



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

Prepared by the Office of Parliamentary Counsel, Canberra

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 5—Conservation of biodiversity and heritage	19
Part 13—Species and communities	19
Division 5—Conservation advice, recovery plans, threat abatement plans and wildlife conservation plans	19
Subdivision AA—Approved conservation advice	19
266B	Approved conservation advice for listed threatened species and listed threatened ecological communities 19
Subdivision A—Recovery plans and threat abatement plans	21
267	Simplified outline of this Subdivision 21
268	Compliance with recovery plans and threat abatement plans 22
269	Implementing recovery and threat abatement plans 22
269AA	Decision whether to have a recovery plan 22
269A	Making or adopting a recovery plan 25
270	Content of recovery plans 28
270A	Decision whether to have a threat abatement plan 30
270B	Making or adopting a threat abatement plan 32
271	Content of threat abatement plans 35
272	Eradication of non-native species 36
273	Ensuring plans are in force 37
274	Scientific Committee to advise on plans 38
275	Consultation on plans 39
276	Consideration of comments 39
277	Adoption of State plans 40
278	Publication of plans 40
279	Variation of plans by the Minister 40
280	Variation by a State or Territory of joint plans and plans adopted by the Minister 41
281	Commonwealth assistance 42
282	Scientific Committee to advise on assistance 43
283	Plans may cover more than one species etc. 44
283A	Revoking a plan 44
284	Reports on preparation and implementation of plans 45

Subdivision B—Wildlife conservation plans	45
285 Wildlife conservation plans	45
286 Acting in accordance with wildlife conservation plans	47
287 Content of wildlife conservation plans	47
288 Eradication of non-native species	48
289 Scientific Committee to advise on scheduling of plans	48
290 Consultation on plans	49
291 Consideration of comments	49
292 Adoption of State plans	50
293 Publication, review and variation of plans	50
294 Variation of plans by the Minister	51
295 Variation by a State or Territory of joint plans and plans adopted by the Minister	51
296 Commonwealth assistance	52
297 Plans may cover more than one species etc.	53
298 Reports on preparation and implementation of plans	53
Subdivision BA—Protection statements	53
298A Protection statements for listed threatened species and listed threatened ecological communities	53
298B Content of protection statements	54
298C Protection statements may cover more than one species or community	55
298D Advice on protection statements	55
298E Public consultation on protection statements	55
298F Varying a protection statement	56
298G Revoking protection statements	57
298H Reviews of protection statements	57
Subdivision C—Miscellaneous	58
299 Wildlife conservation plans cease to have effect	58
300 Document may contain more than one plan	59
300A State and Territory laws not affected	59
300B Assistance from the Scientific Committee	59
Division 6—Access to biological resources	60
301 Control of access to biological resources	60
Division 6A—Control of non-native species	61
301A Regulations for control of non-native species	61

Division 7—Aid for conservation of species in foreign countries	62
302	Aid for conservation of species in foreign countries..... 62
Division 7A—Exemptions from provisions of this Part	63
302A	Exemption from provisions of this Part..... 63
302B	Effect of Part 13 exemption..... 64
302C	Application for Part 13 exemption 64
302D	Grounds for grant of Part 13 exemption 65
302E	Conditions of Part 13 exemption 65
302F	Notice of Part 13 exemption..... 67
302G	Variation of Part 13 exemption 68
302H	Application to vary Part 13 exemption..... 69
302J	Notice of variation of Part 13 exemption 70
302K	Revocation of Part 13 exemption 71
302L	Notice of revocation of Part 13 exemption..... 71
302M	Surrender of Part 13 exemption..... 72
302N	Minister may request further information for making decision..... 73
Division 8—Miscellaneous	74
303	Regulations..... 74
303AA	Conditions relating to accreditation of plans, regimes and policies 74
303AB	Amended policies, regimes or plans taken to be accredited 75
Part 13A—International movement of wildlife specimens	76
Division 1—Introduction	76
303BA	Objects of Part..... 76
303BAA	Certain indigenous rights not affected 76
303BB	Simplified outline 77
303BC	Definitions..... 77
Division 2—CITES specimens	80
Subdivision A—CITES specimens	80
303CA	CITES specimens 80
303CB	Stricter domestic measures 81
Subdivision B—Offences and permit system	81
303CC	Exports of CITES specimens..... 81
303CD	Imports of CITES specimens..... 82

303CE	Applications for permits	84
303CF	Further information	84
303CG	Minister may issue permits.....	85
303CH	Specific conditions relating to the export or import of CITES specimens for commercial purposes.....	87
303CI	Time limit for making permit decision	90
303CJ	Duration of permits	91
303CK	Register of applications and decisions.....	91
Subdivision C—Application of CITES		91
303CL	Application of CITES—Management Authority and Scientific Authority	91
303CM	Interpretation of CITES provisions	92
303CN	Resolutions of the Conference of the Parties to CITES.....	92
Division 3—Exports of regulated native specimens		93
Subdivision A—Regulated native specimens		93
303DA	Regulated native specimens	93
303DB	Listing of exempt native specimens	93
303DC	Minister may amend list	94
Subdivision B—Offence and permit system		96
303DD	Exports of regulated native specimens	96
303DE	Applications for permits.....	97
303DF	Further information	97
303DG	Minister may issue permits.....	98
303DH	Time limit for making permit decision	101
303DI	Duration of permits	101
303DJ	Register of applications and decisions.....	101
Division 4—Imports of regulated live specimens		102
Subdivision A—Regulated live specimens		102
303EA	Regulated live specimens	102
303EB	Listing of specimens suitable for live import	102
303EC	Minister may amend list	103
Subdivision B—Assessments relating to the amendment of the list of specimens suitable for import		104
303ED	Amendment of list on the Minister’s own initiative	104
303EE	Application for amendment of list.....	105
303EF	Requirement for assessments	106
303EG	Timing of decision about proposed amendment.....	107

303EH	Requesting further information	107
303EI	Notice of refusal of proposed amendment.....	108
303EJ	Reviews	108
Subdivision C—Offence and permit system		108
303EK	Imports of regulated live specimens	108
303EL	Applications for permits	109
303EM	Further information	109
303EN	Minister may issue permits.....	110
303EO	Time limit for making permit decision	111
303EP	Duration of permits	111
303EQ	Register of applications and decisions.....	111
Subdivision D—Marking of certain specimens for the purposes of identification		112
303ER	Object	112
303ES	Specimens to which Subdivision applies.....	112
303ET	Extended meaning of <i>marking</i>	112
303EU	Secretary may make determinations about marking of specimens	113
303EV	Offences	114
303EW	This Subdivision does not limit conditions of permits.....	115
Division 5—Concepts relating to permit criteria		116
Subdivision A—Non-commercial purpose exports and imports		116
303FA	Eligible non-commercial purpose exports	116
303FB	Eligible non-commercial purpose imports.....	116
303FC	Export or import for the purposes of research	117
303FD	Export or import for the purposes of education	118
303FE	Export or import for the purposes of exhibition	118
303FF	Export or import for conservation breeding or propagation.....	119
303FG	Export or import of household pets	120
303FH	Export or import of personal items.....	121
303FI	Export or import for the purposes of a travelling exhibition.....	122
Subdivision B—Commercial purpose exports and imports		122
303FJ	Eligible commercial purpose exports	122
303FK	Export or import from an approved captive breeding program	123

303FL	Export from an approved artificial propagation program	123
303FLA	Export from an approved cultivation program	123
303FM	Export from an approved aquaculture program	124
303FN	Approved wildlife trade operation.....	124
303FO	Approved wildlife trade management plan.....	127
303FP	Accredited wildlife trade management plan	129
303FQ	Consultation with State and Territory agencies	130
303FR	Public consultation	131
303FRA	Assessments	131
303FS	Register of declarations	132
303FT	Additional provisions relating to declarations	132
303FU	Approved commercial import program	134
Division 6—Miscellaneous		135
303GA	Permit decision—controlled action, and action for which a non-Part 13A permit is required.....	135
303GB	Exceptional circumstances permit.....	137
303GC	Permit authorising the Secretary to export or import specimens.....	139
303GD	Testing permit—section 303EE assessments	141
303GE	Conditions of permits	143
303GF	Contravening conditions of a permit	144
303GG	Authorities under permits.....	146
303GH	Transfer of permits	147
303GI	Suspension or cancellation of permits	147
303GJ	Review of decisions.....	147
303GK	Permit to be produced.....	148
303GL	Pre-CITES certificate to be produced.....	149
303GM	Fees	150
303GN	Possession of illegally imported specimens.....	150
303GO	Regulations relating to welfare.....	152
303GP	Cruelty—export or import of animals	153
303GQ	Imports of specimens contrary to the laws of a foreign country	154
303GR	Evidence.....	155
303GS	Evidence of examiner	155
303GT	Protection of witness	157
303GU	Forms and declarations—persons arriving in Australia or an external Territory	158
303GV	Saving of other laws	158

