DK.

Subdivision C—Relevant considerations

146E Minister must comply with this Subdivision

The Minister must comply with this Subdivision in deciding:

(a) whether or not to approve, under section 146B, the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and

(b) in the case of a decision to approve the taking of such an action or class of actions under section 134 (as applied by section 146DA), what conditions (if any) to attach to the approval; and

(c) whether or not, under section 143 (as applied by section 146DC), to revoke, vary or add to any conditions attached to the approval; and

(d) whether or not to make a variation of the approval covered by paragraph 146DJ(2)(a), (b), (c), (d) or (f).

Note 1: For the meaning of ***endorsed policy, plan or program***, see section 146A.

Note 2: This Subdivision also applies if the Minister is deciding whether to reinstate a suspended or revoked approval (see section 146DE).

Note 3: Some provisions in this Subdivision also apply if the Minister is deciding whether to suspend or revoke an approval (see subsection 146DD(3)) or whether to consent to a transfer of an approval (see subsection 146DG(3)).

146F General considerations

(1) The Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:

(a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the approval;

(b) economic and social matters.

(2) In considering those matters, the Minister must take into account:

(a) the principles of ecologically sustainable development; and

(b) any bioregional plan, and any bioregional guidance plan, that the Minister considers relevant; and

(c) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development in accordance with section 146CA.

146FA Consistency with prescribed national environmental standards

(1) The Minister must not approve, under section 146B, the taking of an action or a class of actions unless the Minister is satisfied that, taking into account any conditions to be attached to the approval,

the decision is consistent with any national environmental standard prescribed by the regulations for the purposes of this section.

(2) In deciding whether or not to revoke, vary or add to any conditions attached to an approval under section 146B, the Minister must be satisfied that the decision the Minister is to make will be consistent with any national environmental standard prescribed by the regulations for the purposes of this section.

146FB No unacceptable impact

(1) The Minister must not approve, under section 146B, the taking of an action or a class of actions unless the Minister is satisfied that, taking into account any conditions to be attached to the approval, the taking of the action, or the class of actions as a whole, will not have an unacceptable impact on a matter protected by a provision of Part 3 for which the approval has effect.

Note: See the definition of ***unacceptable impacts*** in section 527F.

(2) In deciding whether or not to revoke, vary or add to any conditions attached to an approval under section 146B, the Minister must be satisfied that the decision the Minister is to make will not result in the action, or the class of actions as a whole, having an unacceptable impact on a matter protected by a provision of Part 3 for which the approval has effect.

Note: See the definition of ***unacceptable impacts*** in section 527F.

146FC Approval for action or class of actions with residual significant impact must pass net gain test

Approvals and initial conditions

(1) The Minister may approve, under section 146B:

(a) the taking of an action that will have, or is likely to have, a residual significant impact on a matter protected by a provision of Part 3 for which the approval will have effect; or

(b) the taking of a class of actions that as a whole will have, or are likely to have, a residual significant impact on a matter

protected by a provision of Part 3 for which the approval will have effect;

only if the Minister is satisfied that, taking into account any conditions to be attached to the approval, the approval will pass the net gain test in relation to the residual significant impact.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

Revocation, variation and addition of conditions

(2) In deciding whether or not to revoke, vary or add to any conditions attached to an approval under section 146B of the taking of an action or a class of actions that has had, will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 for which the approval has effect, the Minister must be satisfied that the decision the Minister is to make will continue to ensure that the approval passes the net gain test in relation to the residual significant impact.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

146G Approvals relating to declared World Heritage properties

If the approval relates to a declared World Heritage property, the Minister must not act inconsistently with:

(a) Australia's obligations under the World Heritage Convention; or

(b) the Australian World Heritage management principles; or

(c) a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

146H Approvals relating to National Heritage places

If the approval relates to a National Heritage place, the Minister must not act inconsistently with:

(a) the National Heritage management principles; or

(b) an agreement to which the Commonwealth is party in relation to the National Heritage place; or

(c) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

146J Approvals relating to declared Ramsar wetlands

If the approval relates to a declared Ramsar wetland, the Minister must not act inconsistently with:

(a) Australia's obligations under the Ramsar Convention; or

(b) the Australian Ramsar management principles; or

(c) any plan prepared for the management of the wetland as mentioned in section 333.

146K Approvals relating to listed threatened species and ecological communities

(1) This section applies if the approval relates to a listed threatened species or a listed threatened ecological community.

(2) The Minister must not act inconsistently with any of the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES;

(b) a threat abatement plan;

(c) a protection statement;

(d) a recovery plan.

Effect of protection statement

(3) If there is a protection statement for the whole or one or more parts of the species or community:

(a) the requirement in paragraph (2)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the

extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(4) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

146L Approvals relating to listed migratory species

If the approval relates to a listed migratory species, the Minister must not act inconsistently with whichever of the following conventions or agreements because of which the species is listed:

(a) the Bonn Convention;

(b) CAMBA;

(c) JAMBA;

(d) an international agreement approved under subsection 209(4).

146M No approvals relating to nuclear installations

(1) The Minister must not approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program if the action, or an action in the class of actions, consists of, or involves the construction or operation of, any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;

(b) a nuclear power plant;

(c) an enrichment plant;

(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

Subdivision D—Determination in relation to action that is a component of a larger action

146N Determination in relation to action that is a component of larger action

(1) A person who proposes to take an action (the ***larger action***) may apply to the Minister for a determination that subsection 146D(2) does not apply to an action (the ***component action***) that is a component of the larger action, if:

(a) the component action is covered by an approval in force under section 146B of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and

(b) the larger action is not covered by the approval.

(2) The application must:

(a) be made in writing; and

(b) be made in the approved form (if any); and

(c) include the information or documents prescribed by the regulations (if any).

(3) If the Minister is satisfied that it is appropriate for Parts 7 and 8 and paragraph 170A(c) to apply in relation to the larger action, the Minister may, in writing, determine that subsection 146D(2) does not apply to the component action.

(3A) If the Minister makes a determination, the determination takes effect on the day specified in the determination (which must not be earlier than the day it is made).

(4) If the Minister makes a determination, the Minister must give the following persons a copy of the determination as soon as practicable:

(a) the person proposing to take the larger action;

(b) the holder of the approval;

(c) the responsible person for the policy, plan or program.

(5) If a determination is in force under subsection (3) in relation to a component action, the component action is taken not to be specified in the approval under section 146B.

Note: This also has the effect that there is no deemed approval under Part 9 of the component action (see paragraph 146D(1)(b)).

(6) If the Minister decides not to make a determination, the Minister must, as soon as practicable, give the person proposing to take the larger action written notice of the Minister's decision and the reasons for it.

(7) A determination made under subsection (3) is not a legislative instrument.

Subdivision E—Exclusion determination

146P Exclusion determination

(1) The Minister may, by written instrument, determine that, despite an approval in force under section 146B in relation to actions in a class of actions, a specified action in the class that a person proposes to take is excluded, if the Minister is satisfied that:

(a) the taking of the action has not substantially commenced; and

(b) the taking of the action would result or be likely to result in an outcome; and

(c) that outcome is in Australia's national interest.

That outcome is the ***intended outcome*** for the national interest proposal that, under section 75A, the action is taken to be.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

(1A) Despite subsection (1), the Minister must not determine that a specified action is excluded if the action is a fossil fuel action.

(2) The Minister may make the determination:

(a) if the person proposing to take the action agrees in writing—on the Minister's initiative; or

(b) on application under section 146Q.

(3) The Minister must, as soon as practicable after making the determination:
  (a) give a copy of the determination to:
    (i) the person proposing to take the action; and
    (ii) the holder of the approval under section 146B; and
    (iii) the responsible person for the endorsed policy, plan or program to which the approval relates; and
    (iv) the applicant (if different from the person mentioned in subparagraph (i)); and
  (b) publish a copy of the determination on the Department's website.

(4) The determination takes effect on the day specified in the determination (which must not be earlier than the day the determination is made).

(5) A determination made under subsection (1) is not a legislative instrument.

146Q Application for exclusion determination

(1) Any of the following persons may apply to the Minister for a determination under section 146P:
  (a) the person proposing to take the action as mentioned in subsection 146P(1);
  (b) if the person proposing to take the action agrees in writing:
    (i) another Minister; or
    (ii) a Minister of a State or Territory.

(2) The application must:
  (a) be made in writing; and
  (b) be made in the approved form (if any); and
  (c) include the information or documents prescribed by the regulations (if any).

(3) The Minister must decide whether to make the determination, or refuse the application, within 20 business days of the day the application is made.

(4) If the Minister decides to refuse the application, the Minister must give the applicant written notice of the Minister's decision, and the reasons for it, as soon as practicable.

146R Request for information

(1) The Minister may, in writing, request any person to provide specified information that the Minister reasonably believes is necessary in order to make an informed decision whether or not to make a determination under section 146P.

(2) If the Minister makes a request under subsection (1) in respect of a decision in which there is an applicant, a day is not to be counted as a business day for the purposes of subsection 146Q(3) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day the Minister receives the last of the information requested.

146S Effect of exclusion determination

If a determination is in force under section 146P in relation to an action, then the action specified in the determination is taken not to be an action in the class of actions specified in the approval under section 146B.

Note: This means that no alternate pathway applies to the action under section 71A (because subsection 146D(2) does not apply in relation to the action), which in turn means that the action may be referred under Part 7 for assessment and approval under Parts 8 and 9.

146T Revocation of exclusion determination

Revocation on request

(1) The Minister must, by written instrument, revoke a determination under section 146P in relation to an action if:

(a) the person proposing to take the action, or the designated proponent (if any), has made a written request for the revocation; and

(b) the Minister has not decided whether to approve the taking of the action under section 133; and

(c) the Minister has not made a decision under Division 2 of Part 7 that the action is not a controlled action.

Revocation on Minister's initiative

(2) The Minister must, on the Minister's initiative, by written instrument, revoke a determination under section 146P in relation to an action if:

(a) the Minister is no longer satisfied that the taking of the action would result or be likely to result in the intended outcome mentioned in subsection 146P(1); and

(b) the Minister has not decided whether to approve the taking of the action under section 133; and

(c) the Minister has not made a decision under Division 2 of Part 7 that the action is not a controlled action.

Timing

(3) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

Not legislative instrument

(4) A revocation made under subsection (1) is not a legislative instrument.

146U Notice of revocation of exclusion determination

As soon as practicable after revoking, under section 146T, a determination under section 146P in relation to an action, the Minister must:

(a) give a copy of the revocation to:
  (i) the person proposing to take the action; and
  (ii) the holder of the approval under section 146B; and
  (iii) the responsible person for the policy, plan or program to which the approval relates; and
  (iv) the designated proponent (if any); and

(b) publish a copy of the revocation on the Department's website.

146V Effect of revocation of exclusion determination if Minister has decided action is a controlled action

At the time a determination under section 146P in relation to an action is revoked under section 146T, any determination that, under section 75A, was taken to have been made in relation to the action is also taken to be revoked.

Division 2—Assessment of Commonwealth-managed fisheries

147 Simplified outline of this Division

The following is a simplified outline of this Division:

The Australian Fisheries Management Authority must make agreements under Division 1 for the assessment of actions in fisheries managed under the *Fisheries Management Act 1991*. An agreement must be made whenever it is proposed to make a management plan or a determination not to have a plan. An agreement must be made within 5 years of the commencement of this Act for all fisheries that did not have plans at that commencement.

The Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under Division 1 for the assessment of actions permitted by policies or plans for managing fishing in Torres Strait. All policies or plans must be covered by an agreement within 5 years after the commencement of this Act.

A further agreement for assessment must be made if the impact of the actions is significantly greater than assessed under an earlier agreement.

If the Minister endorses a policy or plan assessed under an agreement under Division 1, the Minister must make a declaration that actions under the policy or plan do not need approval under Part 9 for the purposes of section 23 or 24A (which protect the marine environment).

148 Assessment before management plan is determined

Plans under the Fisheries Management Act 1991

(1) Before the Australian Fisheries Management Authority determines a plan of management for a fishery under section 17 of the *Fisheries Management Act 1991*, the Authority must:

(a) make an agreement with the Minister under section 146 for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and

(b) consider any recommendations made by the Minister under the agreement.

Plans under the Torres Strait Fisheries Act 1984

(2) Before the Minister administering the *Torres Strait Fisheries Act 1984* determines a plan of management for a fishery under section 15A of that Act, he or she must:

(a) make an agreement under section 146 with the Minister (the ***Environment Minister***) administering this section for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and

(b) consider any recommendations made by the Environment Minister under the agreement.

149 Assessment before determination that no plan required

Before the Australian Fisheries Management Authority determines under subsection 17(1A) of the *Fisheries Management Act 1991* that a plan of management is not warranted for a fishery, the Authority must:

(a) make an agreement with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions permitted under the Authority's policy for managing the fishery; and

(b) consider any recommendations made by the Minister under the agreement.

150 Assessment of all fisheries without plans must be started within 5 years

Fisheries managed under the Fisheries Management Act 1991

(1) This section applies to fisheries (as defined in the *Fisheries Management Act 1991*):

(a) that are managed under that Act (whether as a result of arrangements under section 71 or 72 of that Act or not); and

(b) for which there were not plans of management in force under that Act when this Act commenced.

Two-thirds of fisheries to be covered by agreements in 3 years

(2) Before the day that is the third anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing at least $^{2}/_{3}$ of the fisheries.

All fisheries to be covered by agreements in 5 years

(3) Before the day that is the fifth anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing the fisheries.

Agreement not needed if fishery already subject to agreement

(4) However, subsection (3) does not require another agreement to be made in relation to a fishery if an agreement relating to the fishery has been made, before the day mentioned in that subsection, by the Authority and the Minister under section 146 because of subsection 148(1) or section 149.

151 Assessment of all Torres Strait fisheries to be started within 5 years

Fisheries managed under the Torres Strait Fisheries Act 1984

(1) This section applies to actions that:
  (a) are involved in fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act); and
  (b) were not covered by a plan of management in force under section 15A of that Act when this Act commenced.

Policies for all actions to be covered by agreements in 5 years

(2) Before the day that is the fifth anniversary of this Act commencing, the Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under section 146 with the Minister administering this section for assessment of the impacts of the actions on each matter protected by a provision of Part 3, being actions that are permitted by policies under that Act.

Agreement not needed if fishery already subject to agreement

(3) However, subsection (2) does not require another agreement to be made in relation to actions if an agreement covering them has been made under section 146, before the day mentioned in that subsection, by the Ministers mentioned in that subsection because of subsection 148(2).

152 Further assessment if impacts greater than previously assessed

Application

(1) This section applies if the Minister (the ***Environment Minister***) and the Minister administering the *Fisheries Management Act 1991* agree that the impacts that actions:
  (a) included in a fishery managed under that Act; or

(b) permitted under a policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act);

have, will have or are likely to have on a matter protected by a provision of Part 3 are significantly greater than the impacts identified in the most recent report provided to the Environment Minister under an agreement made under section 146 relating to the fishery, policy or plan.

Further assessment for management arrangements under the Fisheries Management Act 1991

(2) The Australian Fisheries Management Authority must make another agreement with the Minister under section 146 in relation to the Authority's policy for managing the fishery.

Further assessment for policy or plan for Torres Strait fishing

(3) The Minister administering the *Torres Strait Fisheries Act 1984* must make another agreement under section 146 in relation to the policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act).

153 Minister must make declaration if he or she endorses plan or policy

(1) This section applies if:

(a) the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:

(i) a plan of management under the *Fisheries Management Act 1991* for a fishery; or

(ii) policies of the Australian Fisheries Management Authority for managing a fishery for which there is not a plan of management under the *Fisheries Management Act 1991*; or

(iii) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or

(iv) policies for managing fishing under the *Torres Strait Fisheries Act 1984*; and

(b) the Minister accredits, under subsection 33(3) of this Act, as an accredited arrangement a management plan or regime consisting of the endorsed plan or policies.

(2) The Minister must make a declaration under section 33 that actions approved in accordance with the accredited arrangement do not require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6).

Note: The declaration and accreditation will allow actions that would otherwise be prohibited by sections 23 and 24A to be taken without approval if they are taken in accordance with the accredited arrangement. See section 32.

154 This Division does not limit Division 1

This Division does not limit Division 1.

Part 11—Miscellaneous rules about assessments and approvals

Division 1—Rules about timing

155 This Chapter ceases to apply to lapsed proposals

(1) If:

(a) a person who proposes to take a controlled action or is the designated proponent of an action is required or requested under this Chapter to do something; and

(b) the person does not do the thing within a period that the Minister believes is a reasonable period;

the Minister may give the person a written notice inviting the person to satisfy the Minister within a specified reasonable period that assessment of the action should continue or that the Minister should make a decision about approving the action.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how documents may be served and when they are taken to be served.

(2) If, by the end of the specified period, the person fails to satisfy the Minister that assessment of the action should continue or that the Minister should make a decision about approving the action, the Minister may declare in writing that this Chapter no longer applies to the action.

(3) This Chapter (apart from this section) ceases to apply in relation to the action on the date specified in the declaration. The Minister must not specify a date earlier than the date of making of the declaration.

(4) The Minister must:

(a) give a copy of the declaration to the person and to the Secretary; and

(b) publish the declaration in accordance with the regulations.

156 General rules about time limits

(1) If this Chapter specifies a time limit in business days in relation to a controlled action (or an action that the Minister believes may be or is a controlled action), the limit is to be worked out by reference to what is a business day in the place where the action is to be taken.

(2) A day is not to be counted as a business day for the purposes of subsection (1) if it is not a business day in all the places in which the action is to be taken.

(3) Failure to comply with a time limit set in this Chapter does not affect the validity of:

(a) a decision under this Chapter; or

(b) an assessment or approval under this Chapter.

Note: The Minister must make a statement to Parliament about some failures to comply with time limits. See section 518.

Division 1A—Variation of proposals to take actions

156A Request to vary proposal to take an action

(1) If:

(a) a proposal (the ***original proposal***) by a person to take an action has been referred to the Minister under Division 1 of Part 7; and

(b) after the referral is made, the person wishes to change the original proposal;

the person may, subject to subsection (2), request the Minister to accept a variation (a ***varied proposal***) of the original proposal.

(2) Subsection (1) does not apply if:

(a) the Minister has made a decision under section 74A to not accept the referral of the original proposal; or

(b) the Minister has made a decision under section 75 that the proposed action is not a controlled action; or

(c) a particular manner for taking the proposed action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action; or

(d) the Minister has made a decision under section 133 approving or refusing to approve the taking of the proposed action; or

(e) the referral of the original proposal has been withdrawn under section 170C.

(3) A request under subsection (1) must:

(a) be made in a way prescribed by the regulations; and

(b) include the information prescribed by the regulations.

(4) If a request is made under subsection (1), any provisions of this Chapter that would, apart from this subsection, have applied in relation to the original proposal cease to apply to that proposal.

Note: Provisions that have ceased to apply in relation to the original proposal under subsection (4) will start to apply to that proposal, or to

the varied proposal, after the Minister has decided whether or not to accept the varied proposal. See section 156D.

(5) Despite subsection (4):

(a) any determination in force under section 79E at the time the request is made in relation to the action that is the subject of the original proposal continues in force, and section 79E continues to apply in relation to any such determination; and

(b) any such determination continues to have effect for the purposes of sections 67, 67A and 74AA, and those sections continue to apply, in relation to the action that is the subject of the original proposal.

156B Minister must decide whether or not to accept a varied proposal

(1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C.

(2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal.

(3) In considering, for the purposes of subsection (2), whether or not the character of the varied proposal is substantially the same as the character of the original proposal, the Minister must have regard to the change (if any) in:

(a) the nature of the activities proposed to be carried out in taking the action; and

(b) the nature and extent of the impacts (if any) the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3.

156C Minister may request further information in relation to a varied proposal

(1) If the Minister believes on reasonable grounds that a request under subsection 156A(1) to accept a varied proposal to take an action does not include enough information for the Minister to decide whether or not to accept the varied proposal, the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.

(2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 156B(1) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

156D Effect of Minister's decision to accept or not accept a varied proposal

(1) If the Minister decides to accept a varied proposal to take an action:

(a) any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to the varied proposal; and

(b) for the purpose of the application of those provisions, anything done in relation to the original proposal is taken to have been done in relation to the varied proposal.

Note: Provisions of this Chapter that relate to section 79E (determination that certain reconsidered actions may continue to be taken) do not cease to apply in relation to the original proposal (see subsection 156A(5)).

(2) If the Minister decides not to accept a varied proposal to take an action, any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to that proposal.

Note: Provisions of this Chapter that relate to section 79E (determination that certain reconsidered actions may continue to be taken) do not cease to apply in relation to the original proposal (see subsection 156A(5)).

(3) For the purpose of the application of the provisions of this Chapter in relation to the varied proposal under subsection (1), or in relation to the original proposal under subsection (2), a day is not to be counted as a business day if it is:

(a) on or after the day the Minister received the request under subsection 156A(1) to accept the varied proposal; and

(b) on or before the day the Minister made the decision under subsection 156B(1).

156E Notice of decision

(1) Within 10 business days after deciding under subsection 156B(1) whether or not to accept a varied proposal to take an action, the Minister must give written notice of the decision to:

(a) the person proposing to take the action; and

(b) the designated proponent of the action (if the designated proponent of the action is not the person proposing to take the action).

(2) If:

(a) the request to accept the varied proposal related to an action that is to be taken in a State or self-governing Territory; and

(b) a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance); and

(c) the Minister decided to accept the varied proposal;

the Minister must also, within the period referred to in subsection (1), give written notice of the decision to the appropriate Minister of the State or Territory.

(3) If the Minister decided to accept the varied proposal, the Minister must, within the period referred to in subsection (1), publish the request to accept the varied proposal and notice of the decision in accordance with the regulations.

Division 1B—Change of person proposing to take action

156F Change of person proposing to take action

Notice of change of person proposing to take action

(1) At any time:

(a) after a proposal by a person to take an action has been referred to the Minister under Division 1 of Part 7; and

(b) before the Minister has approved, or refused to approve, the taking of the action under section 133;

the person (the ***first person***) proposing to take the action and another person (the ***second person***) may notify the Minister, in writing, that:

(c) the first person no longer proposes to take the action; and

(d) the second person proposes to take the action instead.

Note: A person who is the holder of an approval under Part 9 may transfer the approval to another person under section 145B.

When notice cannot be given

(2) Subsection (1) does not apply if:

(a) the Minister has made a decision under section 74A to not accept the referral of the proposal to take the action; or

(b) the Minister has made a decision under section 75 that the action is not a controlled action; or

(c) a particular manner for taking the action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action.

Requirements for notice

(3) A notice must:

(a) include the information (if any) prescribed by the regulations; and

(b) be accompanied by the fee (if any) prescribed by the regulations.

Effect of notice

(4) If a notice is given to the Minister under subsection (1):

(a) any provisions of this Chapter that, apart from this paragraph, would have applied to the first person in relation to the action cease to apply to that person and start to apply to the second person; and

(b) for the purposes of the application of those provisions:

(i) the second person is taken to be named in the referral of the proposal to take the action as the person proposing to take the action; and

(ii) the second person is taken to have done anything the first person did in relation to the action; and

(iii) anything done in relation to the first person in relation to the action is taken to have been done in relation to the second person.

Publication of notice

(5) Within 10 business days after receiving a notice under subsection (1), the Minister must publish a copy of the notice in accordance with the regulations.

Division 2—Actions in area offshore from a State or the Northern Territory

157 Actions treated as though they were in a State or the Northern Territory

(1) A provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a State also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the State by section 4 of the *Coastal Waters (State Title) Act 1980*.

(2) So far as a provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a self-governing Territory relates to the Northern Territory, the provision also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*.

Division 2A—National interest proposals

157A Determination that an action etc. is a national interest proposal

(1) The Minister may, by written instrument, determine that the taking of a specified action is a national interest proposal if:

(a) the Minister has decided, under subsection 75(1), that the action is a controlled action; and

(b) the Minister has not decided whether to approve the taking of the action under section 133.

Note: The Minister is taken to have made a determination under this section in certain circumstances (see sections 75A, 75B and 75C).

(1A) Despite subsection (1), the Minister must not determine that the taking of a specified action is a national interest proposal if the action is a fossil fuel action.

(2) The Minister may make the determination:

(a) if the designated proponent of the action agrees in writing—on the Minister's initiative; or

(b) on application under section 157B.

Note: The Minister may request information to make an informed decision under subsection 157G(1).

(3) A determination made under subsection (1) is not a legislative instrument.

157B Application for determination

(1) The following persons may apply to the Minister (the ***Environment Minister***) for a determination that the taking of an action is a national interest proposal:

(a) the designated proponent of the action;

(b) if the designated proponent of the action agrees in writing—a Minister (other than the Environment Minister), or a Minister of a State or Territory.

(2) The application must:
  (a) be in writing; and
  (b) include the information (if any) prescribed by the regulations.

(3) The Minister must decide whether to make a determination under section 157A within 20 business days of receiving the application.

  Note: If the Minister requests information to make an informed decision under section 157G, days between the request and receipt of the information do not count towards this timeframe (subsection 157G(3)).

(4) If the Minister decides not to make the determination, the Minister must give the applicant written notice of the Minister's decision, and the reasons for it, as soon as practicable after the decision is made.

  Note: If the Minister makes the determination, the Minister must give the persons listed in subsection (1) a copy of the determination (see section 157D).

157C Grounds for determination

(1) Before determining that the taking of an action is a national interest proposal, the Minister must be satisfied that:
  (a) the taking of the action would result or be likely to result in an outcome; and
  (b) that outcome is in Australia's national interest.

That outcome is the ***intended outcome*** for the national interest proposal.

(2) In determining Australia's national interest for the purposes of a provision listed in subsection (3), the Minister may consider:
  (a) Australia's defence, security or strategic interests; or
  (b) Australia's obligations under an agreement with one or more other countries.

This does not limit the matters the Minister may consider.

(3) For the purposes of subsection (2), the following provisions are listed:

(a) subsection (1) of this section;
(b) paragraph 133(7B)(b) (non-disclosure of reasons);
(c) paragraph 146P(1)(c) (exclusion determination for approval under section 146B);
(d) paragraph 157D(2)(b) (non-disclosure of determination and reasons);
(e) paragraph 157E(2)(a) (revocation of determination);
(f) paragraph 157N(2)(b) (non-disclosure of exemption and reasons);
(g) paragraph 157R(2)(b) (non-disclosure of variation and reasons);
(h) paragraph 177BV(1)(b) (exemption for restricted actions);
(i) paragraph 177BW(3)(b) (non-publication of application);
(j) paragraph 177BX(4)(b) (non-publication of reasons);
(k) paragraph 177CF(1)(c) (exclusion determination for priority actions under bioregional plan);
(l) paragraph 302F(2)(b) (non-disclosure of exemption and reasons);
(m) paragraph 302J(2)(b) (non-disclosure of variation and reasons).