303GW	Part not to apply to certain specimens	159
303GX	Part not to apply to certain specimens used by traditional inhabitants	161
303GY	When a specimen is <i>lawfully imported</i>	163
Part 14—Conservation agreements		164
304	Object of this Part.....	164
305	Minister or Restoration Contributions Holder may enter into conservation agreements	165
306	Content of conservation agreements.....	169
306A	Conservation agreement entered into by the Minister may include declaration that actions do not need approval under Part 9.....	172
307	Conservation agreements to be legally binding.....	173
307A	Conservation agreements entered into by the Minister may deal with remediation or mitigation measures.....	173
308	Variation and termination of conservation agreements.....	175
309	Publication of conservation agreements	176
310	List of conservation agreements	178
311	Commonwealth, State and Territory laws	178
312	Minister or the Restoration Contributions Holder must not give preference	178
Part 15—Protected areas		179
Division 1—Managing World Heritage properties		179
Subdivision A—Simplified outline of this Division		179
313	Simplified outline of this Division	179
Subdivision B—Seeking agreement on World Heritage listing		180
314	Special provisions relating to World Heritage nominations.....	180
Subdivision C—Notice of submission of property for listing		180
315	Minister must give notice of submission of property for listing etc.	180
Subdivision D—Plans for listed World Heritage properties in Commonwealth areas		181
316	Making plans	181
317	Notice of plans	182
318	Commonwealth compliance with plans.....	183

319	Review of plans every 5 years	183
Subdivision E—Managing World Heritage properties in States and self-governing Territories		183
320	Application	183
321	Co-operating to prepare and implement plans	184
322	Commonwealth responsibilities	184
Subdivision F—Australian World Heritage management principles		185
323	Australian World Heritage management principles	185
Subdivision G—Assistance for protecting World Heritage properties		185
324	Commonwealth assistance for protecting declared World Heritage properties	185
Division 1A—Managing National Heritage places		187
Subdivision A—Preliminary		187
324A	Simplified outline of this Division	187
324B	National Heritage place may be made up of geographically distinct or non-contiguous locations etc.	188
Subdivision B—The National Heritage List		188
324C	The National Heritage List	188
324D	Meaning of <i>National Heritage values</i>	188
Subdivision BA—Inclusion of places in the National Heritage List: usual process		189
324E	Simplified outline	189
324F	Definitions	190
324J	Minister may invite nominations from time to time	190
324JA	Minister to give nominations to Australian Heritage Council	191
324JB	Australian Heritage Council to prepare proposed priority assessment list	192
324JC	Matters to be included in proposed priority assessment list	193
324JD	Statement to be given to Minister with proposed priority assessment list	193
324JE	The finalised priority assessment list	194
324JF	Publication of finalised priority assessment list	194
324JG	Australian Heritage Council to invite comments on places in finalised priority assessment list	195

324JH	Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister	196
324JI	Time by which assessments to be provided to Minister	198
324JIA	Discontinuing assessment of a place	199
324JJ	Decision about inclusion of a place in the National Heritage List	200
Subdivision BB—Inclusion of places in the National Heritage List: emergency process		203
324JK	Simplified outline	203
324JL	Minister may include place in National Heritage List if under threat	204
324JM	Minister to ask Australian Heritage Council for assessment	205
324JN	Publication of listing of place and inviting comments	206
324JO	Australian Heritage Council to assess place and give assessment to Minister	207
324JP	Time by which assessments to be provided to Minister	207
324JQ	Decision about place remaining in the National Heritage List	208
Subdivision BC—Other provisions relating to the National Heritage List		211
324JR	Co-ordination with Scientific Committee—Council undertaking assessment	211
324JS	Co-ordination with Scientific Committee—Council given assessment to Minister	213
324K	Listing process not affected by changing boundaries of a place	213
324L	Removal of places or National Heritage values from the National Heritage List	214
324LA	Amendment of National Heritage values of a place	215
324LB	Expansion of National Heritage place	216
324LC	Alignment with boundaries of declared World Heritage property	217
324M	Minister must consider advice of the Australian Heritage Council and public comments	217
324N	Minor amendments to the National Heritage List	218
324P	National Heritage List must be publicly available	219

324Q	Certain information may be kept confidential	219
324R	Disclosure of Australian Heritage Council's assessments and advice	219
Subdivision C—Management plans for National Heritage places in Commonwealth areas		222
324S	Management plans for National Heritage places in Commonwealth areas	222
324T	Restriction on ability to make plans	223
324U	Compliance with plans by the Commonwealth and Commonwealth agencies.....	223
324V	Multiple plans in the same document	224
324W	Review of plans at least every 5 years	224
Subdivision D—Management of National Heritage places in States and self-governing Territories		225
324X	Plans and Commonwealth responsibilities	225
Subdivision E—The National Heritage management principles		226
324Y	National Heritage management principles.....	226
Subdivision F—Obligations of Commonwealth agencies		227
324Z	Obligation to assist the Minister and the Australian Heritage Council	227
324ZA	Protecting National Heritage values of places sold or leased	227
Subdivision G—Assistance for protecting National Heritage places		229
324ZB	Commonwealth assistance for protecting National Heritage places	229
Subdivision H—Reviewing and reporting on the National Heritage List		229
324ZC	Reviewing and reporting on the National Heritage List	229
Division 2—Managing wetlands of international importance		231
Subdivision A—Simplified outline of this Division		231
325	Simplified outline of this Division	231
Subdivision B—Seeking agreement on Ramsar designation		232
326	Commonwealth must seek agreement before designation	232
Subdivision C—Notice of designation of wetland		232

327	Minister must give notice of designation of wetland etc.	232
Subdivision D—Plans for listed wetlands in Commonwealth areas		233
328	Making plans	233
329	Notice of plans	234
330	Commonwealth compliance with plans	234
331	Review of plans every 5 years	235
Subdivision E—Management of wetlands in States and self-governing Territories		235
332	Application	235
333	Co-operating to prepare and implement plans	236
334	Commonwealth responsibilities	236
Subdivision F—Australian Ramsar management principles		236
335	Australian Ramsar management principles	236
Subdivision G—Assistance for protecting wetlands		237
336	Commonwealth assistance for protecting declared Ramsar wetlands	237
Division 3—Managing Biosphere reserves		238
337	Definition of <i>Biosphere reserve</i>	238
338	Planning for management of Biosphere reserves	238
339	Commonwealth activities in Biosphere reserves	238
340	Australian Biosphere reserve management principles	239
341	Commonwealth assistance for protecting Biosphere reserves	239
Division 3A—Managing Commonwealth Heritage places		240
Subdivision A—Preliminary		240
341A	Simplified outline of this Division	240
341B	Extension to places etc. outside the Australian jurisdiction	240
341BA	Commonwealth Heritage place may be made up of geographically distinct or non-contiguous locations etc.	241
Subdivision B—The Commonwealth Heritage List		241
341C	The Commonwealth Heritage List	241
341D	Meaning of <i>Commonwealth Heritage values</i>	242

Subdivision BA—Inclusion of places in the Commonwealth		
	Heritage List: usual process	242
341E	Simplified outline	242
341F	Definitions	243
341H	Minister may invite nominations from time to time	244
341J	Minister to give nominations to Australian Heritage Council	244
341JA	Australian Heritage Council to prepare proposed priority assessment list	245
341JB	Matters to be included in proposed priority assessment list	246
341JC	Statement to be given to Minister with proposed priority assessment list	246
341JD	The finalised priority assessment list.....	247
341JE	Publication of finalised priority assessment list.....	248
341JF	Australian Heritage Council to invite comments on places in finalised priority assessment list.....	248
341JG	Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister.....	249
341JH	Time by which assessments to be provided to Minister	251
341JHA	Discontinuing assessment of a place	252
341JI	Decision about inclusion of a place in the Commonwealth Heritage List.....	253
Subdivision BB—Inclusion of places in the Commonwealth		
	Heritage List: emergency process	257
341JJ	Simplified outline	257
341JK	Minister may include place in Commonwealth Heritage List if under threat	257
341JL	Minister to ask Australian Heritage Council for assessment	259
341JM	Publication of listing of place and inviting comments	259
341JN	Australian Heritage Council to assess place and give assessment to Minister.....	260
341JO	Time by which assessments to be provided to Minister	261
341JP	Decision about place remaining in the Commonwealth Heritage List.....	261

Subdivision BC—Other provisions relating to the Commonwealth Heritage List	265
341JQ Co-ordination with Scientific Committee— Council undertaking assessment.....	265
341JR Co-ordination with Scientific Committee— Council given assessment to Minister	266
341K Listing process not affected by changing boundaries of a place	267
341L Removal of places or Commonwealth Heritage values from the Commonwealth Heritage List	267
341LA Amendment of Commonwealth Heritage values of a place	269
341LB Expansion of Commonwealth Heritage place	270
341LC Alignment with boundaries of declared World Heritage property.....	271
341M Minister must consider advice of the Australian Heritage Council and public comments.....	271
341N Minor amendments to the Commonwealth Heritage List.....	273
341P Commonwealth Heritage List must be publicly available	273
341Q Certain information may be kept confidential	273
341R Disclosure of Australian Heritage Council's assessments and advice	274
Subdivision C—Management plans for Commonwealth Heritage places	276
341S Management plans for Commonwealth Heritage places.....	276
341T Endorsing management plans for Commonwealth Heritage places	277
341U Restriction on ability to make plans	278
341V Compliance with plans by the Commonwealth and Commonwealth agencies.....	278
341W Multiple plans in the same document	279
341X Review of plans at least every 5 years.....	279
Subdivision D—The Commonwealth Heritage management principles	280
341Y Commonwealth Heritage management principles	280
Subdivision E—Obligations of Commonwealth agencies	280
341Z Obligation to assist the Minister and the Australian Heritage Council	280

341ZA	Heritage strategies	280
341ZB	Heritage assessments and registers	281
341ZC	Minimising adverse impact on heritage values.....	282
341ZE	Protecting Commonwealth Heritage values of places sold or leased.....	283
Subdivision G—Assistance for protecting Commonwealth Heritage places		284
341ZG	Commonwealth assistance for protecting Commonwealth Heritage places	284
Subdivision H—Reviewing and reporting on the Commonwealth Heritage List		285
341ZH	Reviewing and reporting on the Commonwealth Heritage List.....	285
Division 4—Commonwealth reserves		286
Subdivision A—Simplified outline of this Division		286
342	Simplified outline of this Division	286
Subdivision B—Declaring and revoking Commonwealth reserves		286
343	Simplified outline of this Subdivision	286
344	Declaring Commonwealth reserves	287
345	Extent of Commonwealth reserve	289
345A	Commonwealth usage rights vest in Director.....	289
346	Content of Proclamation declaring Commonwealth reserve	290
347	Assigning Commonwealth reserves and zones to IUCN categories	290
348	Australian IUCN reserve management principles	291
350	Revocation and alteration of Commonwealth reserves.....	291
351	Report before making Proclamation.....	292
352	What happens to Director's usage rights when Commonwealth reserve is revoked.....	294
Subdivision C—Activities in Commonwealth reserves		295
353	Simplified outline of this Subdivision	295
354	Activities that may be carried on only under management plan.....	295
354A	Offences relating to activities that may only be carried on under management plan.....	297
355	Limits on mining operations in Commonwealth reserves.....	302

355A	Offence relating to mining operations	303
356	Regulations controlling activities relating to Commonwealth reserves	306
356A	Charges for activities in Commonwealth reserves.....	308
357	Managing Commonwealth reserves while a management plan is not in operation	308
358	Restriction on disposal of Director's interests in Commonwealth reserves	310
359	Prior usage rights relating to Commonwealth reserves continue to have effect.....	310
359A	Traditional use of Commonwealth reserves by indigenous persons	311
359B	Director's approval of actions and mining operations when a management plan is not in operation.....	312
Subdivision D—Complying with management plans for Commonwealth reserves		314
361	Simplified outline of this Subdivision	314
362	Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve	314
363	Resolving disagreement between land council and Director over implementation of plan.....	315
364	Resolving disagreement between Director and Board over implementation of plan	317
Subdivision E—Approving management plans for Commonwealth reserves		318
365	Simplified outline of this Subdivision	318
366	Obligation to prepare management plans for Commonwealth reserves	318
367	Content of a management plan for a Commonwealth reserve.....	319
368	Steps in preparing management plans for Commonwealth reserves	321
369	Resolving disagreements between Director and Board in planning process	325
370	Approval of management plans for Commonwealth reserves	326
371	Approved management plans are legislative instruments	327
372	Amendment and revocation of management plans for Commonwealth reserves.....	328

373	Expiry of management plans for Commonwealth reserves.....	328
Subdivision F—Boards for Commonwealth reserves on indigenous people’s land		
374	Simplified outline of this Subdivision	328
375	Application	328
376	Functions of a Board for a Commonwealth reserve	329
377	Minister must establish Board if land council or traditional owners agree	329
378	Altering the constitution of a Board or abolishing a Board.....	330
379	Appointment of Board members	332
379A	Fit and proper person.....	333
380	Terms and conditions	333
381	Remuneration	334
382	Termination of appointments of Board members	334
383	Procedure of a Board	336
Subdivision G—Special rules for some Commonwealth reserves in the Northern Territory or Jervis Bay Territory		
384	Simplified outline of this Subdivision	337
385	Activities in Commonwealth reserve without management plan.....	337
386	What are the <i>Kakadu region</i> and the <i>Uluru region</i> ?	338
387	No mining operations in Kakadu National Park	338
388	Establishment and development of townships in the Kakadu region and Uluru region	339
389	Planning for townships.....	339
390	Special rules to protect Aboriginal interests in planning process	340
390A	Appointment of Northern Territory nominee to Board.....	342
Division 5—Conservation zones		
390B	Simplified outline of this Division	344
390C	Object of this Division	344
390D	Proclamation of conservation zones	344
390E	Regulating activities generally	345
390F	Charges for activities in conservation zones.....	347
390G	Other laws and regulations made for this Division.....	347
390H	Prior usage rights relating to conservation zones continue to have effect	348

390J	Revoking and altering conservation zones	349
Chapter 5A—The List of Overseas Places of Historic Significance to Australia 350		
Part 15A—The List of Overseas Places of Historic Significance to Australia 350		
390K	The List of Overseas Places of Historic Significance to Australia	350
390L	Inclusion of places in the List of Overseas Places of Historic Significance to Australia	350
390M	Removal of places from the List of Overseas Places of Historic Significance to Australia or variation of statement of historic significance	351
390N	Inviting comments from other Ministers before taking action	351
390P	Minister may ask Australian Heritage Council for advice etc.....	351
390Q	List of Overseas Places of Historic Significance to Australia to be publicly available	352
390R	Disclosure of Australian Heritage Council's assessments and advice	352
Chapter 5B—Declared commercial fishing activities 353		
Part 15B—Declared commercial fishing activities 353		
Division 1—Prohibition 353		
390SA	Civil penalty—declared commercial fishing activities	353
390SB	Offence—declared commercial fishing activities.....	353
Division 2—Declaring a commercial fishing activity 354		
Subdivision A—What is a declared commercial fishing activity? 354		
390SC	What is a <i>declared commercial fishing activity</i> ?	354
Subdivision B—Interim declaration 354		
390SD	Interim declaration	354
390SE	Consultation	356
Subdivision C—Final declaration 357		
390SF	Final declaration	357
Subdivision D—Revoking declarations 358		
390SG	Revoking an interim or final declaration	358

Division 3—Expert panel assessment of declared commercial fishing activity	359
390SH Establishment of expert panel	359
390SI Terms and conditions	360
390SJ Procedure for assessment	360
390SK Timing of the report	360
390SL Publication of the report	360
Division 4—Sunsetting of this Part	361
390SM Sunsetting of this Part.....	361

Chapter 5—Conservation of biodiversity and heritage

Part 13—Species and communities

Division 5—Conservation advice, recovery plans, threat abatement plans and wildlife conservation plans

Subdivision AA—Approved conservation advice

266B Approved conservation advice for listed threatened species and listed threatened ecological communities

Minister to ensure there is approved conservation advice

- (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extinct or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species or community continues to be listed.
- (2) For this purpose, ***approved conservation advice*** is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains:
 - (a) a statement that sets out:
 - (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; 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

Section 266B

- (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.