157D Notice of determination

(1) As soon as practicable after making a determination under section 157A that the taking of an action is a national interest proposal, the Minister must:
  (a) give a copy of the determination to:
    (i) the designated proponent of the action; and
    (ii) if a different person applied for the determination under subsection 157B(1)—that person (if any); and
  (b) publish a copy of the determination together with the Minister's reasons for making the determination on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the determination or reasons as:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

157E Revocation of determination

Revocation on request

(1) The Minister must, by written instrument, revoke a determination under section 157A that the taking of an action is a national interest proposal, if:

(a) the Minister has not decided whether to approve the taking of the action under section 133; and

(b) the designated proponent of the action has made a written request for the revocation.

Note: The Minister may request information to make an informed decision under subsection 157G(1).

Revocation on Minister's initiative

(2) The Minister may, on the Minister's initiative, by written instrument, revoke a determination under section 157A that the taking of an action is a national interest proposal, if:

(a) the Minister is no longer satisfied that the taking of the action would result or be likely to result in the intended outcome for the national interest proposal; and

(b) the Minister has not decided whether to approve the taking of the action under section 133.

Note 1: The Minister may request information to make an informed decision under subsection 157G(1).

Note 2: For paragraph (a), subsection 157C(2) applies in relation to determining the national interest.

Timing

(3) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

Not legislative instrument

(4) A revocation made under subsection (1) is not a legislative instrument.

157F Notice of revocation of determination

(1) As soon as practicable after revoking, under section 157E, a determination that the taking of an action is a national interest proposal, the Minister must:

(a) give a copy of the revocation to the designated proponent of the action; and

(b) publish a copy of the revocation together with the Minister's reasons for making the revocation on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the revocation or reasons as:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

157G Minister may request further information for making decision

(1) The Minister may, in writing, request any person to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision as to whether to:

(a) make a determination under section 157A that the taking of an action is a national interest proposal; or

(b) revoke, under section 157E, such a determination.

(2) If the Minister has requested information under subsection (1) in respect of a decision for which there is an applicant, a day is not to be counted as a business day for the purposes of subsection 157B(3) (application for determination) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

Division 3—National interest exemption

157H National interest exemption from provisions of Part 3 or this Chapter

(1) The Minister may, by written instrument, grant an exemption (a ***national interest exemption***) for an action from a provision of Part 3 or this Chapter:

(a) on the Minister's initiative; or

(b) on application under section 157K.

Note: The Minister may request information to make an informed decision under subsection 157V(1).

(2) To avoid doubt, the Minister may do so whether or not the action has been referred to the Minister under a provision of Part 7.

Content of exemption

(3) The exemption must specify:

(a) the action; and

(b) each provision from which the action is exempt; and

(c) the person to whom the exemption applies; and

(d) the period for which the exemption is in force; and

(e) any conditions imposed on the exemption under section 157M.

(4) The Minister must be satisfied that the period specified for the purposes of paragraph (3)(d) is reasonably necessary to address the national interest that is the basis for the exemption.

When exemption comes into force

(5) An exemption comes into force at the start of the period specified for the purposes of paragraph (3)(d) (which must not be earlier than the day the exemption is made).

Not a legislative instrument

(6) An exemption made under subsection (1) is not a legislative instrument.

157J Effect of national interest exemption

While a national interest exemption from a provision of Part 3 or this Chapter is in force for an action, the provision does not apply in relation to the taking of the action if:

(a) the action is taken by the person to whom the exemption applies; and

(b) the person takes the action in accordance with the conditions (if any) of the exemption.

Note 1: For conditions of an exemption, see section 157M.

Note 2: To the extent a defendant seeks to rely on this section as a defence to an offence, the defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

157K Application for national interest exemption

(1) The following may apply to the Minister (the ***Environment Minister***) for a national interest exemption for an action:

(a) the person who proposes to take the action;

(b) the designated proponent of the action;

(c) if a person mentioned in paragraph (a) or (b) agrees in writing—a Minister (other than the Environment Minister), or a Minister of a State or Territory.

(2) The application must:

(a) be in writing; and

(b) specify the provision or provisions from which the person is applying for an exemption for the action.

Timeframe for decision

(3) The Minister must decide whether to grant the exemption under section 157H within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 157V, days between the request and receipt of the information do not count towards this timeframe (subsection 157V(2)).

Notice if Minister decides not to grant exemption

(4) If the Minister decides not to grant the exemption, the Minister must give the applicant written notice of the Minister's decision as soon as practicable after the decision is made.

Note: If the Minister grants the exemption, the Minister must give each person to whom the exemption applies a copy of the exemption (see section 157N).

157L Grounds for grant of national interest exemption

(1) Before granting a national interest exemption for an action from a provision of Part 3 or this Chapter, the Minister must be satisfied that:

(a) the action is, or is likely to be, a controlled action; and

(b) for an exemption from a provision of Part 3—the provision is, or is likely to be, a controlling provision for the action; and

(c) it is in the national interest that the provision not apply to the taking of the action by the person to whom the exemption is to apply.

(2) In deciding whether the Minister is satisfied as required by paragraph (1)(a) or (b), the Minister:

(a) if the action has been referred under a provision of Part 7—must have regard to the information provided in relation to the referral; and

(b) whether or not the action has been referred under a provision of Part 7—may have regard to any other information the Minister considers relevant.

(3) In determining the national interest for the purposes of a provision of this Division, the Minister may consider:

(a) Australia's defence or security; or

(b) a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.

This does not limit the matters the Minister may consider.

Note: The following provisions of this Division require the Minister to consider the national interest:
(a) paragraph (1)(c) of this section;
(b) subsection 157P(3);
(c) paragraph 157S(1)(a).

157M Conditions of national interest exemption

(1) The Minister may impose one or more conditions on a national interest exemption for an action.

(2) The Minister must be satisfied that any condition imposed is necessary or convenient for:
(a) protecting, from the action, any matter protected by a provision of Part 3 that the Minister is satisfied is, or is likely to be, a controlling provision for the action; or
(b) repairing or mitigating damage that has been, will be, or may be caused by the action on a matter protected by a provision of Part 3 that the Minister is satisfied is, or is likely to be, a controlling provision for the action.

157N Notice of national interest exemption

(1) As soon as practicable after granting a national interest exemption under section 157H, the Minister must:
(a) give a copy of the exemption to:
(i) the person to whom the exemption applies; and
(ii) if a different person applied for the exemption under subsection 157K(1)—that person; and
(b) publish a copy of the exemption together with the Minister's reasons for granting the exemption on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the exemption or reasons as:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

157P Variation of national interest exemption

(1) The Minister may, by written instrument, vary a national interest exemption:

(a) on the Minister's initiative; or

(b) on application under section 157Q.

Note: The Minister may request information to make an informed decision under subsection 157V(1).

(2) The variation may vary any one or more of the following:

(a) the specified action;

(b) the provisions from which the action is exempt, but not in a way that results in the action being exempt from additional provisions;

(c) the person to whom the exemption applies;

(d) the period for which the exemption is in force;

(e) the conditions of the exemption, including by imposing additional conditions.

Grounds for variation

(3) The Minister must not vary the exemption as mentioned in paragraph (2)(a), (b) or (c) unless the Minister is satisfied that the exemption as varied is in the national interest.

Note: Subsection 157L(3) applies in relation to determining the national interest.

(4) The Minister must not vary the exemption as mentioned in paragraph (2)(d) unless the Minister is satisfied that the variation is reasonably necessary to address the national interest that is the basis for the exemption as varied.

(5) The Minister must not vary the exemption as mentioned in paragraph (2)(e) unless the Minister is satisfied that the conditions as varied are necessary or convenient for a purpose mentioned in subsection 157M(2).

When variation comes into force

(6) A variation comes into force on the day specified in the variation (which must not be earlier than the day the variation is made).

Not a legislative instrument

(7) A variation made under subsection (1) is not a legislative instrument.

157Q Application to vary national interest exemption

(1) The following may apply to the Minister to vary a national interest exemption:

(a) the person to whom the exemption applies (the ***exempt person***);

(b) if a different person applied for the exemption under subsection 157K(1)—that person, with the agreement in writing of the exempt person.

(2) The application must:

(a) be in writing; and
(b) specify the variation applied for.

Note: For the types of variations that may be made, see subsection 157P(2).

Timeframe for decision

(3) The Minister must decide whether to vary the exemption under section 157P within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 157V, days between the request and receipt of the information do not count towards this timeframe (subsection 157V(2)).

Notice if Minister decides not to vary exemption

(4) If the Minister decides not to vary the exemption, the Minister must give the applicant written notice of the Minister's decision as soon as practicable after the decision is made.

Note: If the Minister varies the exemption, the Minister must give the applicant a copy of the variation (see section 157R).

157R Notice of variation of national interest exemption

(1) As soon as practicable after varying a national interest exemption under section 157P, the Minister must:
(a) give a copy of the variation to:
(i) the person to whom the exemption, as varied, applies; and
(ii) if a different person applied for the variation—that person; and
(b) publish a copy of the variation together with the Minister's reasons for varying the exemption on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the variation or reasons as:
(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

157S Revocation of national interest exemption

(1) The Minister may, by written instrument, revoke a national interest exemption, on the Minister's initiative, if the Minister reasonably believes that:

(a) the exemption is no longer in the national interest; or

(b) a condition of the exemption has been contravened.

Note 1: The Minister may request information to make an informed decision under subsection 157V(1).

Note 2: For paragraph (a), subsection 157L(3) applies in relation to determining the national interest.

Note 3: A national interest exemption is taken to be revoked if the Minister decides to accept the surrender of the exemption under section 157U.

(2) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

(3) A revocation made under subsection (1) is not a legislative instrument.

157T Notice of revocation of national interest exemption

As soon as practicable after revoking a national interest exemption under section 157S, the Minister must:

(a) give a copy of the revocation to:

(i) the person to whom the exemption applied immediately before the revocation; and

(ii) if a different person applied for the exemption under subsection 157K(1)—that person; and

(b) publish a copy of the revocation together with the Minister's reasons for revoking the exemption on the Department's website.

157U Surrender of national interest exemption

(1) A person to whom a national interest exemption applies may, in writing, request the Minister to accept the surrender of the exemption.

(2) The Minister must decide whether or not to accept the surrender within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 157V, days between the request and receipt of the information do not count towards this timeframe (subsection 157V(2)).

(3) In deciding whether or not to accept the surrender, the Minister may have regard to any matter the Minister considers relevant.

Notice of decision

(4) As soon as practicable after the decision is made, the Minister must:

(a) give written notice of the decision to:

(i) the person who made the request; and

(ii) if a different person applied for the exemption under subsection 157K(1)—that person; and

(b) if the Minister decides to accept the surrender—publish the notice on the Department's website.

Effect of surrender

(5) If the Minister decides to accept the surrender, the exemption is taken to be revoked with effect from the day specified in the notice

(which must not be earlier than the day the notice is published under paragraph (4)(b)).

157V Minister may request further information for making decision

(1) The Minister may request any of the following persons to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision as to whether to grant, vary, revoke or accept the surrender of a national interest exemption for an action:

(a) the applicant for the decision (if any);

(b) if there is no applicant—the person who proposes to take, is taking or has taken the action, or who is the designated proponent of the action;

(c) in any case—the person to whom the exemption applies or is proposed to apply;

(d) any other person the Minister considers appropriate.

(2) If the Minister has requested information under subsection (1) in respect of a decision for which there is an applicant, a day is not to be counted as a business day for the purposes of subsection 157K(3) (application for exemption), 157Q(3) (application to vary exemption) or 157U(2) (application to surrender exemption) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

Division 3A—Approval process decisions not affected by listing events that happen after section 75 decision made

158A Approval process decisions not affected by listing events that happen after section 75 decision made

(1) In this section:

approval process decision means any of the following decisions:

(a) a decision under section 75 whether an action is a controlled action;

(b) a decision under section 75 whether a provision of Part 3 is a controlling provision for an action;

(c) a decision under section 78 in relation to a decision referred to in paragraph (a) or (b) of this definition;

(ca) a decision under section 79C in relation to a decision referred to in paragraph (a) or (b) of this definition;

(d) a decision under section 87 on the approach for the assessment of the impacts of an action;

(da) a determination under paragraph 87A(2)(b) that an assessment completed under a management or authorisation framework accredited for the purposes of a declaration under section 33 or accredited for the purposes of a bilateral agreement is an assessment for the purposes of Part 8;

(e) a decision under section 133 whether to approve an action;

(f) a decision under section 134 to attach conditions to an approval of an action;

(g) a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;

(ga) a decision under section 146DJ to vary an approval under section 146B;

(h) any other decision made under a provision of this Chapter that is specified in the regulations.

listing event means any of the following events:

(a) a property becoming a declared World Heritage property;

(b) a change in the world heritage values of a declared World Heritage property;

(c) a place becoming a National Heritage place;

(d) a change in the National Heritage values included in the National Heritage List for a National Heritage place;

(e) a place becoming a Commonwealth Heritage place;

(f) a change in the Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place;

(g) a wetland becoming a declared Ramsar wetland;

(h) a change in the boundaries of any of the following:

(i) a World Heritage property;

(ii) a National Heritage place;

(iii) a Commonwealth Heritage place;

(iv) a declared Ramsar wetland;

(v) the Great Barrier Reef Marine Park;

(i) a species becoming a listed threatened species;

(j) an ecological community becoming a listed threatened ecological community;

(k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment;

(l) a species becoming a listed migratory species;

(m) any other event of a kind specified in the regulations.

(2) This section applies if:

(a) the Minister has, before or after the commencement of this section, decided under section 75 (the ***primary decision***) whether an action (the ***relevant action***) is a controlled action (whether the decision is that the action is a controlled action, or that the action is not a controlled action) or the Minister has made a decision (also the ***primary decision***) under section 146B to give an approval; and

(b) at a time that is after the commencement of this section and after the primary decision was made, a listing event occurs.

(3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action or the approval under section 146B before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.

(4) After the listing event occurs, the listing event is to be disregarded:
(a) in making any further approval process decision in relation to the relevant action or the approval under section 146B; and
(b) in doing anything under this Chapter, in relation to the relevant action or the approval under section 146B, because of the making of an approval process decision in relation to the relevant action or the approval under section 146B (whether that approval process decision is or was made before or after the listing event occurred).

(5) This section has effect despite any other provision of this Act and despite any other law.

Division 4—Application of Chapter to actions that are not controlled actions

Subdivision A—Duties in relation to certain authorisations

159 Duties in relation to certain authorisations

(1) The Commonwealth, or a Commonwealth agency, must not do a thing specified in subsection (2), if doing the thing, or a result of doing the thing, would be inconsistent with Australia's international obligations under a designated international agreement.

(2) For the purposes of subsection (1), the things are the following:
  (a) entering into a contract, agreement or arrangement, under Australia's foreign aid program, 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;
  (b) a prescribed activity.

160 Seeking the Minister's advice

(1) The Minister administering the *Airports Act 1996* (the ***Transport Minister***) may request the advice of the Minister administering this Act in relation to an authorisation relating to the adoption or implementation of a major development plan (within the meaning of that Act), including a variation or renewal of such an authorisation.

(2) If the Minister administering this Act receives a request for advice under subsection (1), the Minister must either:
  (a) provide the requested advice; or
  (b) provide advice to the Transport Minister that the requested advice is not required.

Subdivision C—Assessment under agreement with State or Territory

166 This Subdivision applies if Ministers agree it should

(1) This Subdivision applies if the Minister and a Minister of a State or self-governing Territory agree that it should apply in relation to an action that:

(a) is to be taken in the State or Territory by a constitutional corporation; or

(b) if the agreement is with a Minister of a Territory—is to be taken in the Territory; or

(c) is to be taken in the State or Territory by a person for the purposes of trade or commerce:

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between a State and a Territory; or

(iv) between 2 Territories; or

(d) is to be taken in the State or Territory and is an action whose assessment under this Subdivision is an appropriate means of giving effect to Australia's obligations under an agreement with one or more other countries.

(2) This section applies to the adoption or implementation of a policy, plan or program in the same way as it applies to any other action.

(3) Despite subsection (1), this Subdivision does not apply in relation to an action to be taken in 2 or more States or self-governing Territories unless there is an agreement between the Minister and a Minister of each of those States and Territories that this Subdivision should apply in relation to the action.

167 Making an agreement

Power to make agreement

(1) The Minister may make a written agreement with a Minister of a State or self-governing Territory to apply this Subdivision in relation to an action to be taken in the State or Territory.

Prerequisites for making agreement

(2) The Minister may agree only if he or she is satisfied that the action is not a controlled action.

Minister must not make an agreement that gives preference

(3) The Minister must not enter into an agreement that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:

(a) by a constitutional corporation; or

(b) by a person for the purposes of trade or commerce between Australia and another country or between 2 States.

168 Content of an agreement

Generally

(1) An agreement to apply this Subdivision in relation to an action must:

(a) specify that one of the following is to apply in relation to the action:

(ii) Division 4 of Part 8;

(iiia) Division 5A of Part 8;

(iv) Division 6 of Part 8;

(v) Division 7 of Part 8;

(vi) Subdivision A of Division 1 of Part 10; and

(b) if it specifies that Division 4, 5A or 6 of Part 8 is to apply in relation to the action—specify the person who is taken to be

the designated proponent of the action for the purposes of that Division.

Agreement applying Division 6 of Part 8

(4) An agreement that specifies that Division 6 of Part 8 (about environmental impact statements) is to apply in relation to an action may deal with how the Minister will exercise his or her power:

(a) under section 102 to prepare tailored guidelines for the preparation of a draft statement; or

(b) under section 103 to approve publication of a draft statement or specify a period for comment.

Agreement applying Division 7 of Part 8

(5) An agreement that specifies that Division 7 of Part 8 (about inquiries) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 107:

(a) to appoint one or more persons as commissioners, and to appoint a person to preside; or

(b) to specify the matters relating to the action that are to be the subject of the inquiry and report; or

(c) to specify the time within which the commission must report to the Minister; or

(d) to specify the manner in which the commission is to carry out the inquiry.

Agreement applying Part 10

(6) An agreement that specifies that Subdivision A of Division 1 of Part 10 is to apply may:

(a) be in the same document as an agreement mentioned in that Subdivision; or

(b) specify the manner in which an agreement the Minister makes under that Subdivision is to provide for matters that that Subdivision requires that agreement to provide for.

169 Application of a Division of Part 8

Provisions that apply

(1) If the agreement states that a particular Division of Part 8 is to apply in relation to the assessment of an action, the following provisions of this Act (the ***applied provisions***) apply in relation to the action as set out in subsection (2):

(a) that Division;

(b) the other provisions of this Act (except Part 9), so far as they relate to that Division.

Modification of applied provisions

(2) The applied provisions apply in relation to the action as if:

(a) the Minister had decided under Division 2 of Part 7 that the action was a controlled action; and

(b) the Minister had decided that the relevant impacts of the action must be assessed under the Division specified in the agreement applying the Division; and

(c) the person specified in the agreement as the person who is taken to be the designated proponent of the action for the purposes of that Division had been designated as the proponent of the action by the Minister under section 75; and

(d) a reference in the applied provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and

(e) a reference in the applied provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to making an informed report and recommendations relating to the action.

Modification of Division 4 of Part 8

(3) Also, if the agreement states that Division 4 of Part 8 is to apply in relation to the action, that Division applies in relation to the action

as if paragraphs 95(2)(a) and (b) and 95A(3)(a), (b) and (c) merely referred to specified information relating to the action.

Minister must give copy of report to State or Territory Minister

(4) The Minister must give a copy of the report he or she receives from the Secretary or commission of inquiry under the applied provisions in relation to the action to each Minister of a State or Territory who is party to the agreement.

170 Application of Subdivision A of Division 1 of Part 10

If an agreement to apply this Subdivision states that Subdivision A of Division 1 of Part 10 is to apply:

(a) that Subdivision applies as if:
  (i) the reference in subsection 146(1) to relevant impacts of actions were a reference to the impacts the actions have, will have or are likely to have on the environment; and
  (ii) paragraph 146(2)(f) were omitted; and

(b) the Minister must give a copy of the report provided to the Minister under the agreement made under section 146, and of any recommendations made by the Minister under the agreement, to each Minister of a State or Territory who is party to the agreement to apply this Subdivision.

Division 5—Publication of information relating to assessments

170A Publication of information relating to assessments

The Secretary must publish on the Department's website every week notice of the following:

(b) each referral (if any) of an action received by the Minister under Division 1 of Part 7 in the immediately preceding week;

(c) each decision (if any) in the immediately preceding week under Division 2 of Part 7 that an action is a controlled action;

(d) each decision (if any) in the immediately preceding week under Division 3 of Part 8 about which approach is to be used for assessment of the relevant impacts of an action;

(e) the information and invitations (if any) published in the immediately preceding week under Division 4 of Part 8 (about assessment on preliminary documentation);

(g) each public invitation (if any) issued in the immediately preceding week by the Minister to comment on a draft of guidelines under Division 6 of Part 8 for a report or statement;

(h) each draft or finalised report or statement published in the immediately preceding week under Division 6 of Part 8 by a designated proponent;

(ia) each recommendation report given to the Minister in the immediately preceding week under section 95C, 100B or 105;

(j) any other matter prescribed by the regulations.

170B Information critical to protecting matters of national environmental significance not to be disclosed

(1) The Minister may, by notice in writing to a person, direct the person not to disclose specified information when publishing a document or material as required or permitted by a specified provision of this Chapter, if the Minister considers that the information is critical to the protection of a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance).

(2) A provision of this Chapter that is specified in a direction under subsection (1) has effect as if it did not require or permit the publication of the information specified in the direction.

(3) A person who is given a direction under subsection (1) must not contravene the direction.

Civil penalty: 100 penalty units.

170BA Designated proponent may request Minister to permit commercial-in-confidence information not to be disclosed

(1) This section applies in relation to the assessment documentation that must be published by the designated proponent of an action to which Division 4 or 6 of Part 8 applies.

(2) The designated proponent may request the Minister, in writing, to permit the designated proponent not to publish so much of the assessment documentation relating to the action as the designated proponent considers is commercial-in-confidence.

(2A) To avoid doubt, the greenhouse gas emissions information for the action is not commercial-in-confidence.

(3) A request under subsection (2) must include the information prescribed by the regulations.

(4) If the Minister is satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence,

the Minister may, by written notice to the designated proponent, permit the designated proponent not to publish that part of the assessment documentation.

(5) The Minister must not be satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence unless a person demonstrates to the Minister that:

(a) release of the information in that part would cause competitive detriment to the person; and

(b) the information in that part is not in the public domain; and

(c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and

(d) the information in that part is not readily discoverable.

(6) If the Minister permits the designated proponent not to publish a part of the assessment documentation that the Minister considers is commercial-in-confidence, the provision of Division 4 or 6 of Part 8 that requires the designated proponent to publish the assessment documentation has effect as if it did not require the publication of that part of the assessment documentation.

(7) In this section:

assessment documentation, in relation to an action to which Division 4 or 6 of Part 8 applies, means:

(a) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:

(i) the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires; and

(ii) the document prepared under paragraph 95B(1)(a) or the information referred to in subsection 95B(4), as the case requires; or

(c) if Division 6 of Part 8 (environmental impact statements) applies to the action:

(i) the draft environmental impact statement relating to the action given to the Minister under paragraph 103(1)(ab); and

(ii) the finalised environmental impact statement relating to the action given to the Minister under section 104.

Division 6—Withdrawal of referrals

170C Withdrawal of referral of proposal to take an action

(1) Subject to subsection (2), a person who:

(a) has referred a proposal to take an action to the Minister under section 68; or

(b) is named as the person proposing to take an action in a proposal that is referred to the Minister under section 69 or 71;

may withdraw the referral, by written notice to the Minister.

(2) The referral cannot be withdrawn after the Minister has decided, under Part 9, whether or not to approve the taking of the action.

(3) If the Minister receives a notice withdrawing the referral, the Minister must publish notice of the withdrawal of the referral in accordance with the regulations.

(4) If the referral is withdrawn, the provisions of this Chapter that would, apart from this subsection, have applied to the action cease to apply to the action.

(5) Despite subsection (4), if:

(a) at the time the referral (the ***original referral***) is withdrawn, a determination is in force under section 79E in relation to the action (the ***original action***); and

(b) before the end of the period specified in the determination for the purposes of subsection 79E(5), the person refers another proposal to take an action (the ***new action***) to the Minister under section 68; and

(c) either:

(i) the new action is the same as the original action; or

(ii) a component of the new action is the same as the original action;

then:

(d) any determination in force under section 79E at the time of the withdrawal in relation to the action that is the subject of the original proposal continues in force, and section 79E continues to apply in relation to any such determination; and

(e) any such determination continues to have effect for the purposes of sections 67, 67A and 74AA, and those sections continue to apply, in relation to the action that is the subject of the original proposal.

Division 6A—Advanced restoration actions

170CAA Advanced restoration actions

(1) The regulations may make provision for and in relation to advanced restoration actions. ***Advanced restoration actions*** are restoration actions that are:

(a) carried out or intended to be carried out by a person before referring a proposal to take an action under section 68; and

(b) directed at the protection, conservation or restoration of a matter protected by a provision of Part 3.

(2) Without limiting subsection (1), the regulations may make provision for and in relation to the following matters:

(a) registration of advanced restoration actions, including the publishing of any register;

(b) applications for registration of advanced restoration actions, including fees for applications;

(c) decisions by the Minister as to whether to register advanced restoration actions, including the nature of the actions that may be registered and any other requirements;

(d) circumstances (not inconsistent with section 134) in which advanced restoration actions may satisfy conditions that may be attached to approvals under Part 9;

(e) variation, suspension, revocation and transfer of registration of advanced restoration actions;

(f) monitoring of registered advanced restoration actions;

(g) record keeping and reporting in relation to registered advanced restoration actions.

Division 7—Miscellaneous

170CA Fees

(1) The Minister may, in writing, determine the amounts of fees that may be charged if the approach for assessing the relevant impacts of an action that the Minister has decided is a controlled action is:
  (a) assessment by inquiry under Division 7 of Part 8; or
  (b) assessment by strategic assessment under Division 1 of Part 10.

(2) Before making a determination, the Minister must consult:
  (a) the person proposing to take the action; or
  (b) if the person proposing to take the action is not the designated proponent—the designated proponent; or
  (c) if the approach is assessment by strategic assessment—the responsible person for the relevant policy, plan or program;

about the amounts of fees to be charged.