Changing approved conservation advice

- (3) The Minister may, in writing, approve changes to approved conservation advice.

Consultation with Scientific Committee

- (4) If the Minister proposes to approve a document as approved conservation advice, the Minister must consult the Scientific Committee about the document, unless its content is substantially the same as material that the Committee has previously provided to the Minister.
- (5) If the Minister proposes to approve a change to approved conservation advice, the Minister must consult the Scientific Committee about the change, unless the change is substantially the same as a change that the Scientific Committee has previously advised the Minister should be made.

Publication requirements

- (6) If the Minister approves a document as approved conservation advice, the Minister must:
 - (a) within 10 days of the approval of the document, publish the approved conservation advice on the internet; and
 - (b) comply with any other publication requirements of the regulations.
- (7) If the Minister approves a change to approved conservation advice, the Minister must:
 - (a) within 10 days of the approval of the change, publish the advice, as changed, on the internet; and
 - (b) comply with any other publication requirements of the regulations.

Instruments of approval are not legislative instruments

- (8) An instrument of approval under subsection (2) or (3) is not a legislative instrument.

Subdivision A—Recovery plans and threat abatement plans

267 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

Recovery plans for listed threatened species and ecological communities and threat abatement plans for key threatening processes bind the Commonwealth and Commonwealth agencies.

The Minister need ensure that a recovery plan is in force for the whole or part of a listed threatened species or ecological community only if the Minister decides to have a recovery plan for the whole or part of the species or community. The Minister must decide whether to have a recovery plan for the species or community, or part of it, within 90 days after it becomes listed. The Minister may, at any other time, decide whether to have such a plan.

The Minister need ensure a threat abatement plan is in force for the whole, or one or more parts, of a key threatening process only if the Minister decides that a plan is a feasible, effective and efficient way of abating the whole process or the relevant part or parts of the process. The Minister must consult before making such a decision.

A recovery plan or threat abatement plan can be made by the Minister alone or jointly with relevant States and Territories, or the Minister can adopt a State or Territory plan. There must be public consultation and advice from the Scientific Committee about the plan, regardless of how it is made or adopted.

Section 268

268 Compliance with recovery plans and threat abatement plans

A Commonwealth agency must not take any action that contravenes a recovery plan or a threat abatement plan.

269 Implementing recovery and threat abatement plans

- (1) Subject to subsection (2), the Commonwealth must implement a recovery plan or threat abatement plan to the extent to which it applies in Commonwealth areas.
- (2) If a recovery plan or a threat abatement plan applies outside Commonwealth areas in a particular State or self-governing Territory, the Commonwealth must seek the co-operation of the State or Territory with a view to implementing the plan jointly with the State or Territory to the extent to which the plan applies in the State or Territory.

269AA Decision whether to have a recovery plan

- (1) Within 90 days after a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community becomes listed, the Minister must decide whether to:
 - (a) have a recovery plan for the whole species or ecological community; or
 - (b) have a recovery plan for part of the species or ecological community; or
 - (c) not have a recovery plan at all for the species or ecological community.
- (1A) If the Minister decides to have a recovery plan for one or more parts of the species or ecological community, the Minister is taken to have also decided not to have a recovery plan for any other part of the species or ecological community.
- (1B) The Minister may, at any other time, decide whether to have a recovery plan for a listed threatened species (except one that is

Section 269AA

extinct or that is a conservation dependent species) or a listed threatened ecological community, or part of such a species or ecological community.

- (2) In this section:
- (a) the decision that the Minister is required by subsection (1) to make in relation to the species or community within the 90 day period referred to in that subsection, together with any decision the Minister is taken to have made under subsection (1A), is the ***initial recovery plan decision***; and
 - (b) any subsequent decision that the Minister makes under subsection (1B) in relation to the species or community is a ***subsequent recovery plan decision***.

Making the initial recovery plan decision

- (3) In making the initial recovery plan decision, the Minister must have regard to the recommendation (the ***initial recommendation***) made by the Scientific Committee as mentioned in paragraph 189(1B)(c) in relation to the species or community or the relevant part of it.

Making a subsequent recovery plan decision (unless subsection (5) applies)

- (4) In making a subsequent recovery plan decision in relation to the whole or part of the species or community, other than a decision to which subsection (5) applies:
- (a) the Minister must have regard to the initial recommendation in relation to the species or community or the relevant part of it; and
 - (b) the Minister must have regard to any advice subsequently provided to the Minister by the Scientific Committee about whether there should be a recovery plan for the whole or part of the species or community.

Section 269AA

Changing from a decision to have a recovery plan to a decision not to have a recovery plan—additional requirements

- (5) If, at a time when a decision to have a recovery plan for the species or community, or part of it, is in force (whether or not the plan has yet been made), the Minister is proposing to make a subsequent recovery plan decision that there should not be a recovery plan for the species or community, or for that part of it:
 - (a) the Minister must ask the Scientific Committee for advice relating to the proposed decision; and
 - (b) the Minister must publish a notice inviting comments on the proposed decision in accordance with subsection (7); and
 - (c) the Minister must, in deciding whether to make the proposed decision, take account of:
 - (i) any advice provided by the Scientific Committee in relation to the proposed decision; and
 - (ii) subject to subsection (6), the comments the Minister receives in response to the notice referred to in paragraph (b).
- (6) The Minister is not required to take a comment referred to in subparagraph (5)(c)(ii) into account if:
 - (a) the Minister does not receive the comment until after the cut-off date specified in the notice under paragraph (5)(b); or
 - (b) the Minister considers that regulations referred to in paragraph (8)(b) have not been complied with in relation to the comment.
- (7) The notice referred to in paragraph (5)(b):
 - (a) must be published in accordance with the regulations referred to in paragraph (8)(a); and
 - (b) must set out the decision the Minister proposed to make; and
 - (c) must invite people to make comments, to the Minister, about the proposed decision; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days

Section 269A

after the notice has been published as required by paragraph (a); and

- (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (8)(b), apply to making comments; and
 - (f) may also include any other information that the Minister considers appropriate.
- (8) The regulations must provide for the following:
- (a) how a notice referred to in paragraph (5)(b) is to be published;
 - (b) the manner and form for making comments.

General publication requirements

- (9) The Minister must publish the following:
- (a) the Minister's initial recovery plan decision, and the reasons for it;
 - (b) each subsequent recovery plan decision (if any), and the reasons for it.

The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

Note: This subsection must be complied with, even if the Minister has already published notice of the proposed decision in accordance with subsections (5) and (7).

Decisions not legislative instruments

- (10) An instrument making a decision under subsection (1) is not a legislative instrument.

269A Making or adopting a recovery plan

Application

- (1) This section applies only if the Minister's most recent decision under section 269AA in relation to a listed threatened species

Section 269A

(except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community is to have a recovery plan for the whole or part of the species or community.

Note: Subsection 273(1) sets a deadline of 3 years from the decision for ensuring that a recovery plan is in force for the species or community or part of it. Subsection 273(2) allows that period to be extended.

Making a plan

- (2) The Minister may make a written recovery plan for the purposes of the protection, conservation and management of:
- (a) the whole or part of a listed threatened species (except one that is extinct or is a conservation dependent species); or
 - (b) the whole or part of a listed threatened ecological community.

Making a plan jointly with a State or Territory

- (3) The Minister may make a written recovery plan for the purposes of the protection, conservation and management of a listed threatened species (except one that is extinct or is a conservation dependent species) or part of it, or a listed threatened ecological community or part of it, jointly with one or more of the States and self-governing Territories in which the species or community, or the relevant part, occurs, or with agencies of one or more of those States and Territories.

Content of a plan

- (4) The Minister must not make a recovery plan under subsection (2) or (3) unless the plan meets the requirements of section 270.

Prerequisites to making a plan

- (5) Before making a recovery plan under subsection (2) or (3) for the whole or part of a listed threatened species or listed threatened ecological community, the Minister must:
- (a) consult the appropriate Minister of each State and self-governing Territory in which the species or community

Section 269A

or part occurs, and in which actions that the plan would provide for would occur, with a view to:

- (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
 - (ii) making the plan jointly under subsection (3);
- unless the species or community or part occurs only in a Commonwealth area; and
- (b) consider the advice of the Scientific Committee given under section 274; and
 - (c) consult about the plan and consider comments in accordance with sections 275 and 276.

Limits on making a plan

- (6) The Minister must not make a recovery plan under subsection (2) for a species or ecological community, or part of a species or ecological community that occurs wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable, within the period of 3 years referred to in subsection 273(1), to make the plan under subsection (3) of this section with each State or Territory:
 - (a) in which the species or community or part occurs; and
 - (b) in which actions that the plan would provide for would occur, if the plan were made under subsection (2) of this section.

Adopting a State or Territory plan

- (7) The Minister may, by instrument in writing, adopt as a recovery plan a plan made by a State, a self-governing Territory or an agency of a State or self-governing Territory (whether or not the plan is in force in the State or Territory). The Minister may adopt the plan with such modifications as are specified in the instrument. This subsection has effect subject to section 277.

- Note: Section 277 requires that:
- (a) an adopted plan have the content required for a recovery plan by section 270; and
 - (b) there has been adequate consultation in making the plan adopted; and

Section 270

- (c) the Minister consult the Scientific Committee about the content of the plan.

Effect of adopting a plan

- (8) A plan adopted under subsection (7) has effect as if it had been made under subsection (2) (whether it was adopted with modifications or not).

270 Content of recovery plans

- (1) A recovery plan for the whole or part of a listed threatened species or listed threatened ecological community must provide for the research and management actions necessary to stop the decline of, and support the recovery of, the species or community or relevant part of it, so that its chances of long-term survival in nature are maximised.
- (2) In particular, a recovery plan must (subject to subsection (2A)):
 - (a) state the objectives to be achieved (for example, removing a species or community from a list, or indefinite protection of existing populations of a species or community); and
 - (b) state criteria against which achievement of the objectives is to be measured (for example, a specified number and distribution of viable populations of a species or community or part of it, or the abatement of threats to a species or community or part of it); and
 - (c) specify the actions needed to achieve the objectives; and
 - (ca) identify threats to the species or community, or relevant part of it; and
 - (d) identify the critical habitats of the species or community, or relevant part of it, and the actions needed to protect those habitats; and
 - (e) identify any populations of the species or community, or relevant part of it, that are under particular pressure of survival and the actions needed to protect those populations; and

- (f) state the estimated duration and cost of the recovery process;
and
 - (g) identify:
 - (i) interests that will be affected by the plan's implementation; and
 - (ii) organisations or persons who will be involved in evaluating the performance of the recovery plan; and
 - (h) specify any major benefits to native species or ecological communities (other than those to which the plan relates) that will be affected by the plan's implementation; and
 - (j) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).
- (2A) A recovery plan need only address the matters mentioned in paragraphs (2)(d), (e), (f), (g) and (h) to the extent to which it is practicable to do so.
- (3) In making a recovery plan, regard must be had to:
- (a) the objects of this Act; and
 - (b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and
 - (c) minimising any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development; and
 - (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community to which the plan relates; and
 - (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

Section 270A

270A Decision whether to have a threat abatement plan

Decision

- (1) For each threatening process in the list of key threatening processes established under section 183, the Minister may at any time decide to:
 - (a) have a threat abatement plan for the whole process; or
 - (b) have a threat abatement plan for one or more parts of the process; or
 - (c) not have a threat abatement plan at all for the process.
- (1A) If the Minister decides to have a threat abatement plan for one or more parts of the key threatening process, the Minister is taken to have also decided not to have a threat abatement plan for any other part of the process.
- (1B) The Minister must make a decision under this section:
 - (a) within 90 days after the process is included in the list; and
 - (b) within 5 years after the last decision under this section in relation to the process, unless that decision was to have a threat abatement plan for the whole process.

Note: A process may be included in the list of key threatening processes by combining or separating other processes (see paragraph 184(ca)).

Basis for decision

- (2) The Minister must decide to have a threat abatement plan for the whole process if the Minister believes that having and implementing such a plan is a feasible, effective and efficient way to abate the whole process.
- (2A) The Minister must decide to have a threat abatement plan for a part of the process if:
 - (a) the Minister believes that having and implementing such a plan is a feasible, effective and efficient way to abate that part of the process; and

Section 270A

- (b) the Minister does not believe that having and implementing a threat abatement plan for the whole process is a feasible, effective and efficient way to abate the whole process.
- (2B) The Minister must decide to not have a threat abatement plan for the whole process, or any part of the process, if the Minister does not believe that having and implementing a threat abatement plan for the whole process, or the part of the process, is a feasible, effective and efficient way to abate the whole process or the part of the process.

Consultation before making a decision

- (3) Before making a decision under this section, the Minister must:
 - (a) request the Scientific Committee to give advice within a specified period; and
 - (b) take reasonable steps to request any Commonwealth agency, any State, any self-governing Territory, and any agency of a State or self-governing Territory, that would be affected by or interested in abatement of any part of the process to give advice within a specified period;on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the whole or any part of the process.

Consulting others

- (4) Subsection (3) does not prevent the Minister from requesting any other person or body to give advice within a specified period on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the whole or any part of the process.

Request may be made before listing

- (5) A request for advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the whole or any part of the process may be made before or after the

Section 270B

process is included in the list of key threatening processes established under section 183.

Time for giving advice

- (6) The Minister must not make a decision whether to have a threat abatement plan for the whole or any part of the process before the end of the period within which he or she has requested a person or body to give advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the whole or any part of the process.

Considering views expressed in consultation

- (7) When the Minister is making a decision under this section, he or she must consider the advice that a person or body gave on request within the period specified in the request.

Publishing decision and reasons

- (8) The Minister must publish in accordance with the regulations (if any):
- (a) a decision under this section; and
 - (b) the Minister's reasons for the decision.

Special rules for processes included in original list

- (9) Subsections (3), (4), (5), (6) and (7) do not apply in relation to a decision about a process included in the list under section 183 as first established.

270B Making or adopting a threat abatement plan

Application

- (1) This section applies only if the Minister's most recent decision under section 270A in relation to a key threatening process is to:
- (a) have a threat abatement plan for the whole process; or

Section 270B

- (b) have a threat abatement plan for one or more parts of the process.

Note: Section 273 sets a deadline of 3 years from the decision to have a plan for ensuring that the plan is in force.

Making a plan

- (2) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the whole process or one or more parts of the process, as the case may be.

Making a plan jointly with a State or Territory

- (3) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the whole process or one or more parts of the process, as the case may be, jointly with the States and self-governing Territories in which the process, or a relevant part of the process, occurs or with agencies of those States and Territories.

Content of a plan

- (4) The Minister must not make a threat abatement plan under subsection (2) or (3) unless the plan meets the requirements of section 271.

Prerequisites to making a plan

- (5) Before making a threat abatement plan for the whole process, or one or more parts of the process, under subsection (2) or (3), the Minister must:
- (a) consult the appropriate Minister of each State and self-governing Territory in which the process, or a relevant part of the process, occurs, with a view to:
 - (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
 - (ii) making the plan jointly under subsection (3);

Section 270B

unless the process, or a relevant part of the process, occurs only in a Commonwealth area; and

- (b) consider the advice of the Scientific Committee given under section 274; and
- (c) consult about the plan and consider comments in accordance with sections 275 and 276.

Limits on making a plan

- (6) The Minister must not make a threat abatement plan under subsection (2) for the whole of a process that occurs, or one or more parts of a process that occur, wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable to make the plan:
 - (a) jointly with each of the States and self-governing Territories in which the process, or a relevant part of the process, occurs; and
 - (b) within 3 years of the decision to have the plan.

Adopting a State or Territory plan

- (7) The Minister may, by instrument in writing, adopt as a threat abatement plan for the whole process, or one or more parts of the process, a plan made by a State, a self-governing Territory or an agency of a State or self-governing Territory (whether or not the plan is in force in the State or Territory). The Minister may adopt the plan with such modifications as are specified in the instrument. This subsection has effect subject to section 277.

Note: Section 277 requires that:

- (a) an adopted plan have the content required for a threat abatement plan by section 271; and
- (b) there has been adequate consultation in making the plan adopted; and
- (c) the Minister consult the Scientific Committee about the content of the plan.

Adopting a plan for part of a key threatening process

- (7A) If:
-

- (a) a process (the *deleted process*) is deleted from the list of key threatening processes when another process (the *combined process*) that combines the deleted process with one or more other processes is included in the list; and
 - (b) at the time of the inclusion of the combined process, a threat abatement plan is in force for the deleted process;
- the Minister may adopt the plan (as in force immediately before the deletion of the deleted process) as a threat abatement plan for the part of the combined process that corresponds to the deleted process.