(3) The Minister may, in the determination made under subsection (1), determine the way in which a fee is to be worked out.

(4) A determination made under subsection (1) is not a legislative instrument.

Chapter 5—Conservation of biodiversity and heritage

Part 11A—Interpretation

170D References to business days are references to Canberra business days

A reference in this Chapter to a business day is a reference to a day that is a business day in Canberra.

Part 12—Identifying and monitoring biodiversity and making bioregional guidance plans

Division 1—Identifying and monitoring biodiversity

171 Identifying and monitoring biodiversity

(1) The Minister may, on behalf of the Commonwealth, co-operate with, and give financial or other assistance to, any person for the purpose of identifying and monitoring components of biodiversity.

(2) Without limiting subsection (1), the co-operation and assistance may include co-operation and assistance in relation to all or any of the following:

(a) identifying and monitoring components of biodiversity that are important for its conservation and ecologically sustainable use;

(b) identifying components of biodiversity that are inadequately understood;

(c) collecting and analysing information about the conservation status of components of biodiversity;

(d) collecting and analysing information about processes or activities that are likely to have a significant impact on the conservation and ecologically sustainable use of biodiversity;

(e) assessing strategies and techniques for the conservation and ecologically sustainable use of biodiversity;

(f) systematically determining biodiversity conservation needs and priorities.

(3) In this Act:

components of biodiversity includes species, habitats, ecological communities, genes, ecosystems and ecological processes.

(4) For the purposes of this section, the components of biological diversity that are important for its conservation and ecologically

sustainable use are to be identified having regard to the matters set out in Annex I to the Biodiversity Convention.

(5) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

172 Inventories of listed threatened species etc. on Commonwealth land

(1) The Minister may prepare an inventory covering an area of Commonwealth land that identifies, and states the abundance of, the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species on the area of land if:

(a) the Minister is satisfied that the area of land is of importance for the conservation of biodiversity; and

(b) the area of land is not covered by a plan that:

(i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and

(ii) is in force under a law of the Commonwealth.

(2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of an inventory if:

(a) the inventory is to cover an area of Commonwealth land; and

(b) the agency has an interest in the area of land.

(3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in an area of Commonwealth land if the agency:

(a) has a legal or equitable interest in the area; or

(b) occupies the area; or

(c) has administrative responsibilities relating to the area or to actions taken in the area.

173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas

(1) The Minister may prepare a survey covering a Commonwealth marine area that identifies, and states the extent of the range of, cetaceans, listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species in the area if:

(a) the Minister is satisfied that the area is of importance for the conservation of biodiversity; and

(b) the area is not covered by a plan that:

(i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and

(ii) is in force under a law of the Commonwealth.

(2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of a survey if:

(a) the survey is to cover a Commonwealth marine area; and

(b) the agency has an interest in the area.

(3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in a Commonwealth marine area if the agency:

(a) has a legal or equitable interest in the area; or

(b) occupies the area; or

(c) has administrative responsibilities relating to the area or to actions taken in the area.

174 Inventories and surveys to be updated

The Minister must take reasonable steps to ensure that the inventories and surveys prepared under this Division are maintained in an up-to-date form.

Division 2—Bioregional guidance plans

176 Minister may make bioregional guidance plans

(1) The Minister may make a written instrument under this subsection (a ***bioregional guidance plan***).

(2) A bioregional guidance plan must specify the area (the ***region***) to which it relates, which must be in one or more of the following:
  (a) a Commonwealth area;
  (b) a State;
  (c) a Territory.

(3) A bioregional guidance plan may include provisions about one or more of the matters specified in section 176A.

(4) The Minister may, by written instrument, vary a bioregional guidance plan.

(5) The Minister may, on behalf of the Commonwealth, cooperate with one or more of the following in preparing to make or vary, or in implementing, a bioregional guidance plan:
  (a) a State or a self-governing Territory;
  (b) an agency of a State or of a self-governing Territory;
  (c) any other person.

(6) The cooperation may include giving financial or other assistance.

176A Contents of bioregional guidance plans

A bioregional guidance plan for a region may include provisions about one or more of the following:
  (a) the components of biodiversity, and their distribution and conservation status in the region;
  (b) important economic and social values relevant to the region;
  (c) heritage values of places;
  (d) threats to matters that are protected by a provision of Part 3;

(e) areas in the region that may be suitable for protection, conservation or restoration measures;
(f) areas in the region that may be suitable for ecologically sustainable development (whether generally or for specified classes of action);
(g) areas in the region that may be unsuitable for ecologically sustainable development (whether generally or for specified classes of action);
(h) guidance on suitable management actions for listed threatened species or listed ecological communities in the region;
(i) objectives relating to biodiversity and other values;
(j) priorities, strategies and actions to achieve the objectives;
(k) mechanisms for community involvement in implementing the bioregional guidance plan;
(l) measures for monitoring and reviewing the bioregional guidance plan;
(m) any other matters the Minister considers relevant.

176B Requirements for making or varying bioregional guidance plans

(1) The Minister must not make or vary a bioregional guidance plan that relates to an area that is wholly or partly within a particular State or Territory unless the State or Territory has agreed to its making or variation.

(2) The Minister must not make or vary a bioregional guidance plan unless the Minister is satisfied that the bioregional guidance plan, or the bioregional guidance plan as varied, is consistent with any national environmental standards prescribed by the regulations for the purposes of this subsection.

(3) For purposes of making or varying a bioregional guidance plan, the Minister must have regard to any comments received in response to a notice under paragraph 176C(1)(b) in relation to the draft bioregional guidance plan or the proposed variation.

(4) Subsection (1) does not apply to a variation of a minor or machinery nature.

(5) A bioregional guidance plan is not a legislative instrument.

176C Public consultation

(1) Before making or varying a bioregional guidance plan, the Minister must publish on the Department's website:
   (a) a draft of the bioregional guidance plan or the proposed variation, as applicable; and
   (b) a notice inviting comments on the draft bioregional guidance plan or the proposed variation within the period specified in the notice, which must be a period of at least 30 business days.

(2) The Minister must not make a bioregional guidance plan until after the end of the period specified in the notice.

(3) Subsection (1) does not apply to a variation of a minor or machinery nature.

176D Minister must publish bioregional guidance plans

The Minister must publish each bioregional guidance plan, and each bioregional guidance plan as varied, on the Department's website as soon as practicable after the plan is made or varied, as the case requires.

176E Incorporation of instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, a bioregional guidance plan may apply, adopt or incorporate (with or without modifications) an instrument or other writing:
   (a) as in force at a particular time; or
   (b) as is in force or existing from time to time.

Section 177

177 Obligations under this Act unaffected by lack of bioregional guidance plans

Obligations imposed by this Act are not affected, in their application in relation to Commonwealth areas, by a lack of bioregional guidance plans for those areas.

Part 12A—Bioregional plans

Division 1—General requirements about contents of bioregional plans

Subdivision A—Minister may make bioregional plans

177AA Minister may make bioregional plans

(1) The Minister may, by written instrument, make a plan (a ***bioregional plan***) under this section in accordance with the requirements of this Part.

Note: Division 2 sets out the consultation requirements and decision making processes for making bioregional plans.

(2) A bioregional plan must specify the area (the ***region***) to which it relates, which must be in one or more of the following:

(a) a Commonwealth area;

(b) a State;

(c) a Territory.

(3) A bioregional plan must:

(a) include the objectives of the bioregional plan; and

(b) specify development zones and related matters in accordance with Subdivision B of this Division; and

(c) specify bioregional restoration measures and related matters in accordance with Subdivision C of this Division; and

(d) specify conservation zones and related matters in accordance with Subdivision D of this Division.

(4) A bioregional plan must specify the day on which it commences, which must not be earlier than the day on which it is published on the Department's website under section 177AR.

(5) A bioregional plan must include any other matters prescribed by the regulations.

(6) A bioregional plan for a region may include information about the environment in the region including, but not limited to, information about the biodiversity, heritage or cultural heritage of the region.

(7) A bioregional plan is not a legislative instrument.

177AB Incorporation of instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, information included in a bioregional plan as mentioned in subsection 177AA(6) may apply, adopt or incorporate (with or without modifications) an instrument or other writing:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time.

177AC When a bioregional plan is in force

A bioregional plan is in force throughout the period:

(a) beginning on the day on which it commences under subsection 177AA(4); and

(b) ending on the day on which it is revoked under section 177BG.

Subdivision B—Bioregional plans must specify development zones and actions

177AD Development zones

(1) A bioregional plan for a region must specify one or more areas in the region that are development zones.

(2) The boundary of a development zone must be specified having regard to each of the following:

(a) the world heritage values of any declared World Heritage property;

(b) the national heritage values of any National Heritage place;

(c) the ecological characteristics of any declared Ramsar wetland;

(d) the location and habitat of any of the following:
  (i) any listed threatened species;
  (ii) any listed threatened ecological communities;
  (iii) any listed migratory species;
(e) the environment in the Great Barrier Reef Marine Park;
(f) the environment in any part of a Commonwealth marine area.

177AE Priority actions and impacted protected matters for development zones

(1) A bioregional plan must specify, for each development zone specified in the bioregional plan, one or more classes of actions (a ***priority class of actions***) that can be taken in the development zone. Each action in such a class is a ***priority action*** in the class.

Note: It is an offence not to comply with a condition attached to taking a priority action in a development zone, subject to specified exceptions: see section 177BZ.

(2) Before a priority class of actions is specified, the Minister must be satisfied that, taken as a whole, the actions in the class have, will have or are likely to have a significant impact on one or more matters protected by a provision of Part 3. Each such matter is an ***impacted protected matter*** for the priority actions in the class.

(3) The bioregional plan must specify, for each priority class of actions specified under subsection (1), the impacted protected matters for the priority actions in the class.

(4) Priority actions must not include any action of a kind mentioned in section 140A.

(5) A bioregional plan must not specify a priority class of actions that includes one or more fossil fuel actions.

177AF Bioregional plan registration charge for priority actions

A bioregional plan may specify the persons taking priority actions in a development zone specified in the plan who are exempt from paying a bioregional plan registration charge in accordance with

the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*.

177AG Conditions about taking priority actions

(1) A bioregional plan may attach conditions to the taking by a person of a priority action included in a priority class of actions in a development zone specified in the plan.

Note: Section 177BZ provides for offences and civil penalties for failure to comply with conditions.

(2) Before a condition is attached to the taking by a person of a priority action, the Minister must be satisfied that the condition relates to an impacted protected matter for priority actions in the priority class of actions, in either or both of the following ways:

(a) the condition is necessary or convenient to protect the impacted protected matter (whether or not the protection is protection from priority actions in the class);

(b) the condition is necessary or convenient to mitigate or repair damage to the impacted protected matter (whether or not the damage has been, will be or may be caused by the priority actions in the class).

(3) The bioregional plan must specify, for each condition, the impacted protected matters to which the condition relates.

(4) A condition that relates to an impacted protected matter for a priority action does not apply to the taking of the priority action by a person for whom the priority action is a designated priority action for the impacted protected matter.

(5) If an impacted protected matter to which a condition relates ceases to be a matter protected by a provision of Part 3, the condition ceases to have effect to the extent that the condition relates to the impacted protected matter.

Subdivision C—Bioregional plans must specify bioregional restoration measures

177AH Bioregional restoration measures

(1) A bioregional plan for a region must specify measures for the region (***bioregional restoration measures***) that the Minister is satisfied are necessary or convenient to mitigate, repair or compensate for likely damage to one or more impacted protected matters that has been, will be or may be caused by priority actions.

(2) A bioregional plan for a region may specify measures for the region (also ***bioregional restoration measures***) that the Minister is satisfied are appropriate to protect or conserve one or more matters protected by a provision of Part 3 (whether or not the protection or conservation relates to priority actions).

(3) A bioregional restoration measure may include (without limitation) a measure providing for the payment of a specified amount (a ***bioregional plan restoration contribution***).

(4) For each bioregional restoration measure, the bioregional plan must specify one or more of the following persons to be responsible for ensuring delivery of the measure:
  (a) the Commonwealth;
  (b) a Commonwealth agency;
  (c) if a State has consented to be specified—the State;
  (d) if a Territory has consented to be specified—the Territory;
  (e) any other person who has consented to be specified.

(5) To avoid doubt, a bioregional plan may specify that the Restoration Contributions Holder is responsible for delivering a bioregional restoration measure on behalf of the Commonwealth.

177AI Conditions about delivery of bioregional restoration measures

(1) A bioregional plan for a region may include the following conditions relating to bioregional restoration measures:

(a) conditions requiring the delivery of a bioregional restoration measure by a person specified in the bioregional plan to be responsible for the delivery;

(b) conditions relating to the delivery of such a bioregional restoration measure by the person (including, but not limited to, how it is to be delivered).

Note: Division 7 provides for offences and civil penalties for failure to comply with conditions.

(2) However, a condition must not require the delivery of a bioregional restoration measure by a person other than the Commonwealth or a Commonwealth agency unless the person has consented to the condition.

(3) If an impacted protected matter to which a condition relates ceases to be a matter protected by a provision of Part 3, the condition ceases to have effect to the extent that the condition relates to the impacted protected matter.

Subdivision D—Bioregional plans must specify conservation zones

177AJ Conservation zones

(1) A bioregional plan for a region must specify one or more areas in the region that are conservation zones.

(2) The boundary of a conservation zone must be specified having regard to:

(a) the following:

(i) a declared World Heritage property;

(ii) a National Heritage place;

(iii) a declared Ramsar wetland;

(iv) a Commonwealth marine area;
(v) the Great Barrier Reef Marine Park; and
(b) the location and habitat of any of the following:
(i) any listed threatened species;
(ii) any listed threatened ecological communities;
(iii) any listed migratory species.

177AK Restricted actions and restricted protected matters

(1) A bioregional plan must specify, for each conservation zone in the bioregional plan, one or more classes of actions that are prohibited in the conservation zone. Each action in such a class is a ***restricted action*** in the class.

(2) Before a class of actions is specified, the Minister must be satisfied that, taken as a whole, the actions in the class have, will have, or are likely to have, a significant impact on one or more matters protected by a provision of Part 3. Each such matter is a ***restricted protected matter*** for the restricted actions in the class.

(3) The bioregional plan must specify, for each class of actions, the restricted protected matters for the restricted actions in the class.

Division 2—Process for making a bioregional plan

177AL Minister must notify and seek comments on draft of a bioregional plan before it is made

(1) Before the Minister makes a bioregional plan, the Minister must publish on the Department's website:
  (a) a draft of the bioregional plan; and
  (b) a notice inviting comments on the draft bioregional plan within the period specified in the notice, which must be a period of at least 30 business days.

(3) Before the Minister makes a bioregional plan, the Minister must seek the advice of the CEO.

(4) Before the Minister makes a bioregional plan, the Minister may obtain advice from the following:
  (a) the Australian Heritage Council;
  (b) a committee established under Part 19.

(5) The Minister must not make a bioregional plan until after the latest of the following:
  (a) the end of the period specified in the notice given under paragraph (1)(b);
  (c) the day on which the advice of the CEO is received.

177AM Matters to which the Minister must have regard in deciding whether to make a bioregional plan

For the purposes of deciding whether or not to make a bioregional plan, the Minister must have regard to the following:
  (a) the principles of ecologically sustainable development;
  (b) social and economic matters that the Minister considers relevant;
  (c) any bioregional guidance plans that the Minister considers relevant;

(d) comments received in response to a notice on the draft bioregional plan that the Minister considers relevant;

(f) any advice obtained from the CEO;

(g) any advice obtained from the following:

(i) the Australian Heritage Council;

(ii) a committee established under Part 19;

(h) any approved conservation advice that the Minister considers relevant;

(i) any recovery plan that the Minister considers relevant;

(j) any matters prescribed by the regulations.

Note: These matters are also relevant to variations of bioregional plans (see section 177AX).

177AN Matters of which the Minister must be satisfied before making a bioregional plan—agreement of persons

The Minister must not make a bioregional plan for a region unless the Minister is satisfied:

(a) that the bioregional plan has been agreed to by each relevant State and relevant Territory for the bioregional plan; and

(b) if the bioregional plan includes one or more conditions relating to the delivery of bioregional restoration measures by a person other than the Commonwealth or a Commonwealth agency—that the person has consented to the imposition of the conditions.

177AO Matters of which the Minister must be satisfied before making a bioregional plan—protection statements and recovery plans

(1) If the Minister considers that there is a protection statement that is relevant to a bioregional plan that the Minister proposes to make, the Minister must not make the bioregional plan unless the Minister is satisfied that the bioregional plan is not inconsistent with the protection statement.

(2) If the Minister does not consider that there is a protection statement that is relevant to a bioregional plan that the Minister proposes to make, but considers that there is a recovery plan that is relevant to the bioregional plan, the Minister must not make the bioregional plan unless the Minister is satisfied that the bioregional plan is not inconsistent with the recovery plan.

(3) If the Minister considers that there is a protection statement and a recovery plan that are relevant to a bioregional plan that the Minister proposes to make, the Minister must not make the bioregional plan unless the Minister is satisfied that the bioregional plan is not inconsistent with the protection statement, but is not required to be satisfied that the bioregional plan is not inconsistent with the recovery plan.

177AP Matters of which the Minister must be satisfied before making a bioregional plan—outcomes of the bioregional plan

The Minister must not make a bioregional plan for a region unless the Minister is satisfied of the following:

(a) that making the bioregional plan will promote the objects of this Act;

(b) that threats to matters protected by a provision of Part 3 in the region have been identified and addressed as appropriate, being threats arising other than from priority actions;

(c) that the bioregional plan includes objectives directed at promoting the protection, conservation or restoration of the following (to the extent relevant to the bioregional plan):

(i) listed threatened species;

(ii) listed threatened ecological communities;

(iii) listed migratory species;

(iv) the world heritage values of a declared World Heritage property;

(v) the National Heritage values of a National Heritage place;

(vi) the ecological character of a declared Ramsar wetland;

(vii) the environment, in respect of the impact of a radiological exposure action;

(viii) the environment in a Commonwealth marine area;

(ix) the environment in the Great Barrier Reef Marine Park;

(x) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development;

(xi) the environment on Commonwealth land;

(d) that the bioregional plan will not have an unacceptable impact on a matter protected by a provision of Part 3;

(e) that the bioregional plan will, or will be likely to, result in the residual significant impacts of each priority class of actions (taken as a whole) on impacted protected matters being compensated to a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires);

(f) that the bioregional plan includes consideration of:

(i) the expected impacts of climate change; and

(ii) appropriate adaptation and resilience measures to protect matters protected by a provision of Part 3 in response to those impacts.

Note: See the definition of ***unacceptable impacts*** in section 527F.

177AQ Matters of which the Minister must be satisfied before making a bioregional plan—consistency with international conventions and other instruments

(1) The Minister must not make a bioregional plan unless the Minister is satisfied that making the bioregional plan would not be inconsistent with any of the following:

(a) Australia's obligations under a designated international agreement;

(b) any threat abatement plan the Minister considers relevant;

(c) a designated environmental instrument.

(2) The Minister must not make a bioregional plan unless the Minister is satisfied that making the bioregional plan would be consistent

with any national environmental standards prescribed by the regulations for the purposes of this subsection.

177AR Minister must publish bioregional plan

The Minister must publish each bioregional plan, and the reasons for the decision to make the bioregional plan, on the Department's website as soon as practicable after the plan is made.

Division 3—Variation of bioregional plans

Subdivision A—Process for varying bioregional plans

177AS Minister may vary a bioregional plan in certain circumstances

(1) The Minister may vary a bioregional plan for a region if the Minister is satisfied that one or more of the following applies:

(a) a review of the bioregional plan has recommended the bioregional plan be varied;

(b) the objectives of the bioregional plan are not being met;

(c) both:

(i) an ecological event has occurred that has had, will have, or is likely to have, a significant impact on a matter protected by a provision of Part 3; and

(ii) varying the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(d) there has been a change in development pressures in the region and varying the bioregional plan is appropriate in the circumstances;

(e) both:

(i) significant new information about a threat to a matter protected by a provision of Part 3 is available; and

(ii) having regard to the new information, varying the bioregional plan is reasonably necessary to protect, or lessen the threat to, a matter protected by a provision of Part 3;

(f) one or more priority actions taken have had or will have an unacceptable impact on a matter protected by a provision of Part 3;

Note: See the definition of ***unacceptable impacts*** in section 527F.

(g) the bioregional plan has not resulted, or is not likely to result, in the residual significant impacts of each priority class of

actions (taken as a whole) on one or more impacted protected matters being compensated to a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires);

(h) both:

(i) there has been a change in a matter protected by a provision of Part 3, or in the status of a matter protected by a provision of Part 3, or in the importance of the population of a matter protected by a provision of Part 3; and

(ii) varying the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(i) both:

(i) an action taken within or outside the region has had, or is likely to have, a significant impact on a matter protected by a provision of Part 3 in the region; and

(ii) varying the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(j) a condition of the bioregional plan relating to the delivery of a bioregional restoration measure has been, or is likely to be, contravened;

(k) a bioregional restoration measure is no longer appropriate to achieve its purpose;

(l) both:

(i) an existing condition of the bioregional plan in relation to the taking of a priority action by a person is no longer necessary or convenient to protect, or to mitigate or repair damage to, an impacted protected matter to which the existing condition relates; and

(ii) the variation of the bioregional plan is to vary or revoke the existing condition;

(m) the variation has been agreed to by:

(i) each relevant State and relevant Territory for the bioregional plan; or

(ii) if the region is wholly located in one or more Commonwealth areas—the Commonwealth;

(n) the variation is to a part of the bioregional plan that does not have regulatory effect;

(o) the variation is necessary to ensure that the bioregional plan is consistent with a national environmental standard prescribed by the regulations for the purposes of subsection 177AQ(2);

(p) a ground prescribed by the regulations exists.

(2) The Minister may vary a bioregional plan for a region during a period when the bioregional plan is suspended under Division 4.

(3) Without limiting paragraph (1)(j), a reference to a change in a matter protected by a provision of Part 3 includes the occurrence of a listing event (within the meaning of subsection 158A(1)) in relation to the matter.

177AT Scope of variations of a bioregional plan

(1) Without limiting this Division, a variation of a bioregional plan may relate to one or more of the following:

(a) development zones;

(b) conservation zones;

(c) priority actions;

(d) impacted protected matters;

(e) restricted actions;

(f) restricted protected matters;

(g) bioregional restoration measures;

(h) conditions of the bioregional plan.

(2) A variation of a bioregional plan may:

(a) be minor or machinery in nature; or

(b) relate to a provision of the bioregional plan that does not have regulatory effect.

177AU Requirements for variation to specify new impacted protected matters

The Minister must not vary a bioregional plan to specify a new impacted protected matter for an existing priority class of actions, without varying the existing priority class of actions, unless the Minister is satisfied that, taken as a whole, the actions in the class have, will have, or are likely to have, a significant impact on the new impacted protected matter.

Note: If the priority class of actions is also being varied in such a way that impacted protected matters are varied because of the application of section 177AE, the significant impact tests in those provisions will apply because of the operation of paragraph 177AX(1)(f).

177AV Requirements for variation to specify new restricted protected matters

The Minister must not vary a bioregional plan to specify a new restricted protected matter for an existing class of actions unless the Minister is satisfied that, taken as a whole, the actions in the class have, will have, or are likely to have, a significant impact on the new restricted protected matters.

Note: If the class of actions is also being varied in such a way that restricted protected matters are varied because of the application of section 177AE, the significant impact tests in those provisions will apply because of the operation of paragraph 177AX(1)(f).

177AW Consent requirements for variation of conditions of a bioregional plan

The Minister must not vary a bioregional plan in such a way that:

(a) an existing condition requiring, or otherwise relating to, the delivery of a bioregional restoration measure by a person (other than the Commonwealth or a Commonwealth agency) is varied; or

(b) a new condition requiring or otherwise relating to the delivery of a bioregional restoration measure by a person

(other than the Commonwealth or a Commonwealth agency) is included;

unless the person has consented to the variation.

177AX Other matters relating to variations of a bioregional plan

(1) In addition to the matters specified in this Division, for the purposes of deciding whether or not to vary a bioregional plan, the Minister must:

(a) have regard to the matters specified in section 177AM (other than paragraphs 177AM(d) to (g)) in relation to the bioregional plan as proposed to be varied; and

(c) have regard to any advice obtained from the CEO; and

(d) have regard to any advice obtained from the following:

(i) the Australian Heritage Council;

(ii) a committee established under Part 19; and

(e) have regard to any comments received in response to a notice on the draft variation under section 177AY that the Minister considers relevant; and

(f) ensure that the requirements in Division 1 and sections 177AN (agreement of persons), 177AP (outcomes) and 177AQ (consistency with instruments etc.) in relation to the bioregional plan as proposed to be varied are satisfied in relation to the bioregional plan as varied.

Note: The requirement for the Minister to ensure the matters in Division 1 are satisfied means, for example, that the Minister must ensure that:

(a) any new or varied class of priority actions that can be taken in a development zone is specified in accordance with section 177AE, including that the bioregional plan specifies the impacted protected matters for the new or varied class; and

(b) any new or varied development zone is specified in accordance with section 177AD and that the bioregional plan specifies classes of priority actions that can be taken in the zone and the impacted protected matters for each class in accordance with section 177AE; and

(c) any new or varied condition in relation to the taking of a priority action by a person is attached in accordance with section 177AG, including that the bioregional plan specifies the condition and the impacted protected matters that the condition relates to.

(2) Subsection (1) does not apply to a variation of a bioregional plan to the extent that the variation:

(a) is minor or machinery in nature; or

(b) relates to a provision of the bioregional plan that does not have regulatory effect.

177AY Minister must publish, notify and seek comments on a proposed variation of a bioregional plan

(1) Before the Minister varies a bioregional plan for a region under section 177AS, the Minister must give a notice to the following:

(a) each relevant State and relevant Territory for the bioregional plan;

(b) each person who must comply with a condition of the bioregional plan in relation to the delivery of a bioregional restoration measure;

(c) each registered person for the bioregional plan.

(2) A notice under subsection (1) must:

(a) state that the Minister proposes to vary the bioregional plan; and

(b) include a draft of the proposed variation; and

(c) specify the grounds on which the Minister proposes to vary the bioregional plan; and

(d) invite comments on the draft variation within the period specified in the notice, which must be a period of at least 30 business days.

(3) The Minister must:

(a) publish a copy of a notice under subsection (1) on the Department's website as soon as practicable after giving it; and

(b) invite public comments on the draft variation within the period specified in the notice, which must be a period of at least 30 business days.

(5) Before the Minister varies a bioregional plan, the Minister must seek the advice of the CEO.

(6) The Minister must not vary a bioregional plan until after the latest of the following:
  (a) the end of the period specified in the notice given under paragraph (2)(d);
  (b) the end of the period specified in the notice given under paragraph (3)(b);
  (d) the day on which the advice of the CEO is received.

(7) The Minister is not required to publish, notify or invite comments under this section on a draft of a proposed variation:
  (a) if the Minister reasonably believes that the variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment; or
  (b) to the extent that the variation is minor or machinery in nature, or relates to a provision of the bioregional plan that does not have regulatory effect.

(8) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to a decision under section 177AS to vary a bioregional plan.

177AZ Variation of a bioregional plan must be in writing, etc.

(1) A variation of a bioregional plan must be in writing.

(2) A variation of a bioregional plan must specify the day on which the variation commences, which must not be earlier than the day on which it is published on the Department's website under section 177BA.

(3) A variation of a bioregional plan is not a legislative instrument.

177BA Minister must publish, etc. bioregional plan as varied

(1) The Minister must publish each varied bioregional plan for a region on the Department's website as soon as practicable after varying the plan.

(2) The Minister must also give a copy of the varied bioregional plan to the following:
  (a) each relevant State and relevant Territory for the bioregional plan;
  (b) each person who must comply with a condition of the bioregional plan in relation to the delivery of a bioregional restoration measure;
  (c) each registered person for the bioregional plan.

Subdivision B—Application of variations of bioregional plans to existing actions

177BB Variation of conditions—persons who have already registered priority actions

(1) If the Minister varies a bioregional plan by attaching a new condition, or varying an existing condition, in relation to the taking of a priority action by a person, the new or varied condition does not apply to the taking of the priority action by the person if, immediately before the variation, the priority action was a registered priority action in relation to the person.

(2) If a new or varied condition does not apply to the taking of a priority action by a person because of subsection (1), the Minister may, if the Minister considers it appropriate to do so, determine that the condition applies despite that subsection.

(3) If the Minister makes a determination under subsection (2), the Minister must give the person written notice of the determination and the reasons for it.

(4) The notice must specify the day the condition starts to apply to the taking of the priority action by the person (which must not be earlier than the day after the day the notice is given to the person).

177BC Variation of development zones—persons who have already commenced actions

(1) This section applies to the taking of an action by a person if:

(a) the Minister varies a bioregional plan by specifying a new development zone or varying an existing development zone; and

(b) the new or varied development zone covers an area (the ***new area***) that was not a development zone immediately before the variation; and

(c) before the variation:

(i) the person commenced taking the action in the new area; or

(ii) the action was referred to the Minister under section 68, 69 or 71; and

(d) immediately after the variation, the action is a priority action in relation to the new or varied development zone.

(2) On and after the variation, a condition of the bioregional plan that would, but for this subsection, apply to the taking of the action by the person in the new area, is taken not to apply to the taking of the action by the person in the new area.

Note: The person is also not required to register the action (see subsection 177CB(4)).

177BD Variation of development zones—persons who have already registered priority actions

(1) This section applies if:

(a) the Minister varies a bioregional plan by removing or varying an existing development zone; and

(b) as a result of the variation, an area (the ***old area***) that was covered by the existing development zone is no longer a development zone; and

(c) immediately before the variation, a priority action in relation to the existing development zone was a registered priority action in relation to a person.

(2) The bioregional plan as in force immediately before the variation (including any conditions of the plan) continues to apply to the person in relation to the taking of the action on and after the variation as if the variation had not happened.

177BE Variation of priority actions—persons who have already commenced actions

(1) This section applies to the taking of an action by a person if:

(a) the Minister varies a bioregional plan by specifying a new priority class of actions, or varying an existing priority class of actions, that can be taken in a development zone; and

(b) before the variation:

(i) the person commenced taking the action; or

(ii) the action was referred to the Minister under section 68, 69 or 71; and

(c) immediately before the variation, the action was not a priority action; and

(d) immediately after the variation, the action becomes a priority action because it is included in the new or varied class.

(2) On and after the variation, a condition of the bioregional plan that would, but for this subsection, apply to the taking of the action by the person, is taken not to apply to the taking of the action by the person.

Note: The person is also not required to register the action (see subsection 177CB(4)).

177BF Variation of actions—persons who have already registered actions

(1) This section applies if:

(a) the Minister varies a bioregional plan by removing or varying an existing priority class of actions that can be taken in a development zone; and

(b) as a result of the variation, an action that was included in the existing class is no longer included in any priority class of actions that can be taken in the development zone; and

(c) before the variation, a priority action in relation to the development zone was a registered priority action in relation to a person.

(2) The bioregional plan as in force immediately before the variation (including any conditions of the plan) continues to apply to the taking of the action by the person on and after the variation as if the variation had not happened.

Division 4—Suspension and revocation of bioregional plans

Subdivision A—Process for suspending or revoking bioregional plans

177BG Minister may suspend or revoke a bioregional plan

Power to suspend or revoke

(1) The Minister may suspend or revoke a bioregional plan for a region if the Minister is satisfied that one or more of the following apply:

(a) a review of the bioregional plan has recommended the bioregional plan be suspended or revoked;

(b) the objectives of the bioregional plan are not being met;

(c) there has been a change in development pressures in the region and suspending or revoking the bioregional plan is appropriate in the circumstances;

(d) both:

(i) an ecological event has occurred that has had, will have, or is likely to have, a significant impact on a matter protected by a provision of Part 3; and

(ii) suspending or revoking the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(e) both:

(i) significant new information about a threat to a matter protected by a provision of Part 3 is available; and

(ii) having regard to the new information, suspending or revoking the bioregional plan is reasonably necessary to protect, or lessen the threat to, a matter protected by a provision of Part 3;

(f) one or more priority actions taken have had or will have an unacceptable impact on a matter protected by a provision of Part 3;

Note: See the definition of ***unacceptable impacts*** in section 527F.

(g) the bioregional plan has not resulted, or is not likely to result, in the residual significant impacts of each priority class of actions (taken as a whole) on one or more impacted protected matters being compensated to a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires);

(h) both:

(i) there has been a change in a matter protected by a provision of Part 3, in the status of a matter protected by a provision of Part 3, or in the importance of the population of a matter protected by a provision of Part 3; and

(ii) suspending or revoking the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(i) both:

(i) an action taken within or outside the region has had, or is likely to have, a significant impact on a matter protected by a provision of Part 3 in the region; and

(ii) suspending or revoking the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(j) a condition of the bioregional plan relating to the delivery of bioregional restoration measures has been, or is likely to be, contravened;

(k) the suspension or revocation has been agreed to by:

(i) each relevant State and relevant Territory for the bioregional plan; or

(ii) if the region is wholly located in one or more Commonwealth areas—the Commonwealth;

(l) a ground prescribed by the regulations exists.

Effect of suspension of a bioregional plan—no new registrations

(2) The effect of a suspension of a bioregional plan is that the Minister must not register a priority action under section 177BN, or transfer

a registration under section 177BO, in a development zone specified in the bioregional plan during the period of suspension.

(3) The suspension of a bioregional plan does not otherwise affect the operation of the bioregional plan, which remains in effect for all other purposes.

Meaning of change in a matter

(4) Without limiting subparagraph (1)(h)(i), a reference to a change in a matter protected by a provision of Part 3 includes, but is not limited to, a reference to the occurrence of a listing event (within the meaning of subsection 158A(1)) in relation to the matter.

177BH Minister must notify and seek comments on proposed suspension or revocation of a bioregional plan

(1) Before the Minister suspends or revokes a bioregional plan for a region under section 177BG, the Minister must give a notice to the following:

(a) each relevant State and relevant Territory for the bioregional plan;

(b) each person who must comply with a condition included in the bioregional plan in relation to the delivery of a bioregional restoration measure by the person;

(c) each registered person for the bioregional plan.

(2) A notice under subsection (1) must:

(a) state that the Minister proposes to suspend or revoke the bioregional plan; and

(b) specify the grounds on which the Minister proposes to suspend or revoke the bioregional plan; and

(c) invite comments on the proposed suspension or revocation within the period specified in the notice, which must be a period of at least 30 business days.

(3) The Minister must:

(a) publish a copy of a notice under subsection (1) on the Department's website as soon as practicable after giving it; and

(b) invite public comments on the proposed suspension or revocation within the period specified in the notice, which must be a period of at least 30 business days.

(4) The Minister must not suspend or revoke a bioregional plan under section 177BG until after the end of the period specified in paragraph (2)(c) or (3)(b) of this section, whichever is later.

(5) Before suspending or revoking a bioregional plan, the Minister must seek the advice of the CEO.

(6) Before suspending or revoking a bioregional plan, the Minister may obtain advice from the following:

(a) the Australian Heritage Council;

(b) a committee established under Part 19.

(7) Despite subsections (1) to (4), the Minister is not required to publish, notify or invite comments on a draft of a proposed suspension or revocation of a bioregional plan if the Minister reasonably believes that the suspension or revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

(8) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to a decision under section 177BG to suspend or revoke a bioregional plan.

177BI Minister must publish and notify suspension of a bioregional plan

(1) If the Minister suspends a bioregional plan for a region under section 177BG, the Minister must give written notice of the suspension (a ***suspension notice***) to the following as soon as practicable after the suspension:

(a) each relevant State and relevant Territory for the bioregional plan;
(b) each person who must comply with a condition of the bioregional plan in relation to the delivery of a bioregional restoration measure;
(c) each registered person for the bioregional plan.

(2) The suspension notice must specify:
(a) the grounds for the suspension; and
(b) the day the suspension takes effect (which must not be earlier than the day after the day the last notice is given under subsection (1)); and
(c) either:
(i) the things that must be done for the suspension to end (see subsection (3)); or
(ii) a fixed period for the suspension.

(3) For the purposes of subparagraph (2)(c)(i), the things may be one or more specified things to be done by the Commonwealth, a relevant State or a relevant Territory for the bioregional plan.

(4) The Minister must publish a copy of a notice under subsection (1) on the Department's website as soon as practicable after giving it.

177BJ Period of suspension

Suspension notices specifying fixed period

(1) If a suspension notice specifies a fixed period for the suspension, the suspension ceases to have effect immediately after the end of the fixed period.

Suspension notices requiring things to be done

(2) If a suspension notice specifies things that a person must do for the suspension to end:

(a) the Minister must give the person a written notice as soon as practicable after the Minister is satisfied the person has done those things; and

(b) the suspension ceases to have effect at the start of the day the Minister gives the person the notice under paragraph (a).

(3) As soon as practicable after giving a notice under paragraph (2)(a), the Minister must:

(a) give each person mentioned in subsection 177BI(1) a copy of the notice; and

(b) publish a copy of the notice on the Department's website.

177BK Minister must publish and notify revocation of a bioregional plan

(1) If the Minister revokes a bioregional plan under section 177BG, the Minister must give written notice of the revocation to the following as soon as practicable after the revocation:

(a) each relevant State and relevant Territory for the bioregional plan;

(b) each person who must comply with a condition of the bioregional plan in relation to the delivery of a bioregional restoration measure;

(c) each registered person for the bioregional plan.

(2) The notice must specify:

(a) the grounds for the revocation; and

(b) the day the revocation takes effect (which must not be earlier than the day after the day the last notice is given under subsection (1)).

(3) The Minister must publish a copy of a notice under subsection (1) on the Department's website as soon as practicable after giving it.

Subdivision B—Application of suspended or revoked bioregional plans to existing actions

177BL Application of bioregional plan to actions commenced during suspension period

(1) This section applies to an action taken by a person if, during the period starting when a bioregional plan is suspended and ending when the suspension ceases:

(a) the person commences taking the action in a development zone specified in the bioregional plan; or

(b) the action is referred to the Minister under section 68, 69 or 71.

(2) If, as a result of the suspension ceasing, the action would, but for this subsection, become a priority action in relation to a development zone specified in the bioregional plan, the action is taken not to be a priority action in relation to the development zone, to the extent that the action is taken by the person.

177BM Continuation of a revoked bioregional plan in relation to certain matters

(1) This section applies if:

(a) before the revocation of a bioregional plan:

(i) a person commences an action that is a priority action in relation to a development zone; and

(ii) the action is still a priority action in relation to the development zone under the bioregional plan as in force immediately before its revocation; or

(b) immediately before the revocation of a bioregional plan, a priority action in relation to a development zone is registered in relation to a person.

(2) On and after the revocation:

(a) the bioregional plan as in force immediately before the revocation; and

(b) any conditions included in the bioregional plan under section 177AG; and

(c) section 37;

continue to apply to the taking of the action by the person as if the revocation had not happened (despite section 177AC) but, to avoid doubt, cannot be varied after that revocation.

(3) On and after the revocation, any conditions included in the bioregional plan under section 177AI continue to apply as if the revocation had not happened (despite section 177AC) but, to avoid doubt, cannot be varied after that revocation.

Division 5—Registering priority actions

177BN Registering priority actions

(1) A person proposing to take a priority action in a development zone specified in a bioregional plan may request that the Minister register the priority action in relation to the person.

Note: A person who takes a priority action that is not registered may commit an offence (see section 177CB).

(2) A request under subsection (1) must:
(a) be in writing; and
(b) be in the approved form (if any); and
(c) be accompanied by the greenhouse gas emissions information for the priority action; and
(d) be accompanied by the following:
(i) the information or documents (if any) that the approved form specifies are required;
(ii) the information or documents (if any) prescribed by the regulations.

Note: For ***greenhouse gas emissions information***, see subsection 84A(2).

(3) If a person makes a request under subsection (1) for the Minister to register a priority action, the Minister must, as soon as practicable after receiving the request:
(a) decide to register the priority action in relation to the person; or
(b) refuse to register the priority action in relation to the person.

Note 1: The Minister must not decide to register a priority action during a period when the bioregional plan is suspended (see subsection 177BG(2)).

Note 2: The Minister is not required to make a decision until further information requested has been provided (see subsection 177BR(2)).

(4) The Minister must not decide to register a priority action in relation to a person unless the Minister is satisfied:

(a) that the priority action would not be a designated priority action for the person for any impacted protected matter; and

(b) that all of the impacted protected matters for the priority action have not ceased to be protected matters; and

(c) that the person is capable of complying with the conditions of the bioregional plan that would apply to the taking of the priority action by the person; and

(d) that any other matters prescribed by the regulations are satisfied.

(5) In deciding whether or not to register a priority action specified in a development zone in a bioregional plan, the Minister may consider whether the person is a suitable person to take the priority action in the development zone, having regard to:

(a) the person's history in relation to environmental matters; and

(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and

(c) if the person is a body corporate that is a subsidiary of another body or company (the ***parent body***)—the history in relation to environmental matters of the parent body and its executive officers.

(6) As soon as practicable after making a decision under subsection (3), the Minister must give the person:

(a) written notice of the decision; and

(b) if the decision is to register the priority action—the day on which the registration will cease to have effect under subsection 177BQ(2); and

(c) if the decision is to refuse to register the priority action—the reasons for the decision.

(7) If the Minister decides to register the priority action, the priority action:

(a) becomes registered in relation to the person on the day the Minister makes the decision; and

(b) remains registered in relation to the person until any of the following events occurs:

(i) the day on which a transfer of the registration takes effect under subsection 177BO(7);
(ii) the day on which a revocation of the registration takes effect under subsection 177BP(3);
(iii) the day on which the registration ceases to have effect under subsection 177BQ(2).

(8) As soon as practicable after making the decision, the Minister must publish, on the Department's website:
(a) a copy of the decision; and
(b) if the decision is to register the priority action—the greenhouse gas emissions information for the priority action.

177BO Transfer of registration

(1) A person (the ***transferor***) in relation to whom a priority action is registered may request that the Minister transfer the registration of the priority action to another person (the ***transferee***).

(2) The request must:
(a) be in writing; and
(b) be in the approved form (if any); and
(c) be accompanied by the following:
(i) the information or documents (if any) that the approved form specifies are required;
(ii) the information or documents (if any) prescribed by the regulations;
(iii) a copy of the written agreement of the transferee to the transfer.

(3) The Minister must, as soon as practicable after receiving the request:
(a) consent to the transfer of the registration to the transferee; or
(b) refuse to consent to the transfer of the registration.

(4) The Minister must not consent to the transfer unless the Minister is satisfied of the matters specified in paragraphs 177BN(4) (a), (b), (c) and (d) in relation to the transferee.

(5) In considering whether to consent to the transfer, the Minister may consider whether the transferee is a suitable person to take the priority action in the development zone specified in the bioregional plan, having regard to the matters specified in paragraphs 177BN(5)(a), (b) and (c) in relation to the transferee.

(6) As soon as practicable after making a decision under subsection (3), the Minister must give the transferor and the transferee:
  (a) written notice of the decision; and
  (b) if the decision is to refuse to consent to the transfer—the reasons for the decision.

(7) If the Minister decides to consent to the transfer, the notice under paragraph (6)(a) must specify the day on which the transfer takes effect, which must not be earlier than the day on which the notice is given.

(8) If the Minister decides to consent to the transfer then, on and after the day specified by the Minister in accordance with subsection (7) as the day on which the transfer takes effect:
  (a) the priority action becomes registered in relation to the transferee; and
  (b) the priority action ceases to be registered in relation to the transferor; and
  (c) any conditions attached to the taking of the priority action that applied to the transferor immediately before that day cease to apply to the transferor on that day and apply to the transferee on and after that day.

(9) If the Minister decides to consent to the transfer, the priority action remains registered in relation to the transferee until either of the following events occurs:
  (a) the day on which a transfer of the registration takes effect under subsection (7);

(b) the day on which the registration ceases to have effect under subsection 177BQ(2).

(10) The Minister must publish a copy of the decision on the Department's website as soon as reasonably practicable after making the decision.

177BP Revocation of registration

(1) The Minister may, by written instrument, revoke the registration of a priority action in relation to a person if the Minister is satisfied that:

(a) the action is a priority action for an impacted protected matter; and

(b) the person has failed to comply with a condition that relates to the impacted protected matter that is attached by the bioregional plan to the taking of the priority action; and

(c) the condition applies to the taking of the priority action by the person.

(2) The Minister must, as soon as practicable after revoking the registration:

(a) give the person a notice that includes:

(i) a copy of the instrument of revocation; and

(ii) the reasons for the revocation; and

(b) publish the instrument of revocation, and the reasons for the revocation, on the Department's website.

(3) The revocation takes effect on the day specified in the instrument (which must not be earlier than the day the instrument is given to the person).

(4) An instrument made under subsection (1) is not a legislative instrument.

177BQ Cessation of registration of priority actions

(1) This section applies if:

(a) the Minister decides under paragraph 177BN(3)(a) to register a priority action in a development zone in a bioregional plan; and

(b) as at the end of the period of 5 years beginning when the Minister made the decision, the priority action has not substantially commenced.

(2) The registration ceases to have effect at the end of the period.

(3) However, if the Minister decides under section 177BQA to extend the date on which the registration ceases to have effect, the reference in paragraph (1)(b) to the end of the period of 5 years beginning when the Minister made the decision is taken to be a reference to the date decided by the Minister under section 177BQA.

177BQA Extending date of cessation of registration of priority action

(1) At least 6 months before the fifth anniversary of the date of a notice given under subsection 177BN(6) (the ***initial notice***) of a decision under paragraph 177BN(3)(a) to register a priority action, the Minister must give the person to whom the initial notice was given written notice that, if the priority action has not substantially commenced before the fifth anniversary, the registration of the priority action will cease to have effect under subsection 177BQ(2) on that anniversary.

(2) The person may request the Minister to extend the date on which the registration will cease to have effect under subsection 177BQ(2). The request must:

(a) be in writing; and

(b) be in the approved form (if any); and

(c) be accompanied by the following:

(i) the information or documents (if any) that the approved form specifies are required;

(ii) the information or documents (if any) prescribed by the regulations.

(3) The request must be made at least 20 business days before the fifth anniversary.

(4) The Minister must make a decision on the request within 20 business days.

(5) The Minister may, if satisfied that it is appropriate to do so, extend the date on which the registration will cease to have effect under subsection 177BQ(2) to a later date specified by the Minister. The later date must not be later than the tenth anniversary of the date of the initial notice.

(6) If the Minister extends the date to a date that is sooner than the tenth anniversary of the date of the initial notice, the Minister may, if the Minister is satisfied that it is appropriate to do so, further extend the date, so long as the later date is not later than the tenth anniversary of the date of the initial notice.

(7) The Minister may further extend the date under subsection (6) on one or more occasions (so long as no further later date is later than the tenth anniversary of the date of the initial notice).

(8) As soon as practicable after the Minister decides a request under subsection (2), or extends a date under subsection (6), the Minister must:
  (a) give the person written notice of the Minister's decision; and
  (b) publish a copy of the decision on the Department's website.

177BR Minister may request further information for making decision

(1) The Minister may:
  (a) request a person to provide any additional information that the Minister considers is relevant to making a decision on a request made by the person under subsection 177BN(1) that the Minister register a priority action in a development zone; or
  (b) request a person who is a transferor or transferee, in relation to a request under subsection 177BO(1), to provide any

additional information the Minister considers is relevant to making a decision.

(2) There is no limit to the number of times the Minister may request information under subsection (1) from a person in relation to a request.

(3) If the Minister has requested more information under subsection (1), the Minister is not required to make the decision concerned until the information is provided.

177BS Withdrawal of request

A person may withdraw the following requests made by the person by written notice given to the Minister:

(a) a request under subsection 177BN(1) that the Minister register a priority action in a development zone;

(b) a request under subsection 177BO(1) that the registration of a priority action be transferred.

Division 6—Exemptions for restricted actions

177BT Minister may grant exemptions for restricted actions taken in a conservation zone in certain circumstances

(1) The Minister may, by written instrument, grant an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone by a person:

(a) on the Minister's initiative; or

(b) on application under section 177BU.

Note: The Minister may request information to make an informed decision under subsection 177BY(1).

(1A) Despite subsection (1), the Minister must not grant an exemption in relation to the taking of a restricted action in a conservation zone if the restricted action is a fossil fuel action.

Content of exemption

(2) The exemption must specify:

(a) the restricted action; and

(b) the person to whom the exemption applies; and

(c) the period for which the exemption is in force.

(3) The Minister must be satisfied that the period specified for the purposes of paragraph (2)(c) is reasonably necessary having regard to the basis for the exemption.

When exemption comes into force

(4) An exemption comes into force at the start of the period specified for the purposes of paragraph (2)(c) (which must not be earlier than the day the exemption is made).

Not a legislative instrument

(5) An exemption made under subsection (1) is not a legislative instrument.

(6) An exemption under this section may be made even if the bioregional plan for the conservation zone is suspended.

177BU Application for exemption

(1) A person may apply to the Minister for an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone by the person.

Note: Section 177CC imposes penalties for taking a restricted action in a conservation zone.

(2) An application under subsection (1) must:
(a) be in the approved form (if any) for the application; and
(b) be accompanied by the following:
(i) the information or documents (if any) that the approved form specifies are required;
(ii) the information or documents (if any) prescribed by the regulations.

Note: The requirements under this subsection are in addition to any other requirements under this Act for an application.

(3) The Minister must decide whether or not to grant the exemption after taking any steps required by section 177BW (consultation).

177BV Grounds for grant of exemption

(1) Before granting an exemption under section 177BT in relation to the taking of a restricted action in a conservation zone by a person, the Minister must be satisfied:
(a) that exceptional circumstances exist that justify granting the exemption; or
(b) that:

(i) the taking of the action would result or be likely to result in an outcome; and

(ii) that outcome is in Australia's national interest.

That outcome is the ***intended outcome*** for the national interest proposal that, under section 75C, the action is taken to be.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

(2) If the Minister proposes to grant the exemption on the Minister's initiative, the Minister must also be satisfied that the person proposing to take the action has agreed to the granting of the exemption.

Exceptional circumstances

(3) In deciding for the purposes of paragraph (1)(a) whether or not exceptional circumstances exist that justify granting the exemption, the Minister must have regard to:

(a) the extent to which the proposed restricted action would be consistent with the objectives of the relevant bioregional plan; and

(b) the extent to which the proposed restricted action would achieve a conservation outcome; and

(c) the extent to which the proposed restricted action is important for human safety; and

(d) the extent to which the proposed restricted action would provide an essential economic, social or cultural outcome that cannot be achieved elsewhere; and

(e) any comments made in response to a notice under paragraph 177BW(1)(a)(iii); and

(f) any matters prescribed by the regulations; and

(g) any other matters the Minister considers relevant.

177BW Consultation

(1) Before deciding whether or not to grant an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone, the Minister must:

(a) publish the following (as applicable) on the Department's website:

(i) if an application has been made for the exemption—a copy of the application for the exemption (unless subsection (3) applies);

(ii) if the Minister proposes to grant the exemption on the Minister's initiative—a copy of the draft of the exemption;

(iii) in any case (unless subsection (4) applies)—a notice inviting comments on the proposed exemption within the period specified in the notice, which must be a period of at least 30 business days; and

(b) notify each State or Territory in which the whole or a part of the conservation zone is located.

(2) Subject to subsection (4), the Minister must not decide whether or not to grant the exemption until after the end of the period specified in the notice published under subparagraph (1)(a)(iii).

(3) The Minister must not publish under subparagraph (1)(a)(i) so much of the application as:

(a) is:

(i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

(ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

(4) If the Minister is satisfied that granting the exemption is necessary to prevent or lessen a serious and imminent threat to human health or the environment:
  (a) the Minister is not required to publish a notice under subparagraph (1)(a)(iii); and
  (b) the Minister may make a decision to grant the exemption at any time.

177BX Notice of exemption decisions

(1) This section applies if the Minister decides to grant an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone by a person.

(2) The Minister must, as soon as practicable after making a decision, give written notice of the decision and the reasons for the decision to the following (as applicable):
  (a) if the decision relates to an application under subsection 177BU(1)—the applicant;
  (b) if the decision is made on the Minister's initiative—the person proposing to take the action;
  (c) in all cases—each State or Territory in which the whole or a part of the conservation zone is located.

(3) The Minister must, as soon as practicable after giving written notice to the applicant or the person, as the case requires, publish a copy of the notice, and the reasons for the decision, on the Department's website.

(4) However, the Minister must not publish under subsection (3) so much of the reasons as:
  (a) is:
    (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or
    (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

177BY Minister may request information in relation to exemptions

(1) The Minister may, by written notice, request any of the following persons (as applicable) to give the Minister information the Minister reasonably believes is relevant to making a decision on whether or not to grant an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone:

(a) if the decision relates to an application under subsection 177BU(1)—the applicant;

(b) if the Minister is considering making the decision on the Minister's initiative—the person proposing to take the action.