Note: A process may be included in the list of key threatening processes by combining or separating other processes (see paragraph 184(ca)).

Effect of adopting a plan

- (8) A plan adopted under subsection (7) with or without modification, or under subsection (7A), has effect as if it had been made under subsection (2).

271 Content of threat abatement plans

- (1) A threat abatement plan for the whole, or one or more parts, of a key threatening process must provide for the research, management and other actions necessary to reduce the whole process, or the relevant parts of the process, to an acceptable level in order to maximise the chances of the long-term survival in nature of native species and ecological communities affected by the process or the relevant parts of the process, as the case may be.
- (2) In particular, a threat abatement plan must:
 - (a) state the objectives to be achieved; and
 - (b) state criteria against which achievement of the objectives is to be measured; and
 - (c) specify the actions needed to achieve the objectives; and
 - (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).

Section 272

- (3) In making a threat abatement plan for the whole, or one or more parts, of a key threatening process, regard must be had to:
 - (a) the objects of this Act; and
 - (b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and
 - (c) minimising any significant adverse social and economic impacts consistently with the principles of ecologically sustainable development; and
 - (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community threatened by the process or the relevant parts of the process, as the case may be; and
 - (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.
- (4) A threat abatement plan for the whole, or one or more parts, of a key threatening process may:
 - (a) state the estimated duration and cost of the threat abatement process; and
 - (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and
 - (c) specify any major ecological matters (other than the species or communities threatened by the process or the relevant parts of the process, as the case may be) that will be affected by the plan's implementation.
- (5) Subsection (4) does not limit the matters that a threat abatement plan may include.

272 Eradication of non-native species

If:

- (a) the actions specified under paragraph 270(2)(c) in a recovery plan, or under paragraph 271(2)(c) in a threat abatement plan, include the eradication of a non-native species; and

- (b) the species is threatened in a country in which its native habitat occurs;
the recovery plan, or threat abatement plan, must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

273 Ensuring plans are in force

When a plan comes into force

- (1A) A recovery plan or a threat abatement plan comes into force on the day on which it is made or adopted, or on a later day specified by the Minister in writing.

Deadline for recovery plan

- (1) Subject to subsection (2), a recovery plan for the whole or part of a listed threatened species or a listed threatened ecological community must be made and in force within 3 years of the decision under section 269AA to have the plan.
- (2) The Minister may, in writing, extend the period within which a recovery plan must be made. Only one extension can be granted for the making of the plan, and the period of the extension must not be more than 3 years.

Ensuring recovery plan is in force

- (3) Once the first recovery plan for the whole or part of a listed threatened species or a listed threatened ecological community is in force, the Minister must exercise the Minister's powers under this Subdivision to ensure that a recovery plan is in force for the species or community, or the relevant part of it, until the Minister decides under section 269AA not to have a recovery plan for the species or community or the relevant part of it.

Note: For revocation, see section 283A.

Section 274

Deadline for threat abatement plan

- (4) A threat abatement plan for the whole, or one or more parts, of a key threatening process must be made and in force within 3 years of the decision under section 270A to have the plan.

Ensuring threat abatement plan is in force

- (5) Once the first threat abatement plan for the whole, or one or more parts, of a key threatening process is in force, the Minister must exercise the Minister's powers under this Subdivision to ensure that a threat abatement plan is in force for the process or the relevant parts of the process, as the case may be, until the Minister decides under section 270A not to have such a plan.

Note: For revocation, see section 283A.

274 Scientific Committee to advise on plans

- (1) The Minister must obtain and consider the advice of the Scientific Committee on:
- (a) the content of recovery and threat abatement plans; and
 - (b) the times within which, and the order in which, such plans should be made.
- (2) In giving advice about a recovery plan for the whole or part of a species or ecological community, the Scientific Committee must take into account the following matters:
- (a) the degree of threat to the survival in nature of the species or ecological community, or part, in question;
 - (b) the potential for the species or community, or part, to recover;
 - (c) the genetic distinctiveness of the species or community, or part;
 - (d) the importance of the species or community, or part, to the ecosystem;
 - (e) the value to humanity of the species or community, or part;

- (f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.
- (3) In giving advice about a threat abatement plan for the whole, or one or more parts, of a key threatening process, the Scientific Committee must take into account the following matters:
 - (a) the degree of threat posed by the process or the relevant parts of the process, as the case may be, to the survival in nature of species and ecological communities;
 - (b) the potential of species and ecological communities so threatened to recover;
 - (c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

275 Consultation on plans

- (1) Before making a recovery plan or threat abatement plan under this Subdivision, the Minister must:
 - (a) publish a copy of the proposed plan on the Department's website; and
 - (b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and
 - (c) cause the notice to be published:
 - (i) on the Department's website; and
 - (iii) in any other way required by the regulations (if any).
- (2) The notice must invite persons to make written comments about the proposed plan within the period specified in the notice (which must be at least 3 months from the day the notice is published on the Department's website).

276 Consideration of comments

The Minister:

- (a) must, in accordance with the regulations (if any), consider all comments on a proposed recovery plan or threat abatement plan made in response to an invitation under section 275; and

Section 277

- (b) may revise the plan to take account of those comments.

277 Adoption of State plans

- (1) The Minister must not adopt a plan as a recovery plan or a threat abatement plan under this Subdivision unless:
 - (a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and
 - (b) the plan meets the requirements of section 270 or 271, as the case requires.
- (2) Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

278 Publication of plans

- (1) As soon as practicable after the Minister makes or adopts a recovery plan or a threat abatement plan under this Subdivision, the Minister must publish on the Department's website:
 - (a) a copy of the plan; and
 - (b) a notice of the making or adopting of the plan.
- (2) The notice must:
 - (a) state that the Minister has made or adopted the plan; and
 - (b) specify the day on which the plan comes into force; and
 - (c) specify the places where copies of the plan may be purchased.

279 Variation of plans by the Minister

- (1) The Minister may, at any time, review a recovery plan or threat abatement plan that has been made or adopted under this Subdivision and consider whether a variation of it is necessary.
- (2) Each plan must be reviewed by the Minister at intervals of not longer than 5 years.

Section 280

- (3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7), vary the plan.
- (4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.
- (5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (5A) Before varying a plan, the Minister must:
 - (a) publish on the Department's website:
 - (i) a draft of the proposed variation; and
 - (ii) an invitation for anyone to give the Minister, within the period specified in the invitation, written comments on the proposed variation; and
 - (b) have regard to any comments received in response to the invitation within the specified period and in accordance with any requirements prescribed by the regulations for the purposes of this paragraph.
- (6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must consult with that State or Territory, or that agency, with a view to varying the plan.
- (7) Section 278 applies to a variation of a plan in the same way as that section applies to the making of a recovery plan or a threat abatement plan.

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

- (1) If a State or self-governing Territory varies a plan that:

Section 281

- (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or
 - (b) has been adopted by the Minister as a recovery plan or a threat abatement plan;

the variation is of no effect for the purposes of this Act unless it is approved by the Minister.
- (2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (3) The Minister must not approve a variation unless satisfied that:
 - (a) an appropriate level of consultation was undertaken in varying the plan; and
 - (b) the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.
- (4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.
- (5) Section 278 applies to the variation of a plan in the same way that it applies to the making of a recovery plan or threat abatement plan.

281 Commonwealth assistance

- (1) The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory, financial assistance, and any other assistance, to make or implement a recovery plan or a threat abatement plan.
- (2) The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory) financial assistance, and any other assistance, to implement a recovery plan or a threat abatement plan.
- (3) The giving of assistance may be made subject to such conditions as the Minister thinks fit. The Minister is to have regard to the advice

of the Scientific Committee under section 282 before determining those conditions.