(2) The notice given under subsection (1) must specify:

(a) the information requested by the Minister; and

(b) the day by which the information must be given to the Minister (which must be at least 10 business days after the day the notice is given to the person).

(3) There is no limit to the number of times the Minister may request information under subsection (1) from a person.

(4) If the Minister has requested more information under subsection (1), the Minister is not required to make the decision concerned until the information is provided.

Division 7—Offences and civil penalties

177BZ Non-compliance with general conditions of bioregional plans

(1) A person contravenes this subsection if:

(a) the person does an act or omits to do an act; and

(b) doing the act, or omitting to do the act, contravenes a condition of a bioregional plan that is attached to the taking of a priority action (the ***relevant priority action***); and

(c) the relevant priority action is a registered priority action in relation to the person; and

(d) the condition applies to, or in relation to, the taking of the relevant priority action by the person.

Exception—approval granted under Part 9 or such an approval is not required

(2) Subsection (1) does not apply to an act or omission if:

(a) an approval of the taking of the relevant priority action by the person is in operation under Part 9; or

(b) a national interest exemption that allows the relevant priority action to be taken without an approval is in force; or

(c) a provision of Part 4 allows the person to take the relevant priority action without an approval.

Exception—decision of Minister

(3) Subsection (1) does not apply to an act or omission if:

(a) there is in force a decision of the Minister under Division 2 of Part 7 that the relevant priority action is not a controlled action; and

(b) if the decision of the Minister was made because the Minister believed that the relevant priority action would be taken in a manner specified in the notice of the decision given under section 77—the relevant priority action is taken in this manner.

Exception—relevant priority action commenced before bioregional plan came into effect

(4) Subsection (1) does not apply to an act or omission if the person commences taking the relevant priority action before the bioregional plan came into effect.

Exception—relevant priority action referred to the Minister before bioregional plan came into effect

(5) Subsection (1) does not apply to an act or omission if:
  (a) at any time before the bioregional plan came into effect, the relevant priority action was referred to the Minister under section 68, 69 or 71; and
  (b) immediately before the bioregional plan came into effect:
    (i) the Minister had not yet decided under Division 2 of Part 7 whether the relevant priority action was a controlled action; or
    (ii) the Minister had decided that the relevant priority action was a controlled action, but had not yet decided whether to approve the taking of the relevant priority action under section 133.

Fault-based offence

(6) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,000 penalty units.

Strict liability offence

(7) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

(8) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

177CA Non-compliance with conditions about bioregional restoration measures

(1) A person contravenes this subsection if:
  (a) a bioregional plan includes a condition requiring, or relating to, the delivery of a bioregional restoration measure by the person; and
  (b) the person contravenes the condition.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,000 penalty units.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

177CB Requirement to register priority actions

(1) A person contravenes this subsection if:

(a) the person takes an action; and

(b) the action is a priority action for a development zone specified in a bioregional plan; and

(c) the action is a priority action for an impacted protected matter; and

(d) the action is not a registered priority action in relation to the person.

Exception—action in accordance with approval or approval not required

(2) Subsection (1) does not apply to the taking of an action by a person if:

(a) an approval of the taking of the action by the person is in operation under Part 9; or

(b) a national interest exemption that allows the action to be taken without an approval is in force; or

(c) a provision of Part 4 allows the person to take the action without an approval.

Exception—action in accordance with decision of Minister

(3) Subsection (1) does not apply to the taking of an action by a person if:

(a) there is in force a decision of the Minister under Division 2 of Part 7 that the action is not a controlled action; and

(b) if the decision was made because the Minister believed that the action would be taken in a manner specified in the notice of the decision given under section 77—the action is taken in this manner.

Exception—action commenced before bioregional plan came into effect

(4) Subsection (1) does not apply to the taking of an action by a person if the person commenced taking the action before the bioregional plan came into effect.

Exception for actions referred to the Minister before bioregional plan came into effect

(5) Subsection (1) does not apply to the taking of an action by a person if:

(a) at any time before the bioregional plan came into effect, the action was referred to the Minister under section 68, 69 or 71; and

(b) immediately before the bioregional plan came into effect:

(i) the Minister had not yet decided under Division 2 of Part 7 whether the action was a controlled action; or

(ii) the Minister had decided that the action was a controlled action, but had not yet decided whether to approve the taking of the action under section 133.

Other exceptions

(6) Subsection (1) does not apply to the taking of an action by a person that is a designated priority action for the person for all impacted protected matters.

(7) Subsection (1) does not apply to the taking of an action by a person if the impacted protected matter for which the action is a priority action has ceased to be a matter protected by a provision of Part 3.

Fault-based offence

(8) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,000 penalty units.

Strict liability offence

(9) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

(10) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

177CC Restricted actions must not be taken in conservation zones

(1) A person contravenes this subsection if:
(a) the person takes an action; and
(b) the action is a restricted action for a conservation zone specified in a bioregional plan; and
(c) the action is a restricted action for an impacted protected matter.

Exception—action in accordance with approval or approval not required

(2) Subsection (1) does not apply to the taking of an action by a person if:
(a) an approval of the taking of the action by the person is in operation under Part 9; or
(b) a national interest exemption that allows the action to be taken without an approval is in force; or
(c) a provision of Part 4 allows the person to take the action without an approval.

Exception—action in accordance with decision of Minister

(3) Subsection (1) does not apply to the taking of an action by a person if:

(a) there is in force a decision of the Minister under Division 2 of Part 7 that the action is not a controlled action; and

(b) if the decision was made because the Minister believed that the action would be taken in a manner specified in the notice of the decision given under section 77—the action is taken in this manner.

Exception—action covered by an exemption

(4) Subsection (1) does not apply to the taking of an action by a person if the person is covered by an exemption prescribed by the regulations made for the purposes of this subsection in accordance with subsection (12).

(5) Subsection (1) does not apply to the taking of an action by a person if:

(a) the action is a restricted action in relation to the conservation zone as a result of a variation of the bioregional plan that specified a new conservation zone or varied an existing conservation zone; and

(b) the new or varied conservation zone covers an area (the ***new area***) that was not a conservation zone immediately before the variation; and

(c) the person commenced taking the action in the new area before the variation.

(6) Subsection (1) does not apply to the taking of an action by a person if:

(a) the action is a restricted action in relation to the conservation zone as a result of a variation to the bioregional plan that specified a new class of actions, or varied an existing class of actions, that are prohibited in the conservation zone; and

(b) the person commenced taking the action before the variation.

Exception—action commenced before bioregional plan came into effect

(7) Subsection (1) does not apply to the taking of an action by a person if the person commenced taking the action before the bioregional plan came into effect.

Exception for actions referred to the Minister before bioregional plan came into effect

(8) Subsection (1) does not apply to the taking of an action by a person if:

(a) at any time before the bioregional plan came into effect, the action was referred to the Minister under section 68, 69 or 71; and

(b) immediately before the bioregional plan came into effect:

(i) the Minister had not yet decided under Division 2 of Part 7 whether the action was a controlled action; or

(ii) the Minister had decided that the action was a controlled action, but had not yet decided whether to approve the taking of the action under section 133.

Other exceptions

(9) Subsection (1) does not apply to the taking of an action by a person if the action is a designated restricted action for the person for all restricted protected matters.

(10) Subsection (1) does not apply to the taking of an action by a person if the restricted protected matter for which the action is a restricted action has ceased to be a matter protected by a provision of Part 3.

(11) Subsection (1) does not apply to the taking of an action by a person if an exemption under section 177BT in relation to the taking of the action by the person is in force.

Exemption prescribed by the regulations

(12) Before making regulations prescribing an exemption for the purposes of subsection (4), the Minister must be satisfied that prescribing the exemption would not be inconsistent with:

(a) the objects of this Act; and

(b) the objectives of any bioregional plans that are in force; and

(c) Australia's obligations under a designated international agreement.

Fault-based offence

(13) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,000 penalty units.

Strict liability offence

(14) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

(15) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

Division 8—Review of bioregional plans

177CD Review of a bioregional plan

(1) The Minister must cause reviews of each bioregional plan to be undertaken in accordance with this section.

(2) The first review of a bioregional plan must commence within 5 years of the day on which the bioregional plan commences.

(3) Subsequent reviews of a bioregional plan must commence within 5 years of the day on which a report of the previous review of the bioregional plan is given to the Minister under subsection (6).

(4) A review of a bioregional plan must deal with the following matters:
  (a) the extent to which the bioregional plan has promoted the objects of this Act;
  (b) the extent to which the bioregional plan has resulted in a net gain for impacted protected matters in the region to which the bioregional plan relates;
  (c) the extent to which the bioregional plan has achieved its objectives;
  (d) any other matters prescribed by the regulations for the purposes of this paragraph;
  (e) any other matters directed in writing by the Minister.

(5) A review of a bioregional plan may make recommendations in relation to the matters with which it deals.

(6) The person conducting a review of a bioregional plan must give a written report of the review to the Minister as soon as practicable after the review is completed.

(7) The Minister must prepare and publish the Government's response to a review of a bioregional plan on the Department's website as soon as practicable after the report of the review is given to the Minister under subsection (6).

(8) If the review made any recommendations, the response prepared under subsection (7) must give reasons for accepting or rejecting the recommendations.

Division 9—Priority actions that are components of larger actions

177CE Determination in relation to priority action that is a component of larger action

(1) A person who proposes to take an action (the ***larger action***) that includes a component that is a priority action, other than a component that is a registered priority action, may apply to the Minister for a determination that the component (the ***component action***) is taken not to be a priority action.

(2) The application must:
  (a) be made in writing; and
  (b) be made in the approved form (if any); and
  (c) include the information or documents prescribed by the regulations (if any).

(3) If the Minister is satisfied that it is appropriate to do so, the Minister may, in writing, determine that the component action is taken not to be a priority action.

(4) If the Minister makes a determination, the determination takes effect on the day specified in the determination (which must not be earlier than the day it is made).

(5) If the Minister makes a determination, the Minister must, as soon as practicable:
  (a) give the person a copy of the determination; and
  (b) publish a copy of the determination on the Department's website.

(6) While a determination is in force under subsection (3) in relation to a component action, the component action is taken not to be a priority action despite any other provision of this Part.

Note: This has the effect that the larger action, including the priority action, may be referred under Part 7 for approval under Part 9—see section 71A.

(7) If the Minister decides not to make a determination, the Minister must, as soon as practicable, give the person written notice of the Minister's decision and the reasons for it.

(8) A determination made under subsection (3) is not a legislative instrument.

Division 10—Exclusion determinations

177CF Exclusion determination

(1) The Minister may, by written instrument, determine that, despite any other provision of this Part, a specified priority action, other than a registered priority action, that a person proposes to take is taken not to be a priority action if the Minister is satisfied that:

(a) the taking of the action has not substantially commenced; and

(b) the taking of the action would result or be likely to result in an outcome; and

(c) that outcome is in Australia's national interest.

That outcome is the ***intended outcome*** for the national interest proposal that, under section 75B, the action is taken to be.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

(1A) Despite subsection (1), the Minister must not determine that a specified action is taken not to be a priority action if the action is a fossil fuel action.

(2) The Minister may make the determination:

(a) if the person proposing to take the action agrees in writing—on the Minister's initiative; or

(b) on application under section 177CG.

(3) The Minister must, as soon as practicable after making the determination:

(a) give a copy of the determination to:

(i) the person proposing to take the action; and

(ii) the applicant (if different from the person mentioned in subparagraph (i)); and

(b) publish a copy of the determination on the Department's website.

(4) The determination takes effect on the day specified in the determination (which must not be earlier than the day the determination is made).

(5) While a determination is in force under subsection (1) in relation to an action, the action is taken not to be a priority action despite any other provision of this Part.

Note: This has the effect that the action may be referred under Part 7 for approval under Part 9—see section 71A.

(6) A determination made under subsection (1) is not a legislative instrument.

177CG Application for exclusion determination

(1) Any of the following persons may apply to the Minister for a determination under section 177CF:
  (a) the person proposing to take the action as mentioned in subsection 177CF(1);
  (b) if the person proposing to take the action agrees in writing:
    (i) another Minister; or
    (ii) a Minister of a State or Territory.

(2) The application must:
  (a) be made in writing; and
  (b) be made in the approved form (if any); and
  (c) include the information or documents prescribed by the regulations (if any).

(3) The Minister must decide whether to make the determination, or refuse the application, within 20 business days of the day the application is made.

(4) If the Minister decides to refuse the application, the Minister must give the applicant written notice of the Minister's decision, and the reasons for it, as soon as practicable.

177CH Request for information

(1) The Minister may, in writing, request any person to provide specified information that the Minister reasonably believes is necessary in order to make an informed decision about whether or not to make a determination under section 177CF.

(2) If the Minister makes a request under subsection (1) in respect of a decision in which there is an applicant, a day is not to be counted as a business day for the purposes of subsection 177CG(3) if it is:
  (a) on or after the day the Minister requested the information; and
  (b) on or before the day the Minister receives the last of the information requested.

177CI Revocation of exclusion determination

Revocation on request

(1) The Minister must, by written instrument, revoke a determination under section 177CF in relation to an action if:
  (a) the person proposing to take the action, or the designated proponent (if any), has made a written request for the revocation; and
  (b) the Minister has not decided whether to approve the taking of the action under section 133; and
  (c) the Minister has not made a decision under Division 2 of Part 7 that the action is not a controlled action.

Revocation on Minister's initiative

(2) The Minister must, on the Minister's initiative, by written instrument, revoke a determination under section 177CF in relation to an action if:
  (a) the Minister is no longer satisfied that the taking of the action would result or be likely to result in the intended outcome mentioned in subsection 177CF(1); and

(b) the Minister has not decided whether to approve the taking of the action under section 133; and

(c) the Minister has not made a decision under Division 2 of Part 7 that the action is not a controlled action.

Timing

(3) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

Not legislative instrument

(4) A revocation made under subsection (1) is not a legislative instrument.

177CJ Notice of revocation of exclusion determination

As soon as practicable after revoking, under section 177CI, a determination under section 177CF in relation to an action, the Minister must:

(a) give a copy of the revocation to:

(i) the person proposing to take the action; and

(ii) the designated proponent (if any); and

(b) publish a copy of the revocation on the Department's website.

177CK Effect of revocation of exclusion determination if Minister has decided action is a controlled action

At the time a determination under section 177CF in relation to an action is revoked under section 177CI, any determination that, under section 75B, was taken to have been made in relation to the action is also taken to be revoked.

Part 12B—The Restoration Contributions Holder, Restoration Contributions Special Account and related matters

Division 1—Restoration Contributions Holder

177CL Establishment

There is to be a Restoration Contributions Holder.

177CM Appointment

(1) The Restoration Contributions Holder is to be engaged under the *Public Service Act 1999*.

(2) The Restoration Contributions Holder is to be an SES employee in the Department.

Note: The expression ***SES employee*** is defined in section 2B of the *Acts Interpretation Act 1901*.

177CN Staff

The staff assisting the Restoration Contributions Holder are to be APS employees in the Department who are made available for the purpose by the Secretary.

177CO Delegation

(1) The Restoration Contributions Holder may, in writing, delegate all or any of the Restoration Contributions Holder's functions or powers under this Act to an SES employee or acting SES employee in the Department.

Note: The expression ***SES employee*** is defined in section 2B of the *Acts Interpretation Act 1901*.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Restoration Contributions Holder.

177CP Functions of the Restoration Contributions Holder

(1) The functions of the Restoration Contributions Holder are, on behalf of the Commonwealth:

(a) to deliver restoration actions in accordance with Subdivisions A and B of Division 2; and

(b) to deliver bioregional restoration actions in accordance with Subdivision C of Division 2; and

(c) to engage in activities (including, but not limited to, delivering restoration actions) in accordance with Subdivision D of Division 2; and

(d) to develop management plans in accordance with Division 3; and

(e) to monitor and evaluate the progress and outcomes of restoration actions and bioregional restoration actions on which the Restoration Contributions Holder has spent amounts; and

(f) to maintain a public register in accordance with Division 4; and

(g) to prepare annual reports in accordance with Division 5; and

(h) if requested to do so by the Minister—to provide advice to the Minister relating to restoration contribution charge, including in relation to proposed conditions of approvals that would require the payment of such charge; and

(i) if requested to do so by the Minister—to provide advice to the Minister relating to bioregional restoration measures, and bioregional plan registration charge; and

(j) to perform any other functions that are conferred on it by this Act or any other law of the Commonwealth; and

(k) to perform any other functions prescribed by the regulations.

(2) The functions of the Restoration Contributions Holder include doing any of the following on behalf of the Commonwealth:
  (a) exercising any powers of the Commonwealth to enter into contracts for such purposes;
  (b) maintaining up to date records.

177CQ Powers of the Restoration Contributions Holder

(1) The Restoration Contributions Holder has power to do all things necessary or convenient to be done for or in connection with the performance of the Restoration Contributions Holder's functions.

(2) The Restoration Contributions Holder may invest money that:
  (a) is mentioned in paragraph 177DK(a), (b), (c) or (d); and
  (b) is not immediately required for the performance of the functions of the Restoration Contributions Holder;

in an investment of any of the following kinds:
  (c) securities of, or securities guaranteed by, the Commonwealth, a State or a Territory;
  (d) a deposit with a bank (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), including a deposit evidenced by a certificate of deposit;
  (e) any other form of investment prescribed by rules made for the purposes of subparagraph 58(8)(a)(iii) of the *Public Governance, Performance and Accountability Act 2013*.

177CR Limitation on directions to Restoration Contributions Holder

The Restoration Contributions Holder is not subject to the direction of the Minister or the Secretary in relation to the functions of the Restoration Contributions Holder mentioned in paragraphs 177CP(1)(a) to (c).

Division 2—Delivering restoration actions and bioregional restoration actions

Subdivision A—Restoration actions—general

177CS Spending on restoration actions

Application of this section

(1) This section applies if an amount of restoration contribution charge is imposed in relation to a particular residual significant impact (the ***primary impact***) of an approved action, or an approved class of actions, on a matter (the ***affected matter***) protected by a provision of Part 3 for which the approval has effect.

Default requirement for general restoration action

(2) The Restoration Contributions Holder must spend an amount that reasonably relates to the amount of restoration contribution charge imposed to deliver a restoration action that the Restoration Contributions Holder is satisfied:

(a) is directed towards protecting, conserving or restoring the affected matter in the bioregion where the affected matter is located; and

(b) will result in a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires) for the affected matter in that bioregion; and

(c) complies with the requirements (if any) prescribed by the regulations.

Note 1: For example, if an amount of restoration contribution charge is imposed in relation to the primary impact on a particular listed threatened species in a particular bioregion, an amount that reasonably relates to that amount must be spent on that listed threatened species in that bioregion (subject to subsection (4)).

Note 2: If an amount of restoration contribution charge has not yet been received, top-up amounts can be used: see section 177DB.

(3) A restoration action that satisfies paragraphs (2)(a), (b) and (c) is a ***general restoration action*** for the primary impact of the approved action or approved class of actions on the affected matter.

Alternative restoration action if default requirement is not met

(4) Subject to section 177CT (which covers the situation in which subsection (2) is partly satisfied but not wholly satisfied), if:

(a) the Restoration Contributions Holder has considered under subsection (2) whether the Restoration Contributions Holder must spend an amount to deliver a general restoration action for the primary impact of the approved action or approved class of actions on the affected matter; and

(b) the Restoration Contributions Holder is satisfied that:

(i) a general restoration action is not feasible for the primary impact of the action or the class of actions, as the case requires; or

(ii) a general restoration action would not provide the best environmental outcome for the primary impact of the action or the class of actions, as the case requires; and

(c) if the regulations prescribe requirements that must be met in order for the Restoration Contributions Holder to deliver an alternative restoration action in relation to the primary impact of an approved action or approved class of actions—Restoration Contributions Holder is satisfied that those requirements are met;

the Restoration Contributions Holder must spend an amount that reasonably relates to the amount of restoration contribution charge imposed to deliver a restoration action (an ***alternative restoration action***) for the primary impact of the approved action or approved class of actions on the affected matter, being a restoration action that meets the requirements of subsection (5).

(5) A restoration action meets the requirements of this subsection for the primary impact of the approved action or approved class of actions on the affected matter if the Restoration Contributions Holder is satisfied that the restoration action:

(a) will benefit a matter protected by the same provision of Part 3 as the affected matter; and

(b) so far as is reasonably practicable, is directed towards protecting, conserving or restoring a matter protected by the same provision of Part 3 as the affected matter in the bioregion where the affected matter is located; and

(c) provides a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires) for the matter protected by the same provision of Part 3 as the affected matter; and

(d) complies with the requirements (if any) prescribed by the regulations.

Note: A restoration action under this subsection could be a restoration action that benefits a matter that is the same as the affected matter but in a different bioregion from the affected matter.

Minister must be notified if no general restoration action

(6) The Restoration Contributions Holder must notify the Minister, in writing, if the Restoration Contributions Holder is satisfied that subsection (4) applies to the approved action or approved class of actions.

Section subject to sections 177CT and 177CV

(7) This section has effect subject to sections 177CT (combining general restoration actions and alternative restoration actions) and 177CV (pooling amounts).

177CT Combination of general restoration action and alternative restoration action

(1) This section applies if the Restoration Contributions Holder is satisfied that subsection 177CS(2) is partly, but not wholly, satisfied in relation to a particular residual significant impact (the ***primary impact***) of an approved action, or an approved class of actions, on a matter protected by a provision of Part 3.

(2) The Restoration Contributions Holder must:

(a) first—to the extent that the Restoration Contributions Holder is satisfied as mentioned in subsection 177CS(2), spend an amount that reasonably relates to the amount of restoration contribution charge imposed in relation to the primary impact on delivering a general restoration action for the primary impact; and

(b) secondly—to the extent that the Restoration Contributions Holder is satisfied as mentioned in subsection 177CS(4), spend any remaining amount that reasonably relates to the amount of restoration contribution charge imposed in relation to the primary impact on delivering an alternative restoration action for the primary impact.

Note: If an amount of restoration contribution charge has not yet been received, top-up amounts can be used: see section 177DB.

177CU No requirement to spend restoration contribution charge if residual significant impact already compensated

The Restoration Contributions Holder is not required by section 177CS or 177CT to spend an amount that reasonably relates to the amount of restoration contribution charge imposed in relation to a residual significant impact (the ***primary impact***) of an approved action, or an approved class of actions, on an affected matter if the Restoration Contributions Holder is satisfied that the primary impact has already been compensated for by previous expenditure from money standing to the credit of the Restoration Contributions Special Account.

177CV Pooling amounts to cover multiple residual significant impacts

(1) The Restoration Contributions Holder may spend an amount (the ***aggregated amount***) that is the sum of amounts that reasonably relate to amounts of restoration contribution charge imposed in relation to the residual significant impacts of one or more approved

actions, or one or more approved classes of actions, on a matter or matters protected by a provision of Part 3, if:

(a) the aggregated amount is spent to deliver one or more restoration actions to compensate for those impacts; and

(b) the Restoration Contributions Holder is satisfied that there will be a better environmental outcome for each of the matters if the aggregated amount were spent than would otherwise be achieved.

Note: If an amount of restoration contribution charge has not yet been received, top-up amounts can be used: see section 177DB.

(2) The aggregated amount must be spent in accordance with sections 177CS and 177CT.

177CW Consultation with the Restoration Contributions Advisory Committee on proposed restoration actions

Consultation not required if general restoration action feasible etc.

(1) If the Restoration Contributions Holder is satisfied that the Restoration Contributions Holder may deliver a general restoration action to compensate for a residual significant impact of one or more approved actions, or one or more approved classes of actions, on a matter or matters protected by a provision of Part 3, the Restoration Contributions Holder may, but is not required to, seek advice from the Restoration Contributions Advisory Committee on appropriate restoration actions in relation to that impact.

Consultation required if general restoration action not available

(2) If the Restoration Contributions Holder is satisfied as mentioned in subsection 177CS(4) in relation to a residual significant impact of one or more approved actions, or one or more approved classes of actions, on a matter or matters protected by a provision of Part 3, the Restoration Contributions Holder must seek advice from the Restoration Contributions Advisory Committee on:

(a) whether a general restoration action to compensate for the residual significant impact is feasible and would provide the best environmental outcome; and

(b) if a general restoration action is not feasible or would not provide the best environmental outcome—an appropriate alternative restoration action for the residual significant impact.

(3) The Restoration Contributions Holder may also consult the following in relation to restoration actions:

(a) any other committee established under Part 19;

(b) the Australian Heritage Council.

177CX Other matters to which the Restoration Contributions Holder must have regard

In spending an amount that reasonably relates to a restoration contribution charge on a restoration action (see paragraph 177CP(1)(a)), the Restoration Contributions Holder must have regard to the following:

(a) any advice given by the Restoration Contributions Advisory Committee in relation to the restoration action;

(b) any advice given by:

(i) any other committee established under Part 19; or

(ii) the Australian Heritage Council;

(c) any approved conservation advice the Restoration Contributions Holder considers relevant;

(d) any bioregional plan or bioregional guidance plan the Restoration Contributions Holder considers relevant;

(e) any other matters the Restoration Contributions Holder considers relevant;

(f) any other matters prescribed by the regulations.

Subdivision B—Restoration actions—exemption amounts

177CY Spending exemption amounts on restoration actions

(1) The Restoration Contributions Holder may spend amounts that reasonably relate to one or more amounts of exemption charge imposed on one or more restoration actions if:

(a) the Restoration Contributions Holder is satisfied that the restoration action or actions are:

(i) for the purpose of protecting or conserving a matter or matters protected by a provision of Part 3; or

(ii) for the purpose of mitigating, repairing or compensating for damage to a matter or matters protected by a provision of Part 3; and

(b) the spending of the amounts complies with the requirements (if any) prescribed by the regulations.

Note 1: The Restoration Contributions Holder must also be satisfied of the matters specified in section 177DC.

Note 2: If an amount of exemption charge has not yet been received, top-up amounts can be used: see section 177DB.

(2) For the purposes of subsection (1), it is not necessary that the matter or matters protected by a provision of Part 3 are likely to be impacted by an action for which the exemption concerned was granted.

(3) The Restoration Contributions Holder:

(a) may consult the Restoration Contributions Advisory Committee in relation to appropriate restoration actions on which to spend amounts mentioned in subsection (1); and

(b) if the Restoration Contributions Holder does so—must have regard to any advice given by the Restoration Contributions Advisory Committee in spending such amounts.

Subdivision C—Bioregional restoration actions

177CZ Spending on bioregional restoration actions

(1) The Restoration Contributions Holder must, in performing functions relating to bioregional restoration actions that relate to spending amounts mentioned in subsection (2):

(a) comply with the requirements (if any) prescribed by the regulations; and

(b) be satisfied of the matters (if any) prescribed by the regulations.

Note: The Restoration Contributions Holder must also be satisfied of the matters specified in section 177DC.

(2) The amounts are as follows:

(a) amounts that reasonably relate to amounts of bioregional plan registration charge imposed on the registration of one or more priority actions;

(b) amounts that reasonably relate to amounts of bioregional plan restoration contribution required to be paid by a condition of a bioregional plan.

Note: If an amount of charge has not yet been received, top-up amounts can be used: see section 177DB.

(3) The Restoration Contributions Holder:

(a) may consult the following in relation to appropriate bioregional restoration actions:

(i) the Restoration Contributions Advisory Committee;

(ii) any other committee established under Part 19;

(iii) the Australian Heritage Council; and

(b) if the Restoration Contributions Holder does so—must have regard to any advice given by the Restoration Contributions Advisory Committee, the other committee or the Australian Heritage Council in making the decision.

Subdivision D—Top-up amounts

177DA Spending top-up amounts for activities

(1) The Restoration Contributions Holder may spend top-up amounts on one or more activities (including but not limited to restoration actions) if:

(a) the Restoration Contributions Holder is satisfied that the activities are:

(i) for the purpose of protecting or conserving a matter or matters protected by a provision of Part 3; or

(ii) for the purpose of mitigating, repairing or compensating for damage to a matter or matters protected by a provision of Part 3; and

(b) the spending of the amounts complies with the requirements (if any) prescribed by the regulations.

Note: The Restoration Contributions Holder must also be satisfied of the matters specified in section 177DC.

(2) The Restoration Contributions Holder:

(a) may consult the Restoration Contributions Advisory Committee in relation to appropriate activities on which to spend amounts mentioned in subsection (1); and

(b) if the Restoration Contributions Holder does so—must have regard to any advice given by the Restoration Contributions Advisory Committee in spending such amounts.

177DB Spending top-up amounts for other purposes

The Restoration Contributions Holder may spend top-up amounts for the purposes of delivering restoration actions or bioregional restoration actions under Subdivision A, B, or C if:

(a) the Restoration Contributions Holder is satisfied that:

(i) the spending of the top-up amounts is for the purpose of delivering restoration actions or bioregional restoration actions before amounts of charge have been received; or

(ii) it is otherwise appropriate to spend the top-up amounts; and

(b) the spending of the top-up amounts complies with the requirements of Subdivision A, B or C before amounts of charge have been received.

Note: The Restoration Contributions Holder must also be satisfied of the matters specified in section 177DC.

Subdivision E—General

177DC Other matters of which the Restoration Contributions Holder must be satisfied

The Restoration Contributions Holder must not spend an amount on a restoration action, a bioregional restoration action, or any other activity unless the Restoration Contributions Holder is satisfied that spending the amount:

(a) would promote the objects of the Act; and

(b) would be consistent with any national environmental standard that is prescribed by the regulations for the purposes of this paragraph; and

(c) would not be inconsistent with Australia's obligations under a designated international agreement; and

(d) satisfies any other matters prescribed by the regulations.

Division 3—Management plans

177DD Management plans for restoration actions—restoration contribution charge

(1) The Restoration Contributions Holder must develop a management plan for each restoration action on which one or more amounts that reasonably relate to amounts of restoration contribution charge imposed have been spent by the Restoration Contributions Holder under Subdivision A of Division 2.

(2) The Restoration Contributions Holder must complete the management plan within the time period specified in the regulations (if any).

(3) A management plan for a restoration action must specify the following:

(a) each residual significant impact of an action or class of actions for which the restoration action is intended to compensate;

(b) the action or class of actions for each such residual significant impact;

(c) the holder of the approval for each such action or class of actions;

(d) each matter protected by a provision of Part 3 that is likely to be damaged by each such residual significant impact;

(e) whether restoration contribution charge imposed in relation to each such residual significant impact has been paid;

(f) the restoration action that will be delivered;

(g) the amounts that have been, or are being, spent on the restoration action;

(h) the intended outcome or outcomes resulting from the restoration action;

(i) the period within which the restoration action is to be delivered;

(j) identification of risks and mitigation strategies in relation to the restoration action;

(k) a schedule specifying monitoring, evaluation, reporting and adaptive management mechanisms, in order to ensure that the net gain for each matter protected by a provision of Part 3 that is likely to be damaged by each residual significant impact mentioned in paragraph (a):

(i) is likely to be achieved within the required period; and

(ii) will be maintained;

which must be developed having regard to likely risks including, but not limited to, the likely effects of climate change;

(l) evidence to support the restoration action as the preferred option.

(m) any other matters prescribed by the regulations.

(4) The Restoration Contributions Holder must monitor progress and evaluate the outcomes of restoration actions delivered, having regard to the management plan for the restoration action.

177DE Management plans for bioregional restoration actions—bioregional plan registration charge and bioregional plan restoration contribution

(1) The Restoration Contributions Holder must develop a management plan for each bioregional restoration action on which one or more of the following amounts have been spent by the Restoration Contributions Holder:

(a) amounts that reasonably relate to amounts of bioregional plan registration charge imposed on the registration of priority actions;

(b) amounts that reasonably relate to amounts of bioregional plan restoration contribution required to be paid by a condition of a bioregional plan;

(c) top-up amounts.

(2) The Restoration Contributions Holder must complete the management plan within the time period specified in the regulations (if any).

(3) A management plan for a bioregional restoration action under this section must include the matters (if any) prescribed by the regulations.

(4) The Restoration Contributions Holder must monitor progress and evaluate the outcomes of bioregional restoration actions delivered, having regard to the management plan for the bioregional restoration action.

177DF Management plans for restoration actions—exemption charge

(1) The regulations may require the Restoration Contributions Holder to develop a management plan for each restoration action on which one or more amounts that reasonably relate to amounts of exemption charge imposed have been spent by the Restoration Contributions Holder.

(2) Regulations made for the purposes of subsection (1) may make provision for and in relation to the following:
  (a) the matters to be included in a management plan;
  (b) the time period within which the Restoration Contributions Holder must complete a management plan;
  (c) other relevant matters.

(3) If regulations made for the purposes of subsection (1) require the Restoration Contributions Holder to develop a management plan, the Restoration Contributions Holder must monitor progress and evaluate the outcomes of restoration actions delivered, having regard to the management plan.

177DG Management plans for activities covered by section 177DA—certain top-up amounts

(1) The regulations may require the Restoration Contributions Holder to develop a management plan for each activity on which one or more top-up amounts have been spent by the Restoration Contributions Holder.

(2) Regulations made for the purposes of subsection (1) may make provision for and in relation to the following:

(a) the matters to be included in a management plan;

(b) the time period within which the Restoration Contributions Holder must complete a management plan;

(c) other relevant matters.

(3) If regulations made for the purposes of subsection (1) require the Restoration Contributions Holder to develop a management plan, the Restoration Contributions Holder must monitor progress and evaluate the outcomes of restoration actions delivered, having regard to the management plan.

Division 4—Register

177DH Register to be established

(1) The Restoration Contributions Holder must establish and maintain a register of the following:

(a) all approved actions, and approved classes of actions, in relation to which amounts of restoration contribution charge have been imposed;

(b) all bioregional plans in relation to which amounts of bioregional plan registration charge have been imposed on the registration of a priority action;

(c) all bioregional plans that include a condition that requires a person to pay a bioregional plan restoration contribution;

(d) all actions in relation to which amounts of exemption charge have been imposed.

Restoration contribution charge

(2) The register must contain the following details in relation to each approved action, and each approved class of actions, in relation to which an amount of restoration contribution charge has been imposed:

(a) details of each residual significant impact of the approved action, or approved class of actions, in relation to which an amount of restoration contribution charge has been imposed;

(b) for each such residual significant impact:

(i) each matter protected by a provision of Part 3 that is likely to be damaged by the residual significant impact; and

(ii) the amount of restoration contribution charge imposed in relation to the residual significant impact; and

(iii) whether the restoration contribution charge has been paid;

(c) each restoration action on which an amount was spent to compensate for each such residual significant impact, and the amount spent on each such restoration action;
(d) the intended outcomes of each such restoration action;
(e) the management plan for each such restoration action;
(f) any other matters prescribed by the regulations.

Bioregional plan registration charge

(2) The register must contain the details prescribed by the regulations in relation to each bioregional plan in relation to which an amount of bioregional plan registration charge has been imposed on a registered priority action.

Bioregional plan restoration contributions

(3) The register must contain the details prescribed by the regulations in relation to each bioregional plan that includes a condition that requires a person to pay a bioregional plan restoration contribution.

Exemption charge

(4) The register must contain the details prescribed by the regulations in relation to each action in relation to which an amount of exemption charge has been imposed.

Top-up amounts

(5) The register must contain the details prescribed by the regulations in relation to each activity on which a top-up amount has been spent by the Restoration Contributions Holder under section 177DA.

(6) The register must be made publicly available on the Department's website.

(7) The register is not a legislative instrument.

Division 5—Annual report

177DI Annual report

(1) The Restoration Contributions Holder must cause to be prepared, as soon as practicable after the end of each financial year, an annual report on the exercise of the Restoration Contributions Holder's functions and powers during the financial year.

(2) Without limiting subsection (1), the annual report must include the following in relation to the financial year:

(a) details of each residual significant impact of an approved action, or approved class of actions, in relation to which an amount of restoration contribution charge has been imposed;

(b) details of each approved action, or approved class of actions, mentioned in paragraph (a);

(c) for each such residual significant impact:

(i) each matter protected by a provision of Part 3 that is likely to be damaged by the residual significant impact; and

(ii) the amount of restoration contribution charge imposed in relation to the residual significant impact; and

(iii) whether the restoration contribution charge has been paid;

(d) details of each restoration action on which an amount was spent under Subdivision A or B of Division 2;

(e) details of each bioregional restoration action on which an amount was spent;

(f) details of each activity on which the Restoration Contributions Holder spent top-up amounts under section 177DA;

(g) achievements against the objectives of the management plan for each restoration action and each bioregional restoration action, including progress towards a net gain (where relevant);

(h) for any residual significant impacts of an approved action, or an approved class of action, for which a general restoration action was not available:

(i) the residual significant impacts; and

(ii) the matters protected by a provision of Part 3 that are likely to be damaged by each such residual significant impact;

(i) a reconciliation of monies from the Restoration Contributions Special Account against the relevant projects;

(j) any directions given by the Minister or the Secretary to the Restoration Contributions Holder;

(k) any other matters prescribed by the regulations.

Note: Section 177CR limits the directions that may be given by the Minister or Secretary.

(3) The Restoration Contributions Holder must give the annual report to the Minister as soon as practicable after it is prepared.

(4) The Minister must publish a copy of the annual report on the Department's website within 20 days of receiving the report.

Division 6—The Restoration Contributions Special Account

177DJ Restoration Contributions Special Account

(1) The Restoration Contributions Special Account is established by this section.

(2) The Restoration Contributions Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

177DK Credits of amounts to the Restoration Contributions Special Account

There must be credited to the Restoration Contributions Special Account amounts equal to the following amounts received by or on behalf of the Commonwealth:

(a) amounts of restoration contribution charge;
(b) amounts of bioregional plan registration charge;
(c) amounts of exemption charge;
(d) amounts of bioregional plan restoration contribution;
(e) amounts received in connection with the performance of the Restoration Contributions Holder's functions;
(f) amounts of any gifts or bequests received by the Restoration Contributions Holder, or made for the purposes of the Special Account, not being gifts or bequests that are expressed to be tied to the granting of approval of a specific action, or are subject to any directions for expenditure;
(g) amounts of interest earned on the investment, in accordance with subsection 177CQ(2), of amounts mentioned in paragraph (a), (b), (c) or (d) standing to the credit of the Special Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly

refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

177DL Purposes of the Restoration Contributions Special Account

The purposes of the Restoration Contributions Special Account are as follows:

(a) paying or discharging the costs, expenses and other obligations associated with the performance of the functions of the Restoration Contributions Holder;

(b) paying or discharging the costs, expenses and other obligations associated with the performance of the functions of the Restoration Contributions Advisory Committee;

(c) paying any remuneration or allowances payable to the following:

(i) the Restoration Contributions Holder;

(ii) APS employees assisting the Restoration Contributions Holder;

(d) paying or discharging the costs, expenses and other obligations associated with an investment of a kind mentioned in subsection 177CQ(2).

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

Part 13—Species and communities

Division 1—Listed threatened species and ecological communities

Subdivision A—Listing

178 Listing of threatened species

(1) The Minister must, by legislative instrument, establish a list of threatened species divided into the following categories:
  (a) extinct;
  (b) extinct in the wild;
  (c) critically endangered;
  (d) endangered;
  (e) vulnerable;
  (f) conservation dependent.

(2) The list, as first established, must contain only the species contained in Schedule 1 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

(3) The Minister must include:
  (a) in the extinct category of the list, as first established, only the species mentioned in subsection (2) that were listed as presumed extinct; and
  (b) in the endangered category of the list, as first established, only the native species mentioned in subsection (2) that were listed as endangered; and
  (c) in the vulnerable category of the list, as first established, only the species mentioned in subsection (2) that were listed as vulnerable.

(4) If the Minister is satisfied that a species included in the list, as first established, in:

(a) the extinct category; or

(b) the endangered category; or

(c) the vulnerable category;

is not eligible to be included in that or any other category, or is eligible to be, or under subsection 186(3), (4) or (5) can be, included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

179 Categories of threatened species

(1) A native species is eligible to be included in the ***extinct*** category at a particular time if, at that time, there is no reasonable doubt that the last member of the species has died.

(2) A native species is eligible to be included in the ***extinct in the wild*** category at a particular time if, at that time:

(a) it is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; or

(b) it has not been recorded in its known and/or expected habitat, at appropriate seasons, anywhere in its past range, despite exhaustive surveys over a time frame appropriate to its life cycle and form.

(3) A native species is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.

(4) A native species is eligible to be included in the ***endangered*** category at a particular time if, at that time:

(a) it is not critically endangered; and

(b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

(5) A native species is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:

(a) it is not critically endangered or endangered; and

(b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

(6) A native species is eligible to be included in the ***conservation dependent*** category at a particular time if, at that time:

(a) the species is the focus of a specific conservation program the cessation of which would result in the species becoming vulnerable, endangered or critically endangered; or

(b) the following subparagraphs are satisfied:

(i) the species is a species of fish;

(ii) the species is the focus of a plan of management that provides for management actions necessary to stop the decline of, and support the recovery of, the species so that its chances of long term survival in nature are maximised;

(iii) the plan of management is in force under a law of the Commonwealth or of a State or Territory;

(iv) cessation of the plan of management would adversely affect the conservation status of the species.

(7) In subsection (6):

fish includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

180 Native species of marine fish

(1) A native species of marine fish is eligible to be included in a category mentioned in a paragraph of subsection 178(1) at a particular time if, at that time, the species meets the prescribed criteria for that category.

(2) A subsection of section 179 referring to a category (the ***relevant category***) does not apply to a native species of marine fish if regulations are in force for the purposes of subsection (1) of this section prescribing criteria for the relevant category.

181 Listing of threatened ecological communities

(1) The Minister must, by legislative instrument, establish a list of threatened ecological communities divided into the following categories:
  (a) critically endangered;
  (b) endangered;
  (c) vulnerable.

(2) Subject to subsection (3), the Minister must not include an ecological community in a particular category of the list, as first established, unless satisfied that the ecological community is eligible to be included in that category when the list is first published.

(3) The list, as first established, must contain only the ecological communities listed in Schedule 2 to the *Endangered Species Protection Act 1992* immediately before the commencement of this Act, and they must be listed in the endangered category.

(4) If the Minister is satisfied that an ecological community included in the endangered category of the list, as first established under subsection (3), is not eligible to be included in that or any other category, or is eligible to be included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

(5) To avoid doubt, the instrument first establishing the list under subsection (1) is not taken to have been a legislative instrument.

Note: When the list was first established, it was required to be established by instrument published in the Gazette.

182 Critically endangered, endangered and vulnerable communities

(1) An ecological community is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.

(2) An ecological community is eligible to be included in the ***endangered*** category at a particular time if, at that time:
  (a) it is not critically endangered; and
  (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

(3) An ecological community is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:
  (a) it is not critically endangered nor endangered; and
  (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

183 Listing of key threatening processes

(1) The Minister must, by legislative instrument, establish a list of threatening processes that are key threatening processes.

(2) The list, as first established, must contain only the key threatening processes contained in Schedule 3 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

184 Minister may amend lists

Subject to this Subdivision, the Minister may, by legislative instrument, amend a list referred to in section 178, 181 or 183 by:
  (a) including items in the list in accordance with Subdivision AA; or

(aa) including items in the list in accordance with subsection 186(3), (4) or (5); or

(b) deleting items from the list; or

(c) in the case of the list referred to in section 178 or 181—transferring items from one category in the list to another category in the list in accordance with Subdivision AA; or

(ca) in the case of the list referred to in section 183:

(i) deleting 2 or more threatening processes from the list and including in the list a threatening process that combines the deleted processes; or

(ii) deleting a threatening process from the list and including in the list 2 or more threatening processes that, in combination, cover the deleted process; or

(d) correcting an inaccuracy or updating the name of a listed threatened species or listed threatened ecological community.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

186 Amending list of threatened native species

Including native species in a category

(1) Subject to subsections (3), (4) and (5), the Minister must not include (whether as a result of a transfer or otherwise) a native species in a particular category unless satisfied that the native species is eligible to be included in that category.

(2) In deciding whether to include a native species in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the native species is eligible to be included in that category; or

(b) the effect that including the native species in that category could have on the survival of the native species.

Deleting native species from a category

(2A) The Minister must not delete (whether as a result of a transfer or otherwise) a native species from a particular category unless satisfied that:

(a) the native species is no longer eligible to be included in that category; or

(b) the inclusion of the native species in that category is not contributing, or will not contribute, to the survival of the native species.

(2B) In deciding whether to delete a native species from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the native species is eligible to be included in that category; or

(b) the effect that the inclusion of the native species in that category is having, or could have, on the survival of the native species.

Including similar species to an eligible species

(3) The Minister may include a native species in the critically endangered category if satisfied that:

(a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(3)) that it is difficult to differentiate between the 2 species; and

(b) this difficulty poses an additional threat to the last-mentioned species; and

(c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as critically endangered.

(4) The Minister may include a native species in the endangered category if satisfied that:

(a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be

included in that category (see subsection 179(4)) that it is difficult to differentiate between the 2 species; and

(b) this difficulty poses an additional threat to the last-mentioned species; and

(c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as endangered.

(5) The Minister may include a native species in the vulnerable category if satisfied that:

(a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(5)) that it is difficult to differentiate between the 2 species; and

(b) this difficulty poses an additional threat to the last-mentioned species; and

(c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as vulnerable.

187 Amending list of ecological communities

Including ecological communities in a category

(1) The Minister must not include (whether as a result of a transfer or otherwise) an ecological community in a particular category unless satisfied that the ecological community is eligible to be included in that category.

(2) In deciding whether to include an ecological community in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the ecological community is eligible to be included in that category; or

(b) the effect that including the ecological community in that category could have on the survival of the ecological community.

Deleting ecological communities from a category

(3) The Minister must not delete (whether as a result of a transfer or otherwise) an ecological community from a particular category unless satisfied that:

(a) the ecological community is no longer eligible to be included in that category; or

(b) the inclusion of the ecological community in that category is not contributing, or will not contribute, to the survival of the ecological community.

(4) In deciding whether to delete an ecological community from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:

(a) whether the ecological community is eligible to be included in that category; or

(b) the effect that the inclusion of the ecological community in that category is having, or could have, on the survival of the ecological community.

188 Amending list of key threatening processes

(1) The Minister must not add a threatening process to the list unless satisfied that it is eligible to be treated as a key threatening process.

(2) The Minister must not delete a threatening process from the list unless the Minister:

(a) is satisfied that the threatening process is no longer eligible to be treated as a key threatening process; or

(b) deletes the threatening process as mentioned in paragraph 184(ca).

(3) A process is a ***threatening process*** if it threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community.

(4) A threatening process is eligible to be treated as a key threatening process if:

(a) it could cause a native species or an ecological community to become eligible for listing in any category, other than conservation dependent; or

(b) it could cause a listed threatened species or a listed threatened ecological community to become eligible to be listed in another category representing a higher degree of endangerment; or

(c) it adversely affects 2 or more listed threatened species (other than conservation dependent species) or 2 or more listed threatened ecological communities.

189 Minister must consider advice from Scientific Committee

(1) In deciding whether to make an amendment covered by paragraph 184(1)(aa), (b), (ca) or (d), the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.

(1A) Subsection (1) has effect subject to section 192.

(1B) If advice from the Scientific Committee for the purposes of subsection (1) is to the effect that a particular native species, or a particular ecological community, is eligible to be included in the relevant list in a particular category, the advice must also contain:

(a) a statement that sets out:

(i) the grounds on which the species or community is eligible to be included in the category; and

(ii) the main factors that are the cause of it being so eligible; and

(b) either:

(i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or

(ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community; and

(c) a recommendation on the question whether there should be a recovery plan for the species or community or any part of it.

(2) In preparing advice under subsection (1), the Scientific Committee may obtain advice from a person with expertise relevant to the subject matter of the proposed amendment.

(3) In preparing advice for a proposed amendment to delete an item:

(a) included in a category of a list referred to in section 178 or 181; and

(b) that had not been included in that category in accordance with subsection 186(3), (4) or (5);

the only matters the Scientific Committee may consider are matters relating to:

(c) the survival of the native species or ecological community concerned; or

(d) the effect that the inclusion in the list of the native species or ecological community concerned is having, or could have, on the survival of that native species or ecological community.

(3A) In preparing advice for a proposed amendment to:

(a) include a native species in a category of the list referred to in section 178 in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species; or

(b) delete a native species from a category of the list referred to in section 178 that had been included in that category in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species;

the only matters the Scientific Committee may consider are matters relating to:

(c) the survival of either species; or

(d) the effect that the inclusion in the list of the first-mentioned species is having, or could have, on the survival of either species.

189A Certain information may be kept confidential

(1) This section applies if the Minister considers that the survival of a native species or ecological community could be threatened by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:

(a) the precise location of the species in the wild, or of the community;

(b) any other information about the species or community.

(2) It is sufficient compliance with this Act if only a general description of the location of the species or community is included in an instrument or other document created for the purposes of this Act.

189B Disclosure of Scientific Committee's assessments and advice

(1) A member of the Scientific Committee has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Committee or another member of the Committee:

(a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;

(b) advice under section 189 concerning an amendment covered by subsection 189(1) or any information relating to the advice.

(2) However:

(a) the duty not to disclose a thing described in paragraph (1)(a) in relation to an item does not exist after:

(i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 in relation to the item; or

(ii) the Minister decides under paragraph 194Q(1)(b) not to include the item in a list referred to in section 178, 181 or 183; and

(b) the duty not to disclose a thing described in paragraph (1)(b) in relation to an amendment does not exist after:

(i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 relating to the amendment; or

(ii) the Minister decides under this Subdivision not to remove the item from a list referred to in section 178, 181 or 183.

(3) Subsection (1) does not apply to a disclosure of particular information if:

(a) the Chair of the Scientific Committee requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and

(b) the Minister gives that permission; and

(c) the disclosure is made to that person (or a person within that group).

(4) After a member of the Scientific Committee has ceased under subsection (2) to have a duty not to disclose:

(a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183; or

(b) advice under section 189 concerning an amendment covered by subsection 189(1);

the member must give a copy of the assessment or advice to anyone who asks for it.

(5) If:

(a) a member of the Scientific Committee proposes to give a person under subsection (4):

(i) a copy of an assessment relating to an item concerning a native species or ecological community; or

(ii) a copy of advice relating to an amendment concerning a native species or ecological community; and

(b) the member is aware that, under section 189A, it would be sufficient compliance with this Act if the copy included only a general location of the species or community;

the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

190 Scientific Committee may provide advice about species or communities becoming threatened

(1) If the Scientific Committee is of the opinion that a native species or ecological community is not eligible to be included in any category of the list mentioned in section 178 or 181, the Committee may give advice to the Minister concerning any action that is necessary to prevent the species or community becoming threatened.

(2) The Minister is to have regard to any advice given under subsection (1) in performing any function, or exercising any power, under this Act relevant to the species or community.

192 Rediscovery of threatened species that were extinct

(1) If the Minister is satisfied that a native species that is listed in the extinct category has been definitely located in nature since it was last listed as extinct, the Minister may, under section 184, transfer the species from the extinct category to another category without considering advice from the Scientific Committee.

(2) Subsection (1) does not prevent the Minister from making such an amendment after having considered advice from the Scientific Committee.

193 Species posing a serious threat to human health

(1) If the Minister is satisfied that a native species poses a serious threat to human health, the Minister may, by legislative instrument, determine that the species is not appropriate for inclusion in any of the categories of the list referred to in section 178.

(2) While the determination is in force, the species is not to be added to that list.

(4) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

194 Lists must be publicly available

The Minister must ensure that:

(a) up-to-date copies of the lists referred to in sections 178, 181 and 183 are available for free to the public on request; and

(b) up-to-date copies of the lists are available on the internet.

Note: The copies of the lists made publicly available may not contain certain information kept confidential under section 189A.

Subdivision AA—The nomination and listing process

194A Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for including an item in a list referred to in section 178, 181 or 183, or transferring an item from one category in one of those lists to another category in the list.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 194C).

The usual process involves the following steps for each assessment period for a list:

(a) the Minister may determine conservation themes (this step is optional) (see section 194D);

(b) the Minister invites people to nominate items for inclusion in the list referred to in section 178, 181 or 183, and gives the nominations to the Scientific Committee (see sections 194E and 194F);

(c) the Scientific Committee prepares, and gives to the Minister, a list of items (which will mostly be items that have been nominated) that it thinks should be assessed (see sections 194G to 194J);

(d) the Minister finalises the list of items that are to be assessed (see sections 194K and 194L);

(e) the Scientific Committee invites people to make comments about the item in the finalised list (see section 194M);

(f) the Scientific Committee assesses the item in the finalised list, and gives the assessments to the Minister (see sections 194N and 194P);

(g) the Minister decides whether an item that has been assessed should be included in the list referred to in section 178, 181 or 183 (see section 194Q).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

194B Definitions

(1) In this Subdivision:

assessment period has the meaning given by subsection 194C(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 194G(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 194K(4).

includes has a meaning affected by subsections (2) and (3).

proposed priority assessment list for an assessment period has the meaning given by subsection 194G(1).