282 Scientific Committee to advise on assistance

- (1) The Scientific Committee is to advise the Minister on the conditions (if any) to which the giving of assistance under section 281 should be subject.
- (2) In giving advice about assistance for making or implementing a recovery plan for the whole or part of a species or ecological community, the Scientific Committee must take into account the following matters:
 - (a) the degree of threat to the survival in nature of the species or ecological community, or part, in question;
 - (b) the potential for the species or community, or part, to recover;
 - (c) the genetic distinctiveness of the species or community, or part;
 - (d) the importance of the species or community, or part, to the ecosystem;
 - (e) the value to humanity of the species or community, or part;
 - (f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.
- (3) In giving advice about assistance for making or implementing a threat abatement plan for the whole, or one or more parts, of a key threatening process, the Scientific Committee must take into account the following matters:
 - (a) the degree of threat posed by the process or the relevant parts of the process, as the case may be, to the survival in nature of species and ecological communities;
 - (b) the potential of species and ecological communities so threatened to recover;
 - (c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

Section 283

283 Plans may cover more than one species etc.

- (1) A recovery plan made or adopted under this Subdivision may deal wholly or partly with one or more listed threatened species and/or one or more listed ecological communities.
- (2) A threat abatement plan made or adopted under this Subdivision may deal wholly or partly with one or more key threatening processes.

283A Revoking a plan

- (1) The Minister may, by legislative instrument:
 - (a) revoke a recovery plan for the whole of a listed threatened species or the whole of a listed threatened ecological community if the Minister decides under section 269AA to:
 - (i) have a recovery plan for part of the species or ecological community; or
 - (ii) not have a recovery plan at all for the species or community; or
 - (b) revoke a recovery plan for part of a listed threatened species or part of a listed threatened ecological community if the Minister decides under section 269AA to:
 - (i) have a recovery plan for the whole species or community; or
 - (ii) have a recovery plan for a different part of the species or community; or
 - (iii) not have a recovery plan at all for the species or community; or
 - (c) revoke a threat abatement plan for the whole of a key threatening process if the Minister decides under section 270A to:
 - (i) have a threat abatement plan for one or more parts of the process; or
 - (ii) not have a threat abatement plan at all for the process; or

Section 284

- (d) revoke a threat abatement plan for one or more parts of a key threatening process if the Minister decides under section 270A to:
 - (i) have a threat abatement plan for the whole process; or
 - (ii) have a threat abatement plan for a different part of the process; or
 - (iii) not have a threat abatement plan at all for the process.
- (2) The Minister must publish in accordance with the regulations (if any):
 - (a) the instrument revoking the plan; and
 - (b) the Minister's reasons for revoking the plan.

284 Reports on preparation and implementation of plans

The Secretary must include in each annual report a report on the making and adoption under this Subdivision of each recovery plan and threat abatement plan during the year to which the report relates.

Subdivision B—Wildlife conservation plans

285 Wildlife conservation plans

- (1) Subject to this section, the Minister may make, by instrument in writing, and implement a wildlife conservation plan for the purposes of the protection, conservation and management of the following:
 - (a) a listed migratory species that occurs in Australia or an external Territory;
 - (b) a listed marine species that occurs in Australia or an external Territory;
 - (c) a species of cetacean that occurs in the Australian Whale Sanctuary;
 - (d) a conservation dependent species.

Section 285

- (2) The Minister must not make a wildlife conservation plan for a species that is a listed threatened species (except a conservation dependent species).
- (3) Subject to section 292, the Minister may, by instrument in writing, adopt a plan that has been made by a State or a self-governing Territory, or by an agency of a State or self-governing Territory, as a wildlife conservation plan. The Minister may adopt a plan with such modifications as are specified in the instrument.
- (4) A plan, as modified and adopted under subsection (2), has effect as if the plan had been made by the Minister under subsection (1).
- (5) The Minister must seek the co-operation of the States and self-governing Territories in which:
 - (a) a listed migratory species occurs; or
 - (b) a listed marine species occurs; or
 - (c) a species of cetacean occurs; or
 - (d) a conservation dependent species occurs;with a view to making and implementing jointly with those States and Territories, or agencies of those States or Territories, a joint wildlife conservation plan unless the species occurs only in a Commonwealth area.
- (6) Before making a wildlife conservation plan under subsection (1) or (5), the Minister must:
 - (a) consider the advice of the Scientific Committee given under section 289; and
 - (b) consult about the plan in accordance with sections 290 and 291.
- (7) A wildlife conservation plan comes into force on the day on which it is made or adopted, or on such later day as the Minister specifies in writing.

286 Acting in accordance with wildlife conservation plans

A Commonwealth agency must take all reasonable steps to act in accordance with a wildlife conservation plan.

287 Content of wildlife conservation plans

- (1) A wildlife conservation plan must provide for the research and management actions necessary to support survival of the migratory species, marine species, species of cetacean or conservation dependent species concerned.
- (2) In particular, a wildlife conservation plan must:
 - (a) state the objectives to be achieved; and
 - (b) state criteria against which achievement of the objectives is to be measured; and
 - (c) specify the actions needed to achieve the objectives; and
 - (d) identify the habitats of the species concerned and the actions needed to protect those habitats; and
 - (e) identify:
 - (i) interests that will be affected by the plan's implementation; and
 - (ii) organisations or persons who will be involved in evaluating the performance of the plan; and
 - (f) specify any major benefits to migratory species, marine species, species of cetacean or conservation dependent species (other than those to which the plan relates) that will be affected by the plan's implementation; and
 - (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).
- (3) In making a wildlife conservation plan, regard must be had to:
 - (a) the objects of this Act; and
 - (b) the most efficient and effective use of the resources that are allocated for the conservation of migratory species, marine species, species of cetacean and conservation dependent species; and

Section 288

- (c) minimising any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development; and
- (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the migratory species, marine species, species of cetacean or conservation dependent species to which the plan relates; and
- (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

288 Eradication of non-native species

If:

- (a) the actions specified under section 287 in a wildlife conservation plan include the eradication of a non-native species; and
- (b) the species is threatened in a country in which its native habitat occurs;

the wildlife conservation plan must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

289 Scientific Committee to advise on scheduling of plans

- (1) The Minister may seek advice from the Scientific Committee on the need for wildlife conservation plans and the order in which they should be made.
- (1A) The Scientific Committee may advise the Minister on its own initiative to make a wildlife conservation plan for a specified species described in subsection 285(1).
- (2) In giving advice under subsection (1) or (1A), the Scientific Committee must take into account the resources available for making plans.

- (3) Before making a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

290 Consultation on plans

- (1) Before making a wildlife conservation plan under subsection 285(1) or (5), the Minister must:
- (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at prescribed places in each State and self-governing Territory; and
 - (b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and
 - (c) cause the notice to be published:
 - (i) in the *Gazette*; and
 - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
 - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
- (a) specify the places where copies of the proposed plan may be purchased; and
 - (b) invite persons to make written comments about the proposed plan; and
 - (c) specify:
 - (i) an address for lodgment of comments; and
 - (ii) a day by which comments must be made.
- (3) The day specified must not be a day occurring within 3 months after the notice is published in the *Gazette*.

291 Consideration of comments

The Minister:

- (a) must, in accordance with the regulations (if any), consider all comments on a proposed wildlife conservation plan made in response to an invitation under section 290; and

Section 292

- (b) may revise the plan to take account of those comments.

292 Adoption of State plans

- (1) The Minister must not adopt a plan as a wildlife conservation plan under subsection 285(3) unless:
 - (a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and
 - (b) the plan meets the requirements of section 287.
- (2) Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

293 Publication, review and variation of plans

- (1) As soon as practicable after the Minister makes or adopts a wildlife conservation plan under section 285, the Minister must:
 - (a) make copies of the plan available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
 - (b) give notice of the making or adoption of each such plan; and
 - (c) publish the notice:
 - (i) in the *Gazette*; and
 - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory; and
 - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
 - (a) state that the Minister has made or adopted the plan; and
 - (b) specify the day on which the plan comes into force; and
 - (c) specify the places where copies of the plan may be purchased.

294 Variation of plans by the Minister

- (1) The Minister may, at any time, review a wildlife conservation plan that has been made or adopted under section 285 and consider whether a variation of it is necessary.
- (2) Each plan must be reviewed by the Minister at intervals of not longer than 5 years.
- (3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7) vary the plan.
- (4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 287.
- (5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.
- (7) Sections 290, 291 and 293 apply to the variation of a plan in the same way that those sections apply to the making of a wildlife conservation plan.

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

- (1) If a State or self-governing Territory varies a plan that:
 - (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or
 - (b) has been adopted by the Minister as a wildlife conservation plan;

Section 296

the variation is of no effect for the purposes of this Act unless it is approved by the Minister.

- (2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (3) The Minister must not approve a variation under subsection (1) unless satisfied:
 - (a) an appropriate level of consultation was undertaken in varying the plan; and
 - (b) the plan, as so varied, continues to meet the requirements of section 287.
- (4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.
- (5) Section 293 applies to the variation of a plan in the same way that it applies to the making of a wildlife conservation plan.