Subdivision A List means a list referred to in section 178, 181 or 183.

(2) A reference in this Subdivision to including an item in a list referred to in section 178 or 181 includes a reference to transferring the item from one category in the list to another category in the list.

(3) A reference in this Subdivision to including an item in the list referred to in section 183 does not include a reference to including a threatening process as mentioned in paragraph 184(ca).

194C Meaning of *assessment period*

(1) For the purposes of this Subdivision, each of the following is an ***assessment period*** for a Subdivision A List:
  (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph in relation to the Subdivision A List;
  (b) each period of 12 months starting on an anniversary of the day so determined.

(2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.

(3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

194D Minister may determine conservation themes for an assessment period

(1) Before the Minister invites nominations for an assessment period for a Subdivision A List under section 194E, the Minister may determine one or more conservation themes that the Minister considers should be given priority in relation to the assessment period for the Subdivision A List.

(2) Without limiting subsection (1), the Minister may determine as a conservation theme that priority should be given to the conservation of:

(a) particular groups of species; or

(b) particular species; or

(c) particular regions of Australia.

(3) The Minister may request advice from the Scientific Committee for the purpose of making a determination under subsection (1), and may have regard to any advice the Committee provides in response to the request.

(4) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

194E Minister to invite nominations for each assessment period

(1) Before the start of each assessment period for a Subdivision A List, the Minister must publish a notice inviting people to nominate items for inclusion in the Subdivision A List.

Note: Nominations can be for the transfer of an item already on a list covered by section 178 or 181 from one category in the list to another category in the list (see subsection 194B(2)).

(2) A notice under subsection (1):

(a) must be published in accordance with the regulations referred to in paragraph (3)(a); and

(b) must invite people to nominate, to the Minister, items for inclusion in the Subdivision A List; and

(ba) must invite people:

(i) to consider, for any item they nominate for inclusion, whether there exists Indigenous peoples' knowledge, including knowledge about cultural significance, in relation to the item; and

(ii) if such knowledge exists—to provide, with the nomination, the knowledge or information on who may be able to provide the knowledge; and

(c) must identify the assessment period to which the notice relates; and

(d) must specify a date (the ***cut-off date***) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and

(e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and

(f) may also include:

(i) information related to any conservation themes that the Minister has determined under section 194D should be given priority in relation to the assessment period for the Subdivision A List; and

(ii) any other information that the Minister considers appropriate.

(3) The regulations must provide for the following:

(a) how a notice under subsection (1) is to be published;

(b) the manner and form for making nominations;

(c) what information is to be included in a nomination.

194F Minister to give nominations to Scientific Committee

Nominations in relation to first assessment period

(1) Within 30 business days after the cut-off date specified in the notice under subsection 194E(1) for the first assessment period, the Minister must give the Scientific Committee the nominations that the Minister:

(a) had received before the end of that cut-off date; and

(b) had not already forwarded to the Scientific Committee, under section 191 (as in force before the commencement of this section), to assess; and

(c) had not already rejected under section 191 (as in force before the commencement of this section); and

(d) does not reject under subsection (3).

Nominations in relation to later assessment periods

(2) Within 30 business days after the cut-off date (the ***current cut-off date***) specified in the notice under subsection 194E(1) for an assessment period (other than the first) for a Subdivision A List, the Minister must give the Scientific Committee the nominations that were received by the Minister in the period:

(a) starting immediately after the end of the cut-off date specified in the notice under subsection 194E(1) for the immediately preceding assessment period for the Subdivision A List; and

(b) ending at the end of the current cut-off date for the Subdivision A List;

other than any such nominations that the Minister has rejected under subsection (3).

Minister may reject nominations

(3) The Minister may, in writing, reject a nomination if the Minister considers that:

(a) the nomination is vexatious, frivolous or not made in good faith; or

(b) the Minister considers that regulations referred to in paragraph 194E(3)(b) or (c) have not been complied with in relation to the nomination.

(4) If a nomination is rejected under paragraph (3)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

(5) In this section:

nomination means a nomination of an item for inclusion in a Subdivision A List.

194G Scientific Committee to prepare proposed priority assessment list

(1) Within 40 business days after the Scientific Committee receives the nominations as required by subsection 194F(1) in relation to an assessment period for a Subdivision A List, the Committee must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period for the Subdivision A List.

(2) The proposed priority assessment list for the Subdivision A List is to consist of such of the items that are eligible for assessment consideration in relation to the assessment period for the Subdivision A List as the Scientific Committee considers it appropriate to include in the proposed priority assessment list, having regard to:

(a) any conservation themes determined by the Minister under section 194D in relation to the assessment period for the Subdivision A List; and

(b) the Committee's own views about what should be given priority in relation to the assessment period for the Subdivision A List; and

(c) the Committee's capacity to make assessments under this Division while still performing its other functions; and

(d) any other matters that the Committee considers appropriate.

(3) An item is ***eligible for assessment consideration*** in relation to the assessment period for a Subdivision A List if:

(a) the item has been nominated by a nomination referred to in subsection (1); or

(b) the Committee itself wishes to nominate the item for inclusion in the Subdivision A List; or

(c) the item was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) for the Subdivision A List but was not included in the finalised priority assessment list for that assessment period for the Subdivision A List.

(4) Without limiting the generality of the Scientific Committee's discretion under subsection (2), the Committee does not have to include in the proposed priority assessment list an item that has been nominated if the Committee considers that:

(a) if the item is not on the Subdivision A List concerned—it is unlikely that the item is eligible to be included in the Subdivision A List; or

(b) if the nomination is for the transfer of the item to another category in the Subdivision A List concerned—it is unlikely that the item is eligible to be included in that other category of the Subdivision A List.

(5) For the purposes of subsection (4), the Committee is not required to have regard to any information beyond the information that was included in the nomination.

(6) The proposed priority assessment list is not a legislative instrument.

194H Matters to be included in proposed priority assessment list

(1) The proposed priority assessment list for an assessment period for a Subdivision A List is to include, for each item in the proposed priority assessment list:

(a) a description of the item; and
(b) an assessment completion time; and
(c) any other information required by the regulations.

(2) The assessment completion time for an item must be either:
(a) a time that is at or before the end of the assessment period for the proposed priority assessment list; or
(b) if the Scientific Committee considers it likely that making an assessment in relation to the item will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period for the proposed priority assessment list).

194J Statement to be given to Minister with proposed priority assessment list

(1) When the Scientific Committee gives the Minister the proposed priority assessment list for an assessment period for a Subdivision A List, the Committee must also give the Minister a statement setting out such information as the Committee considers appropriate relating to:
(a) for each item that is included in the proposed priority assessment list—why the Committee included the item in the list; and
(b) for each item that is not included in the proposed priority assessment list but that was eligible for assessment consideration because of paragraph 194G(3)(a) or (c)—why the Committee did not include the item in the proposed priority assessment list.

(2) The statement must also identify, as items nominated by the Scientific Committee, any items that are included in the proposed priority assessment list because the Committee itself wishes to nominate them (see paragraph 194G(3)(b)).

194K The finalised priority assessment list

(1) Within 20 business days after the Minister, under section 194G, receives the proposed priority assessment list for an assessment period for a Subdivision A List, the Minister may, in writing, make changes to the proposed priority assessment list as mentioned in subsection (2).

(2) The changes the Minister may make are as follows:

(a) including an item in the proposed priority assessment list (and also including the matters referred to in subsection 194H(1));

(b) omitting an item from the proposed priority assessment list (and also omitting the matters referred to in subsection 194H(1));

(c) changing the assessment completion time for an item in the proposed priority assessment list;

(d) any other changes of a kind permitted by the regulations.

(3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.

(4) At the end of the period of 20 business days referred to in subsection (1), the proposed priority assessment list, as changed (if at all) by the Minister, becomes the ***finalised priority assessment list*** for the assessment period for the Subdivision A List.

(5) The Minister must notify the Scientific Committee of all changes that the Minister makes to the proposed priority assessment list.

(6) The finalised priority assessment list is not a legislative instrument.

194L Publication of finalised priority assessment list

(1) The Scientific Committee must publish the finalised priority assessment list for an assessment period for a Subdivision A List on the internet.

(2) The Scientific Committee must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

(3) The Scientific Committee must also give the Indigenous Advisory Committee:

(a) a copy of the finalised priority assessment list; and

(b) a copy of the nominations made in response to the notice under subsection 194E(1), other than any nominations rejected by the Minister under subsection 194F(3); and

(c) a compilation of any Indigenous peoples' knowledge, including knowledge about cultural significance, in relation to nominated items that was provided in response to the notice under subsection 194E(1).

194M Scientific Committee to invite comments on items in finalised priority assessment list

(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must publish a notice inviting people to make comments on the item.

(2) The Scientific Committee may, under subsection (1), publish a single notice relating to all of the items on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the items.

(3) A notice under subsection (1), in relation to an item or items:

(a) must be published in accordance with the regulations referred to in paragraph (4)(a); and

(b) must identify the item or items to which the notice relates; and

(c) if the Subdivision A List is the list referred to in section 178 or 181—must identify the category of the Subdivision A List in which the item or items are proposed to be included; and

(d) must invite people to make comments, to the Scientific Committee, setting out:

(i) if the Subdivision A List is the list referred to in section 178 or 181—views about whether the item or items are eligible for inclusion in that category of the Subdivision A List; and

(ii) if the Subdivision A List is the list referred to in section 183—views whether the item or items are eligible for inclusion in the Subdivision A List; and

(iii) reasons supporting those views; and

(da) must invite people:

(i) to consider whether there exists Indigenous peoples' knowledge, including knowledge about cultural significance, in relation to the item or items; and

(ii) if such knowledge exists—to provide, to the Scientific Committee, the knowledge or information on who may be able to provide the knowledge; and

(e) must specify the date (the ***cut-off date***) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and

(f) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and

(g) may also invite people to comment on other matters that the Scientific Committee considers appropriate; and

(h) may also include any other information that the Scientific Committee considers appropriate.

(3A) The Scientific Committee must:

(a) give the Indigenous Advisory Committee a copy of the notice; and

(b) invite the Indigenous Advisory Committee to make comments in relation to the item or items to which the notice relates.

(4) The regulations must provide for the following:

(a) how a notice under subsection (1) is to be published;

(b) the manner and form for making comments.

194N Scientific Committee to assess items on finalised priority assessment list and give assessments to Minister

(1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P):

(a) make a written assessment of:

(i) whether the item is eligible for inclusion in the Subdivision A List; and

(ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and

(b) give to the Minister:

(i) the written assessment (or a copy of it); and

(ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).

(2) In making an assessment in relation to an item, the Scientific Committee, subject to subsections (3) and (4):

(a) must take into account the comments the Committee receives in response to the notice under subsection 194M(1) in relation to the item; and

(b) may seek, and have regard to, information or advice from any source.

(3) The Scientific Committee is not required to take a comment referred to in paragraph (2)(a) into account if:

(a) the Committee does not receive the comment until after the cut-off date specified in the notice under subsection 194M(1) in relation to the item; or

(b) the Committee considers that regulations referred to in paragraph 194M(4)(b) have not been complied with in relation to the comment.

(4) In making an assessment, the only matters the Scientific Committee may consider are matters relating to:

(a) whether the item is eligible for inclusion in the Subdivision A List; or

(b) the effect that including the item in that List could have on the survival of the native species or ecological community concerned.

194P Time by which assessments to be provided to Minister

(1) Subsection 194N(1) must be complied with, in relation to an item included in the finalised priority assessment list for an assessment period for a Subdivision A List, by the assessment completion time specified in the finalised priority assessment list for the item, or by that time as extended under this section.

(2) The Scientific Committee may request the Minister to extend the assessment completion time (or that time as previously extended) if the Committee considers that it needs more time to make the assessment.

(3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.

(4) An extension under subsection (3) must be made in writing.

(5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

194Q Decision about inclusion of an item in the Subdivision A List

Minister to decide whether or not to include item

(1) After receiving from the Scientific Committee an assessment under section 194N of an item, the Minister must:

(a) include the item in the Subdivision A List concerned; or

(b) in writing, decide not to include the item in the Subdivision A List concerned.

Note 1: Under this subsection the Minister can transfer an item already on a Subdivision A List to a different category in the List (see subsection 194B(1)).

Note 2: Sections 186, 187 and 188 contain rules about including items in a Subdivision A List.

(2) If, under subsection (1), the Minister transfers an item to a category of the Subdivision A List, the Minister must at the same time delete the item from the category in which it was included before the transfer.

(3) Subject to subsection (4), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.

(4) The Minister may, in writing, extend or further extend the period for complying with subsection (1).

(5) Particulars of an extension or further extension under subsection (4) must be published on the internet and in any other way required by regulations.

(6) For the purpose of deciding what action to take under subsection (1) in relation to the item:

(a) the Minister must have regard to:

(i) the Scientific Committee's assessment of the item; and

(ii) the comments (if any), a copy of which were given to the Minister under subsection 194N(1) with the assessment; and

(b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include item

(7) If the Minister includes the item in the Subdivision A List, he or she must, within a reasonable time:

(a) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person that the item has been included in the Subdivision A List; and

(aa) notify the Indigenous Advisory Committee that the item has been included in the Subdivision A list; and

(b) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and

(c) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

Additional requirements if Minister decides not to include item

(8) If the Minister decides not to include the item in the Subdivision A List, the Minister must, within 10 business days after making the decision:

(a) publish the decision on the internet; and

(b) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person of the decision, and of the reasons for the decision; and

(c) notify the Indigenous Advisory Committee of the decision.

194R Scientific Committee may obtain advice

In performing its functions under this Subdivision, the Scientific Committee may obtain advice from a person with expertise relevant to the inclusion of an item in a Subdivision A List.

194S Co-ordination with Australian Heritage Council—Committee undertaking assessment

(1) This section applies if:

(a) the Scientific Committee undertakes an assessment under this Subdivision; and

(b) before giving the assessment to the Minister, the Committee becomes aware that:

(i) the Australian Heritage Council is undertaking, or has undertaken, an assessment of a place under

Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and

(ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.

(3) Before the Scientific Committee gives an assessment to the Minister under this Subdivision, the Committee must comply with subsection (4) or (6).

(4) If the Australian Heritage Council has not yet given the Minister an assessment that deals with that matter, the Scientific Committee must:

(a) give the Council a copy of the assessment that the Committee proposes to give to the Minister; and

(b) invite the Council to give the Committee its comments in relation to that matter; and

(c) take into account, in finalising the assessment that the Committee gives the Minister, any comments that the Council makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.

(5) If the Scientific Committee gives the Australian Heritage Council a copy of a proposed assessment under paragraph (4)(a), the Committee must also give the Council a copy of the assessment that the Committee gives the Minister.

(6) If:

(a) the Australian Heritage Council has already given the Minister an assessment that deals with that matter; and

(b) the Scientific Committee has been given a copy of that assessment;

the Committee must take that assessment into account in finalising the assessment that the Committee gives the Minister.

(7) If, under section 324JR, 324JS, 341JQ or 341JR, the Australian Heritage Council gives the Scientific Committee a proposed assessment, or an assessment, that deals with a particular matter because the Committee is undertaking an assessment that deals with that matter, a member of the Committee may discuss that matter with a member of the Council.

(8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 189B.

194T Co-ordination with Australian Heritage Council—Committee given assessment to Minister

(1) This section applies if:
  (a) the Scientific Committee has given to the Minister an assessment under this Subdivision; and
  (b) the Committee is or becomes aware that:
    (i) the Australian Heritage Council is undertaking an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
    (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).

(2) The Scientific Committee must, within 7 days after giving the assessment to the Minister, or becoming aware, as referred to in paragraph (1)(b):
  (a) ensure the Australian Heritage Council is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
  (b) give the Council a copy of the assessment.

(3) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.

(4) Subsections (2) and (3) have effect despite section 189B.

Subdivision B—Permit system

195 Subdivision does not apply to cetaceans

This Subdivision does not apply to a member of a listed threatened species that is a cetacean.

196 Killing or injuring member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a species or a member of an ecological community; and

(c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196A Strict liability for killing or injuring member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a native species or a member of an ecological community; and

(c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196B Taking etc. member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196C Strict liability for taking etc. member of listed threatened species or community

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a native species or a member of an ecological community; and

(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196D Trading etc. member of listed threatened species or community taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a species or a member of an ecological community; and
(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
(c) the member has been taken in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196E Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area

(1) A person commits an offence if:
(a) the person trades, keeps or moves a member of a native species or a member of an ecological community; and
(b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
(c) the member has been taken in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

196F Aggravated offence—member of listed threatened species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 196, 196A, 196B, 196C, 196D or 196E (the ***underlying offence***) is an ***aggravated offence*** if the member to which the underlying offence relates is:

(a) a member of a listed threatened species; and

(b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(g) and (h), and on the day this section commenced, these species were listed threatened species.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) Strict liability applies to the physical elements of circumstance, that the member is:

(a) a member of a listed threatened species; and

(b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

197 Certain actions are not offences

Sections 196, 196A, 196B, 196C, 196D, 196E and 207B do not apply to:

(a) an action authorised by a permit that was issued under section 201 and is in force; or

(b) an action provided for by, and done in accordance with, a recovery plan in force under Division 5; or

(c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2); or

(d) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and

(ii) is taken in accordance with a management or authorisation framework that is accredited for the purposes of the declaration; or

(da) an action that may be taken without an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2) because section 37 (registered priority actions under bioregional plans) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(daa) an action that may be taken without an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2) because section 36G (actions approved under declared framework do not require approval) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(db) in the case of sections 196B, 196C, 196D and 196E—an action that is trading, keeping or moving a member of a listed threatened species or a listed ecological community, if:

(i) when the member of the species or community was taken, the species or community was not a listed threatened species or a listed threatened ecological community, as the case requires; and

(ii) the trading, keeping or moving of the member of the species or community occurs during the period of 6 months that started when the species or community became a listed threatened species or a listed threatened ecological community, as the case requires; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed threatened species or listed threatened ecological community; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A; or

(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p).

Note: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code*.

198 Operation of sections 18 and 18A not affected

To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E, 196F and 197 do not affect the operation of section 18 or 18A.

199 Failing to notify taking of listed threatened species or listed ecological community

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 196, 196A, 196B, 196C, 196D or 196E, otherwise than because of paragraph 197(db);

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 197 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 196, 196A, 196B, 196C, 196D or 196E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 204 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the CEO in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the CEO of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary, or CEO, and a Commonwealth agency or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides is to be notified to the CEO by the agency.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
  (a) fails to do an act; and
  (b) the failing to do the act results in a contravention of subsection (2).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

200 Application for permits

(1) A person may, in accordance with the regulations, apply to the CEO for a permit to be issued under section 201.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the CEO must cause to be published on NEPA's website:
  (a) details of the application; and
  (b) an invitation for anyone to give the CEO comments within 10 business days (measured in Canberra) on whether the permit should be issued.

201 CEO may issue permits

(1) Subject to subsections (3) and (3A), the CEO may, on application by a person under section 200, issue a permit to the person.

(2) A permit authorises its holder to take an action specified in the permit without breaching section 196, 196A, 196B, 196C, 196D, 196E or 207B.

(3) The CEO must not issue the permit unless satisfied that:
  (a) the specified action will contribute significantly to the conservation of the listed threatened species or listed threatened ecological community concerned; or
  (b) the impact of the specified action on a member of the listed threatened species or listed threatened ecological community

concerned is incidental to, and not the purpose of, the taking of the action and:

(i) the taking of the action will not adversely affect the survival or recovery in nature of that species or ecological community; and

(ii) the taking of the action is not inconsistent with a recovery plan; and

(iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species or ecological community; or

(c) the specified action is of particular significance to indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species or listed threatened ecological community concerned; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed threatened species or listed threatened ecological community concerned.

(3A) The CEO must, in deciding whether to issue the permit, have regard to any approved conservation advice for the listed threatened species or listed threatened ecological community concerned.

(4) In this Act:

indigenous tradition means the body of traditions, observances, customs and beliefs of indigenous persons generally or of a particular group of indigenous persons.

(5) In making a decision on the application, the CEO must consider the comments (if any) received:

(a) in response to the invitation under subsection 200(3) for anyone to give the CEO comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

202 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The CEO may, in accordance with the regulations:
  (a) vary or revoke a condition of a permit; or
  (b) impose further conditions of a permit.

(3) Without limiting subsections (1) and (2), conditions of a permit may include conditions stating the period within which the action specified in the permit may be taken.

203 Contravening conditions of a permit

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:
  (a) he or she does, or fails to do, an act or thing; and
  (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

204 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:
  (a) the permit contains a condition permitting the holder to do so; and
  (b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the CEO written notice of it within 14 days after giving the authority.

205 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the CEO may, in accordance with the regulations, transfer the permit to another person.

206 Suspension or cancellation of permits

The CEO may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

206A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(2) Subsection (1) does not apply to a decision made personally by the CEO (but the subsection does apply to a decision made by a delegate of the CEO under section 59 of the *National Environmental Protection Agency Act 2025*).

207 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Subdivision BA—Protecting critical habitat

207A Register of critical habitat

(1) The Minister must arrange for a register of critical habitat to be kept. The register must be kept in accordance with any regulations prescribed for the purposes of this subsection.

(1AA) The Minister may include on the register critical habitat (see subsection (4)) for a listed threatened species or a listed threatened ecological community. Critical habitat that is included on the register is ***registered critical habitat***.

(1AB) Nothing in subsection (1AA) requires the Minister to include particular critical habitat on the register.

(1A) In considering whether to list habitat, the Minister must take into account the potential conservation benefit of listing the habitat.

(1B) Subsection (1) does not limit the matters:

(a) that the Minister may take into account in considering whether to list habitat; or

(b) that the regulations may require or permit the Minister to take into account in considering whether to list habitat.

(2) The regulations must require the Minister to consider scientific advice in identifying the habitat.

(3) The register must be made available for public inspection in accordance with the regulations (if any).

(3A) Particular material included in the register does not have to be made available for public inspection if the Minister considers that the interests of relevant landholders could be impeded or compromised by:

(a) the disclosure of the material; or

(b) without limiting paragraph (a)—the presence or actions of persons if the material were disclosed.

(4) Habitat is ***critical habitat*** for a listed threatened species or listed threatened ecological community if the habitat is necessary for one or more of the following:

(a) activities such as foraging, breeding, roosting or dispersal;

(b) the long-term maintenance of the species or ecological community (including maintenance essential to its survival);

(c) the maintenance of genetic diversity and long-term evolutionary development;

(d) the reintroduction of populations or the recovery of the species or ecological community.

207B Offence of knowingly damaging registered critical habitat

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the person knows that the action significantly damages or will significantly damage critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and

(ba) the critical habitat is registered critical habitat; and

(c) the habitat is in or on a Commonwealth area.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(ba) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

(4) To avoid doubt, this section does not affect the operation of Division 2, 3 or 4.

207C Sale or lease of Commonwealth land containing registered critical habitat

(1) This section applies to a Commonwealth agency that executes a contract for the sale or lease to someone else of Commonwealth land that includes registered critical habitat for a listed threatened species or listed threatened ecological community. It does not matter whether the Commonwealth agency executes the contract for the Commonwealth or on its own behalf.

(2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the registered critical habitat.

(3) The Commonwealth agency must take reasonable steps to ensure as far as practicable that the covenant binds the successors in title of the buyer or lessee (as appropriate).

Subdivision C—Miscellaneous

208A Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed threatened species (other than conservation dependent species) are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

208 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed threatened species or listed threatened ecological communities killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed threatened species or listed threatened ecological communities may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed threatened species or listed threatened ecological communities; and

(d) provide for the protection and conservation of listed threatened species or listed threatened ecological communities; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 2—Migratory species

Subdivision A—Listing

209 Listed migratory species

(1) The Minister must:
  (a) establish a list of migratory species for the purposes of this Act; and
  (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3).

(2) The Minister must establish the list within 30 days after the commencement of this Act.

(3) The list must include:
  (a) all migratory species that are:
    (i) native species; and
    (ii) from time to time included in the appendices to the Bonn Convention; and
  (b) all migratory species from time to time included in annexes established under JAMBA and CAMBA; and
  (c) all native species from time to time identified in a list established under, or an instrument made under, an international agreement approved by the Minister under subsection (4).

  The list must not include any other species.

(4) The Minister may, by legislative instrument, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of migratory species.

(6) The Minister may correct an inaccuracy or update the name of a migratory species.

(7) The list of migratory species made under subsection (1), and any amendments to the list made under paragraph (1)(b) or subsection (6), are legislative instruments, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the list or any amendments.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the list or any amendments. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

(8) In this Act:

migratory species has the meaning given by Article I of the Bonn Convention.

Subdivision B—Permit system

210 Subdivision does not apply to members of listed threatened species or cetaceans

This Subdivision does not apply to a member of a listed migratory species that is a member of a listed threatened species or a cetacean.

211 Killing or injuring member of listed migratory species

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a species; and

(c) the member is a member of a listed migratory species; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211A Strict liability for killing or injuring member of listed migratory species

(1) A person commits an offence if:

(a) the person takes an action; and

(b) the action results in the death or injury of a member of a migratory species; and

(c) the member is a member of a listed migratory species; and

(d) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211B Taking etc. member of listed migratory species

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a species; and

(b) the member is a member of a listed migratory species; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211C Strict liability for taking etc. member of listed migratory species

(1) A person commits an offence if:
(a) the person takes, trades, keeps or moves a member of a migratory species; and
(b) the member is a member of a listed migratory species; and
(c) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211D Trading etc. member of listed migratory species taken in Commonwealth area

(1) A person commits an offence if:
(a) the person trades, keeps or moves a member of a species; and

(b) the member is a member of a listed migratory species; and
(c) the member has been taken in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area

(1) A person commits an offence if:
(a) the person trades, keeps or moves a member of a migratory species; and
(b) the member is a member of a listed migratory species; and
(c) the member has been taken in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

211F Aggravated offence—member of listed migratory species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 211, 211A, 211B, 211C, 211D or 211E (the ***underlying offence***) is an ***aggravated offence*** if the member to which the underlying offence relates is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(f), (g) and (h), and on the day this section commenced, these species were listed migratory species.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) Strict liability applies to the physical element of circumstance, that the member is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

212 Certain actions are not offences

(1) Sections 211, 211A, 211B, 211C, 211D and 211E do not apply to:
- (a) an action authorised by a permit that was issued under section 216 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made or adopted under Division 5 and in force; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); or
- (d) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and

(ii) is taken in accordance with a management or authorisation framework that is accredited for the purposes of the declaration; or

(da) an action that may be taken without an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2) because section 37 (registered priority actions under bioregional plans) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(daa) an action that may be taken without an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2) because section 36G (actions approved under declared framework do not require approval) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(db) in the case of sections 211B, 211C, 211D and 211E—an action that is trading, keeping or moving a member of a listed migratory species, if:

(i) when the member of the species was taken, the species was not a listed migratory species; and

(ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed migratory species; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed migratory species; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A; or

(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p); or

(r) an action that is taken in the course of recreational fishing and the action:

(i) consists of, or involves, taking, trading, keeping or moving; or

(ii) results in the death or injury of;

a shortfin mako shark, a longfin mako shark or a porbeagle shark.

Note: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code*.

(2) For the purposes of paragraph (1)(r), ***recreational fishing*** includes (but is not limited to) the following types of fishing:

(a) fishing from a charter boat (within the meaning of the *Fisheries Management Act 1991*), including fishing by the person in charge of the boat, the crew of the boat or any other person on the boat;

(b) fishing in a fishing competition (whether or not in a professional capacity);

(c) fishing that is undertaken primarily for:

(i) inclusion on a website, or in a film, video, television program or radio program; or

(ii) description or representation in a magazine, newspaper, book or other such document.

213 Operation of sections 20 and 20A not affected

To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E, 211F and 212 do not affect the operation of section 20 or 20A.

214 Failing to notify taking etc. of listed migratory species

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed migratory species that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed migratory species that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 211, 211A, 211B, 211C, 211D or 211E, otherwise than because of paragraph 212(db) or (r);

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 212 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 211, 211A, 211B, 211C, 211D or 211E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 219 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the CEO in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the CEO of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary, or CEO, and a Commonwealth agency or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides is to be notified to the CEO by the agency.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
  (a) fails to do an act; and
  (b) the failing to do the act results in a contravention of subsection (2).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

215 Application for permits

(1) A person may, in accordance with the regulations, apply to the CEO for a permit to be issued under section 216.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the CEO must cause to be published on NEPA's website:
  (a) details of the application; and
  (b) an invitation for anyone to give the CEO comments within 10 business days (measured in Canberra) on whether the permit should be issued.

216 CEO may issue permits

(1) Subject to subsection (3), the CEO may, on application by a person under section 215, issue a permit to the person.

(2) A permit authorises its holder to take an action specified in the permit without breaching section 211, 211A, 211B, 211C, 211D or 211E.

(3) The CEO must not issue the permit unless satisfied that:
  (a) the specified action will contribute significantly to the conservation of the listed migratory species concerned or other listed migratory species; or

(b) the impact of the specified action on a member of the listed migratory species concerned is incidental to, and not the purpose of, the taking of the action and:

(i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and

(ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and

(iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or

(c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed migratory species concerned, or a population of that species; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed migratory species concerned.

(4) In making a decision on the application, the CEO must consider the comments (if any) received:

(a) in response to the invitation under subsection 215(3) for anyone to give the CEO comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

217 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The CEO may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

218 Contravening conditions of a permit

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

(a) he or she does, or fails to do, an act or thing; and

(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

219 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:

(a) the permit contains a condition permitting the holder to do so; and

(b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the CEO written notice of it within 14 days after giving the authority.

220 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the CEO may, in accordance with the regulations, transfer the permit to another person.

221 Suspension or cancellation of permits

The CEO may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

221A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(2) Subsection (1) does not apply to a decision made personally by the CEO (but the subsection does apply to a decision made by a delegate of the CEO under section 59 of the *National Environmental Protection Agency Act 2025*).

222 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

222A Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

223 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed migratory species killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed migratory species may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed migratory species; and

(d) provide for the protection and conservation of listed migratory species; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 3—Whales and other cetaceans

Subdivision A—Application of Division

224 Application of Division

(1) This Division extends to acts, omissions, matters and things outside Australia (whether in a foreign country or not), except so far as the contrary intention appears.

(2) A provision of this Division that has effect in relation to a place outside the outer limits of the Australian Whale Sanctuary applies only in relation to:
  (a) Australian nationals; and
  (b) Australian permanent residents; and
  (d) the Commonwealth; and
  (e) Commonwealth agencies; and
  (f) Australian aircraft; and
  (g) Australian vessels; and
  (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

(3) This Division applies to a vessel as if it were an Australian vessel if:
  (a) the vessel is a boat within the meaning of the *Fisheries Management Act 1991*; and
  (b) a declaration, under subsection 4(2) of that Act, that the vessel is taken to be an Australian boat is in force.

Subdivision B—Australian Whale Sanctuary and important cetacean habitat areas

225 Australian Whale Sanctuary

(1) The Australian Whale Sanctuary is established in order to give formal recognition of the high level of protection and management

afforded to cetaceans in Commonwealth marine areas and prescribed waters.

(2) The ***Australian Whale Sanctuary*** comprises:

(a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:

(i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and

(ii) waters within the limits of a State or the Northern Territory; and

(b) any waters over the continental shelf, except:

(i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and

(ii) waters within the limits of a State or the Northern Territory; and

(iii) waters covered by paragraph (a); and

(c) so much of the coastal waters of a State or the Northern Territory as are prescribed waters.

Note: This subsection is subject to subsection 5(3).

226 Prescribed waters

(1) The regulations may declare the whole, or a specified part, of the coastal waters of a State or the Northern Territory to be prescribed waters.

(2) Before the Governor-General makes a regulation under subsection (1), the Minister must obtain the agreement of the relevant Minister of the State or the Northern Territory.

227 Coastal waters

(1) Section 15B of the *Acts Interpretation Act 1901* does not apply in relation to this Division.

(2) The ***coastal waters*** of a State or the Northern Territory are:
  (a) the part or parts of the territorial sea that are:
    (i) within 3 nautical miles of the baseline of the territorial sea; and
    (ii) adjacent to that State or Territory; and
  (b) any marine or tidal waters that are inside that baseline and are adjacent to that State or Territory but are not within the limits of a State or that Territory.

Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.

(3) Any part of the territorial sea that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (2), taken to be adjacent to New South Wales.

228 Minister may make declaration for coastal waters

(1) If the Minister is satisfied that a law of a State or the Northern Territory adequately protects cetaceans in the coastal waters, or a part of the coastal waters, of the State or Territory, the Minister may make a declaration accordingly, whether or not those coastal waters or that part are prescribed waters.

(2) A declaration must be in writing.

228A Important cetacean habitat areas

(1) The Minister may, by legislative instrument, declare a specified area in the Australian Whale Sanctuary to be an important cetacean habitat area.

(2) The regulations may specify criteria to be applied by the Minister in determining whether to declare an area to be an important

cetacean habitat area. If regulations are made for the purposes of this section, the Minister may declare an area to be an important cetacean habitat area only if he or she is satisfied that the area meets the criteria prescribed by the regulations.

Subdivision C—Offences

229 Killing or injuring a cetacean

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action results in the death or injury of a cetacean; and
  (c) the cetacean is in:
    (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(1A) Strict liability applies to paragraph (1)(c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

229A Strict liability for killing or injuring a cetacean

(1) A person commits an offence if:
  (a) the person takes an action; and
  (b) the action results in the death or injury of a cetacean; and

(c) the cetacean is in:

(i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229B Intentionally taking etc. a cetacean

(1) A person commits an offence if:

(a) the person takes, trades, keeps, moves or interferes with a cetacean; and

(b) the cetacean is in:

(i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraph (1)(b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

(4) In this Act:

interfere with a cetacean includes harass, chase, herd, tag, mark or brand the cetacean.

trade a cetacean:

(a) includes:

(i) buy the cetacean, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or

(ii) sell the cetacean, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or

(iii) cause or allow any of the acts referred to in subparagraph (i) or (ii) to be done; but

(b) does not include export the cetacean from Australia or an external Territory or import it into Australia or an external Territory.

Note: For provisions relating to export or import, see Part 13A.

229C Strict liability for taking etc. a cetacean

(1) A person commits an offence if:

(a) the person takes, trades, keeps, moves or interferes with a cetacean; and

(b) the cetacean is in:

(i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

(ii) waters beyond the outer limits of the Australian Whale Sanctuary.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a) and (b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229D Treating cetaceans

Treating unlawfully killed or taken cetaceans

(1) A person commits an offence if:
(a) the person treats a cetacean; and
(b) the cetacean has been:
(i) killed in contravention of section 229 or 229A; or
(ii) taken in contravention of section 229B or 229C.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) An offence against subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

Treating unlawfully imported cetaceans

(2A) A person commits an offence if:
(a) the person treats a cetacean; and
(b) the cetacean has been unlawfully imported.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2B) An offence against subsection (2A) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

(3) In this Act:

treat a cetacean means divide or cut up, or extract any product from, the cetacean.

230 Possession of cetaceans

Possession of unlawfully killed cetaceans

(1) A person commits an offence if:
  (a) the person has in his or her possession:
    (i) a cetacean; or
    (ii) a part of a cetacean; or
    (iii) a product derived from a cetacean; and
  (b) the cetacean has been:
    (i) killed in contravention of section 229 or 229A; or
    (ii) taken in contravention of section 229B or 229C.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) An offence against subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

Possession of unlawfully imported cetaceans

(3) A person commits an offence if:
  (a) the person has in his or her possession:
    (i) a cetacean; or

(ii) a part of a cetacean; or

(iii) a product derived from a cetacean; and

(b) the cetacean, part or product, as the case may be, has been unlawfully imported.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(4) An offence against subsection (3) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

231 Certain actions are not offences

Sections 229, 229A, 229B, 229C, 229D and 230 do not apply to:

(a) an action authorised by a permit that was issued under section 238 and is in force; or

(aa) an action that is whale watching carried out in accordance with regulations referred to in paragraph 238(3)(c), but only if:

(i) the whale watching is not carried out for a commercial purpose; or

(ii) the whale watching is carried out in an area that is not an important cetacean habitat area; or

(b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and in force; or

(ba) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); or

(bb) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); and

(ii) is taken in accordance with a management or authorisation framework that is accredited for the purposes of the declaration; or

(bc) an action that may be taken without an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7) because section 37 (registered priority actions under bioregional plans) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(bd) an action that may be taken without an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7) because section 36G (actions approved under declared framework do not require approval) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean; or

(d) an action that is reasonably necessary to prevent a risk to human health; or

(e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(ga) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245; or

(i) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(j) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(k) an action that consists of the transit of a cetacean through a Commonwealth area in circumstances where the cetacean was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (ba), (bb), (bc), (ga), (h), (i) or (j).

Note: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code*.

232 Action to be taken on killing etc. cetaceans

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action:

(i) results in the injury or death of a cetacean, or consists of taking a cetacean, in the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters of a State or the Northern Territory for which a declaration under section 228 is in force) or in waters beyond the outer limits of the Australian Whale Sanctuary; or

(ii) consists of treating a cetacean killed, injured or taken in contravention of section 229, 229A, 229B or 229C;

(b) the person's action does not constitute an offence against section 229, 229A, 229B, 229C or 229D;

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 231 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 229, 229A, 229B, 229C or 229D.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 241 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the CEO in writing, by telephone or by use of any other electronic equipment:

(a) that the action was taken; and

(b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

(a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the CEO of the action; or

(b) the action is in a class of actions:

(i) that is specified in an agreement or arrangement between the Secretary, or CEO, and a Commonwealth agency or an agency of a State or self-governing Territory; and

(ii) that the agreement or arrangement provides are to be notified to the CEO by the agency.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

(a) fails to do an act; and

(b) the failing to do the act results in a contravention of subsection (2).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Subdivision E—Miscellaneous offences

236 Offences relating to foreign whaling vessels

(1) The master of a foreign whaling vessel commits an offence if the vessel is brought into a port in Australia or an external Territory and the master has not obtained the written permission of the Minister for the vessel to be brought into the port.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) is punishable on conviction by a fine not exceeding 500 penalty units.

(4) Subsection (1) does not apply if:

(a) the vessel is brought into the port in accordance with a prescribed agreement between Australia and any other country or countries; or

(b) the vessel is brought into the port under the direction of a person exercising powers under a law of the Commonwealth or of a State; or

(c) an unforeseen emergency renders it necessary to bring the vessel into the port in order to secure the safety of the vessel or human life.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

(5) In this Act:

foreign whaling vessel means a vessel, other than an Australian vessel, designed, equipped or used for:

(a) killing, taking, treating or carrying cetaceans; or

(b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying cetaceans.

master, in relation to a foreign whaling vessel, means the person (other than a ship's pilot) in charge or command of the vessel.

Subdivision F—Permit system

237 Application for permits

(1) A person may, in accordance with the regulations, apply to the CEO for a permit to be issued under section 238.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the CEO must cause to be published on NEPA's website:
  (a) details of the application; and
  (b) an invitation for anyone to give the CEO comments within 10 business days (measured in Canberra) on whether the permit should be issued.

238 CEO may issue permits

(1) Subject to subsections (3) to (4), the CEO may, on application by a person under section 237, issue a permit to the person.

(2) A permit authorises its holder to take an action specified in the permit without breaching sections 229, 229A, 229B, 229C, 229D and 230.

(3) The CEO must not issue the permit unless satisfied that:
  (a) the specified action will contribute significantly to the conservation of cetaceans; or
  (b) if the specified action will interfere with cetaceans, the interference is incidental to, and not the purpose of, the taking of the action and:
    (i) the taking of the action will not adversely affect the conservation status of a species of cetacean or a population of that species; and

(ii) the taking of the action is not inconsistent with a recovery plan or wildlife conservation plan; and

(iii) the holder of the permit will take all reasonable steps to minimise the interference with cetaceans; or

(c) the specified action is whale watching (other than whale watching covered by paragraph 231(aa)) and:

(i) the whale watching is carried out in accordance with the regulations (if any) made for the purposes of this section; or

(ii) the whale watching will not adversely affect the conservation status of a species of cetacean or a population of that species, and is not inconsistent with a recovery plan or wildlife conservation plan.

(3AA) If the specified action would or could relate to a species of cetacean that is a listed threatened species, the CEO must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species of cetacean.

(3A) In making a decision on the application, the CEO must consider the comments (if any) received:

(a) in response to the invitation under subsection 237(3) for anyone to give the CEO comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

(4) The CEO must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.

(5) In this Act:

whale watching means any activity conducted for the purpose of observing a cetacean, including but not limited to being in the water for the purposes of observing or swimming with a cetacean, or otherwise interacting with a cetacean.

239 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The CEO may, in accordance with the regulations:
  (a) vary or revoke a condition of a permit; or
  (b) impose further conditions of a permit.

240 Contravening conditions of a permit

The holder of a permit commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:
  (a) he or she does, or fails to do, an act or thing; and
  (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

241 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:
  (a) the permit contains a condition permitting the holder to do so; and
  (b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the CEO written notice of it within 14 days after giving the authority.

242 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the CEO may, in accordance with the regulations, transfer the permit to another person.

243 Suspension or cancellation of permits

The CEO may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

243A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or

(e) to suspend or cancel a permit.

(2) Subsection (1) does not apply to a decision made personally by the CEO (but the subsection does apply to a decision made by a delegate of the CEO under section 59 of the *National Environmental Protection Agency Act 2025*).

244 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

(a) the grant or the transfer of a permit;

(b) the variation or revocation of a condition of a permit;

(c) the imposition of a further condition of a permit.

Subdivision G—Miscellaneous

245 Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:

(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or

(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:

(i) made by a State or self-governing Territory; and

(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management

(within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

246 Vesting of whales in Commonwealth

(1) If:

(a) a cetacean is:

(i) in the Australian Whale Sanctuary, other than the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force; or

(ii) in waters beyond the outer limits of the Australian Whale Sanctuary; and

(a) a person kills, injures or takes the cetacean, whether or not in contravention of this Division;

the cetacean vests, by force of this section, in the Commonwealth.

(2) The Commonwealth is not liable in any action, suit or proceedings in respect of any matter relating to a cetacean at any time before the taking of possession of the cetacean by the Commonwealth.

247 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of cetaceans killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which cetaceans may be killed, taken or interfered with otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to cetaceans; and

(d) provide for the protection and conservation of cetaceans; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 4—Listed marine species

Subdivision A—Listing

248 Listed marine species

(1) The Minister must, by legislative instrument, establish a list of marine species for the purposes of this Part.

(2) The list, as first established, must contain only the following:
  (a) all species in the Family Hydrophiidae (sea-snakes);
  (b) all species in the Family Laticaudidae (sea-snakes);
  (c) all species in the Family Otariidae (eared seals);
  (d) all species in the Family Phocidae ("true" seals);
  (e) all species in the Genus *Crocodylus* (crocodiles);
  (f) all species in the Genus *Dugong* (dugong);
  (g) all species in the Family Cheloniidae (marine turtles);
  (h) the species *Dermochelys coriacea* (leatherback turtles);
  (i) all species in the Family Syngnathidae (seahorses, sea-dragons and pipefish);
  (j) all species in the Family Solenostomidae (ghost pipefish);
  (k) all species in the Class Aves (birds) that occur naturally in Commonwealth marine areas.

(3) The Minister must establish the list within 30 days after the commencement of this Act.

(4) The Minister must cause a notice summarising the information contained in the instrument to be published in accordance with the regulations (if any).

249 Minister may amend list

(1) Subject to this Subdivision, the Minister may, by legislative instrument, amend the list by:
  (a) including or deleting items from the list; or

(b) correcting an inaccuracy or updating the name of a marine species.

(2) Amendments of a list that delete items from the list take effect on the first day the amendments are no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

(3) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

(4) When an instrument is laid before each House of the Parliament in accordance with Part 2 of Chapter 3 of the *Legislation Act 2003*, the Minister must cause a statement to be laid before each House with the instrument explaining:

(a) in the case of an item that has been included in the list by the instrument—why the item was so included; or

(b) in the case of an item that has been deleted from the list by the instrument—why the item was so deleted.

(5) The Minister must cause a notice summarising the information contained in an amendment under subsection (1) to be published in accordance with the regulations (if any).

250 Adding marine species to the list

(1) The Minister must not add a marine species to the list unless:

(a) the Minister is satisfied that it is necessary to include the species in the list in order to ensure the long-term conservation of the species; and

(b) the species occurs naturally in a Commonwealth marine area.

(2) Before adding a marine species to the list, the Minister must consult with each Minister who has an interest in a Commonwealth marine area where the species occurs naturally.

251 Minister must consider advice from Scientific Committee

(1) In deciding whether to add an item to, or delete an item from, the list, the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the scientific aspects of the addition or deletion of the item concerned.

(2) The Minister must:

(a) decide whether to add an item to, or delete an item from, the list; and

(b) if the Minister decides to add or delete the item—amend the list accordingly under subsection 249(1);

within 90 days after receiving the Scientific Committee's advice on the addition or deletion of the item.

(3) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:

(a) is for the official purposes of the Scientific Committee; or

(b) relates to an addition or deletion included in an amendment of the list that has already been registered as a legislative instrument under the *Legislation Act 2003*.

Note: Amendments of the list to add or delete an item are legislative instruments (see section 249).

Subdivision B—Permit system

253 Subdivision does not apply to members of certain species and cetaceans

This Subdivision does not apply to a member of a listed marine species that is a member of a listed migratory species, a member of a listed threatened species or a cetacean.

254 Killing or injuring member of listed marine species

(1) A person commits an offence if:

(a) the person takes an action; and
(b) the action results in the death or injury of a member of a species; and
(c) the member is a member of a listed marine species; and
(d) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254A Strict liability for killing or injuring member of listed marine species

(1) A person commits an offence if:
(a) the person takes an action; and
(b) the action results in the death or injury of a member of a marine species; and
(c) the member is a member of a listed marine species; and
(d) the member is in or on a Commonwealth area.

Penalty:
(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254B Taking etc. member of listed marine species

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a species; and

(b) the member is a member of a listed marine species; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254C Strict liability for taking etc. member of listed marine species

(1) A person commits an offence if:

(a) the person takes, trades, keeps or moves a member of a marine species; and

(b) the member is a member of a listed marine species; and

(c) the member is in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;

(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254D Trading etc. member of listed marine species taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a species; and

(b) the member is a member of a listed marine species; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

(b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area

(1) A person commits an offence if:

(a) the person trades, keeps or moves a member of a marine species; and

(b) the member is a member of a listed marine species; and

(c) the member has been taken in or on a Commonwealth area.

Penalty:

(a) in the case of an aggravated offence—1,500 penalty units;
(b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b) and (c).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

254F Aggravated offence—member of listed marine species that is a dugong or turtle

(1) For the purposes of this Subdivision, an offence against section 254, 254A, 254B, 254C, 254D or 254E (the ***underlying offence***) is an ***aggravated offence*** if the member to which the underlying offence relates is a member of a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are the listed marine species mentioned in paragraphs 248(2)(f), (g) and (h).

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) Strict liability applies to the physical element of circumstance, that the member is a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

255 Certain actions are not offences

Sections 254, 254A, 254B, 254C, 254D and 254E do not apply to:
(a) an action authorised by a permit that was issued under section 258 and is in force; or
(b) an action provided for by, and taken in accordance with, a wildlife conservation plan made under Division 5 and in force; or

(c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); or

(d) an action that:

(i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); and

(ii) is taken in accordance with a management or authorisation framework that is accredited for the purposes of the declaration; or

(da) an action that may be taken without an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4) because section 37 (registered priority actions under bioregional plans) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(daa) an action that may be taken without an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4) because section 36G (actions approved under declared framework do not require approval) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(db) in the case of sections 254B, 254C, 254D and 254E—an action that is trading, keeping or moving a member of a listed marine species, if:

(i) when the member of the species was taken, the species was not a listed marine species; and

(ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed marine species; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by an animal; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(j) an action taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 265; or

(l) an action, to the extent that it is covered by subsection 517A(7); or

(m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or

(n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

(o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

(i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and

(ii) is in force; or

(p) an action that is taken in accordance with a permit that:

(i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and

(ii) is in force; or

(q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:

(i) obtained from an area that is not a Commonwealth area; or

(ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (l), (m), (n), (o) or (p).

Note: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code*.

256 Failing to notify taking etc. of listed marine wildlife

(1) This section applies to an action taken by a person if all of the following conditions are met:

(a) the person's action either:

(i) results in the death or injury of a member of a listed marine species that is in or on a Commonwealth area; or

(ii) consists of, or involves, trading, taking, keeping or moving a member of a listed marine species that is in or on a Commonwealth area;

(b) the person's action does not constitute an offence against section 254, 254A, 254B, 254C, 254D or 254E, otherwise than because of paragraph 255(db);

(c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 255 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 254, 254A, 254B, 254C, 254D or 254E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 261 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the CEO in writing, by telephone or by use of any other electronic equipment:
  (a) that the action was taken; and
  (b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:
  (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the CEO of the action; or
  (b) the action is in a class of actions:
    (i) that is specified in an agreement or arrangement between the Secretary, or CEO, and a Commonwealth agency or an agency of a State or self-governing Territory; and
    (ii) that the agreement or arrangement provides is to be notified to the CEO by the agency.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if a person:
  (a) fails to do an act; and
  (b) the failing to do the act results in a contravention of subsection (2).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

257 Application for permits

(1) A person may, in accordance with the regulations, apply to the CEO for a permit to be issued under section 258.

(2) The application must be accompanied by the fee prescribed by the regulations (if any).

(3) As soon as practicable after receiving the application, the CEO must cause to be published on NEPA's website:
  (a) details of the application; and
  (b) an invitation for anyone to give the CEO comments within 10 business days (measured in Canberra) on whether the permit should be issued.

258 CEO may issue permits

(1) Subject to subsection (3), the CEO may, on application by a person under section 257, issue a permit to the person.

(2) A permit authorises its holder to take the actions specified in the permit without breaching section 254, 254A, 254B, 254C, 254D or 254E.

(3) The CEO must not issue the permit unless satisfied that:
  (a) the specified action will significantly contribute to the conservation of the listed marine species concerned or other listed marine species; or
  (b) the impact of the specified action on a member of the listed marine species concerned is incidental to, and not the purpose of, the taking of the action and:
    (i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and
    (ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and
    (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or
  (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed marine species concerned; or

(d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed marine species concerned.

(4) In making a decision on the application, the CEO must consider the comments (if any) received:

(a) in response to the invitation under subsection 257(3) for anyone to give the CEO comments on whether the permit should be issued; and

(b) within the period specified in the invitation.

259 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) The CEO may, in accordance with the regulations:

(a) vary or revoke a condition of a permit; or

(b) impose further conditions of a permit.

260 Contravening conditions of a permit

The holder of a permit commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

(a) he or she does, or fails to do, an act or thing; and

(b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

261 Authorities under permits

(1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

(2) The holder of a permit must not give an authority unless:

(a) the permit contains a condition permitting the holder to do so; and

(b) the authority is given in accordance with any requirements set out in the condition.

(3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.

(4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

(5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

(6) A person who gives an authority must give to the CEO written notice of it within 14 days after giving the authority.

262 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the CEO may, in accordance with the regulations, transfer the permit to another person.

263 Suspension or cancellation of permits

The CEO may, in accordance with the regulations:

(a) suspend a permit for a specified period; or

(b) cancel a permit.

263A Review of decisions about permits

(1) Subject to subsection (2), an application may be made to the Administrative Review Tribunal for review of a decision:

(a) to issue or refuse a permit; or

(b) to specify, vary or revoke a condition of a permit; or

(c) to impose a further condition of a permit; or

(d) to transfer or refuse to transfer a permit; or
(e) to suspend or cancel a permit.

(2) Subsection (1) does not apply to a decision made personally by the CEO (but the subsection does apply to a decision made by a delegate of the CEO under section 59 of the *National Environmental Protection Agency Act 2025*).

264 Fees

Such fees as are prescribed (if any) are payable in respect of the following:
(a) the grant or the transfer of a permit;
(b) the variation or revocation of a condition of a permit;
(c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

265 Minister may accredit plans, regimes or policies

(1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
(a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
(b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
(c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
(i) made by a State or self-governing Territory; and
(ii) in force under a law of the State or self-governing Territory; or

(d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or

(e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and

(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

266 Regulations

The regulations may:

(a) provide for the transportation, treatment and disposal of members of listed marine species killed, injured or taken in contravention of this Division; and

(b) provide for the methods or equipment by which members of listed marine species may be killed or taken otherwise than in contravention of this Division; and

(c) provide for the gathering and dissemination of information relating to listed marine species; and

(d) provide for the protection and conservation of listed marine species; and

(e) provide for any matter incidental to or connected with any of the above paragraphs.