296 Commonwealth assistance

- (1) The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory, financial assistance, and any other assistance, to make a wildlife conservation plan.
- (2) The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory) financial assistance, and any other assistance, to implement a wildlife conservation plan.
- (3) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

297 Plans may cover more than one species etc.

A wildlife conservation plan made or adopted under this Subdivision may deal with all or any of the following:

- (a) one or more listed migratory species;
- (b) one or more listed marine species;
- (c) one or more species of cetacean;
- (d) one or more conservation dependent species.

298 Reports on preparation and implementation of plans

The Secretary must include in each annual report a report on the making and adoption under section 285 of each wildlife conservation plan during the year to which the report relates.

Subdivision BA—Protection statements

298A Protection statements for listed threatened species and listed threatened ecological communities

- (1) The Minister may, by legislative instrument, make a *protection statement* for:
 - (a) a listed threatened species or one or more parts of a listed threatened species (except one that is extinct or is a conservation dependent species); or
 - (b) a listed threatened ecological community or one or more parts of a listed threatened ecological community.
- (2) The Minister must not make a protection statement unless the Minister is satisfied that the protection statement:
 - (a) is consistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and
 - (b) meets any criteria prescribed by the regulations.

Section 298B

- (3) In making a protection statement for a species or community or one or more parts of a species or community, the Minister must have regard to:
- (a) any recovery plan for the species or community or a relevant part of the species or community; and
 - (b) any approved conservation advice for the species or community; and
 - (c) any advice received from a person or body in accordance with section 298D; and
 - (d) any relevant comments received in accordance with section 298E; and
 - (e) any matter prescribed by the regulations; and
 - (f) any other matter the Minister considers relevant.

298B Content of protection statements

- (1) A protection statement for a species or community or one or more parts of a species or community must include information about what must be protected in order to ensure the survival and recovery of the species or community, or the relevant parts of the species or community, in the wild.
- (2) A protection statement for a species or community or one or more parts of a species or community may also include:
- (a) information about impacts on the species or community, or a relevant part of the species or community, that would or would be likely to seriously impair the viability of the species or community or part of the species or community; or
 - (b) information about critical habitat for the species or community, or a relevant part of the species or community; or
 - (c) information about irreplaceable habitat for the species or community, or a relevant part of the species or community; or
 - (ca) information about whether payment of a restoration contribution charge should be available in relation to a

Section 298C

- residual significant impact that an action has, will have or is likely to have on the species or community or a relevant part of the species or community; or
- (d) any information the Minister considers relevant; or
- (e) any other information prescribed by the regulations.
- (3) A protection statement for a species or community or one or more parts of a species or community may also set out circumstances or factors that the Minister considers are relevant to the exercise of discretion (if applicable) by a decision maker in applying an environment law provision relevant to an impact on the species or community or part of the species or community.

298C Protection statements may cover more than one species or community

A single protection statement may cover:

- (a) one or more species or communities; or
- (b) one or more parts of the same, or different, species or communities; or
- (c) any combination thereof.

298D Advice on protection statements

The Minister may obtain advice, in accordance with the regulations (if any), from any of the following persons or bodies before making, varying or revoking a protection statement:

- (a) the Scientific Committee;
- (b) the Restoration Contributions Holder;
- (c) the Restoration Contributions Advisory Committee;
- (d) a State or Territory government body;
- (e) any other person or body the Minister considers relevant.

298E Public consultation on protection statements

- (1) Before making or varying a protection statement, the Minister must publish on the Department's website:

Section 298F

- (a) a draft of the protection statement or variation; and
 - (b) a notice inviting comments on the draft protection statement or 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 or vary a protection statement 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.

298F Varying a protection statement

- (1) The Minister may, by legislative instrument, vary a protection statement if the Minister is satisfied it is appropriate to do so.
- (2) In varying a protection statement for a species or community or one or more parts of a species or community the Minister must have regard to:
 - (a) any recovery plan for the species or community or a relevant part of the species or community;
 - (b) any approved conservation advice for the species or community; and
 - (c) any advice received from a person or body in accordance with section 298D; and
 - (d) any relevant comments received in accordance with section 298E.
- (3) If the Minister varies a protection statement, the Minister must publish reasons for the variation on the Department's website as soon as practicable after making the variation.

298G Revoking protection statements

Automatic revocation

- (1) A protection statement for a species or community or one or more parts of a species or community is, by force of this section, revoked if:
 - (a) the species or community ceases to be a listed threatened species or listed threatened ecological community; or
 - (b) the species is transferred to the extinct category or the conservation dependent category.
- (2) The revocation takes effect at the time that the event mentioned in paragraph (1)(a) or (b) occurs.

Revocation by Minister

- (3) The Minister may, by legislative instrument, revoke a protection statement if the Minister is satisfied that the protection statement is no longer appropriate.
- (4) The Minister must have regard to any advice obtained from a person or body in accordance with section 298D in revoking a protection statement.
- (3) If the Minister revokes a protection statement, the Minister must publish reasons for the revocation on the Department's website as soon as practicable after making the revocation.

298H Reviews of protection statements

- (1) The Minister must cause reviews of each protection statement to be undertaken in accordance with this section.
- (2) The first review of a protection statement must commence within 5 years of the day on which the protection statement commences.

Section 299

- (3) Subsequent reviews of a protection statement for a species or community or one or more parts of a species or community must commence:
 - (a) if the Minister makes or varies a recovery plan for the species or community or a relevant part of the species or community—when the recovery plan is made or varied; and
 - (b) if the Minister approves a conservation advice or changes an approved conservation advice for the species or community or a relevant part of the species or community—when the conservation advice is approved or changed; and
 - (c) in all cases—within 5 years after the day on which a report of the previous review of the protection statement is given to the Minister under subsection (5).
- (4) A review of a protection statement must consider:
 - (a) the matters prescribed by the regulations; and
 - (b) any other matter specified by the Minister in writing.
- (5) The person conducting a review of a protection statement must give a written report of the review to the Minister within:
 - (a) 12 months after the day the review is commenced; or
 - (b) a longer period determined in writing by the Minister.
- (6) The Minister must publish the report on the Department's website as soon as practicable after the report is given to the Minister.
- (7) An instrument mentioned in paragraph (4)(b) is not a legislative instrument.

Subdivision C—Miscellaneous

299 Wildlife conservation plans cease to have effect

If:

- (a) a wildlife conservation plan is in force for all or any of the following:
 - (i) a listed migratory species;

- (ii) a listed marine species;
 - (iii) a species of cetacean; and
 - (b) the species becomes a listed threatened species (except a conservation dependent species);
- the wildlife conservation plan ceases to have effect in relation to the species on and from the day on which the species becomes a listed threatened species as mentioned in paragraph (b).

300 Document may contain more than one plan

- (1) All or any of the plans made under this Division may be included in the same document.
- (2) All or any of the plans adopted under this Division may be included in the same instrument of adoption.

300A State and Territory laws not affected

Sections 269A, 270A, 270B, 273 and 285 do not exclude or limit the concurrent operation of a law of a State or self-governing Territory.

300B Assistance from the Scientific Committee

- (1) The Minister may, at any time, ask the Scientific Committee to provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister's functions or powers under section 266B, 269AA or 270A.
- (2) The Scientific Committee may, at any time, provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister's functions or powers under section 266B, 269AA or 270A (whether or not the Committee is acting in response to a request under subsection (1) of this section).

Section 301

Division 6—Access to biological resources

301 Control of access to biological resources

- (1) The regulations may provide for the control of access to biological resources in Commonwealth areas.
- (2) Without limiting subsection (1), the regulations may contain provisions about all or any of the following:
 - (a) the equitable sharing of the benefits arising from the use of biological resources in Commonwealth areas;
 - (b) the facilitation of access to such resources;
 - (c) the right to deny access to such resources;
 - (d) the granting of access to such resources and the terms and conditions of such access.

Division 6A—Control of non-native species

301A Regulations for control of non-native species

The regulations may:

- (a) provide for the establishment and maintenance of a list of species, other than native species, whose members:
 - (i) do or may threaten biodiversity in the Australian jurisdiction; or
 - (ii) would be likely to threaten biodiversity in the Australian jurisdiction if they were brought into the Australian jurisdiction; and
- (b) regulate or prohibit the bringing into the Australian jurisdiction of members of a species included in the list mentioned in paragraph (a); and
- (c) regulate or prohibit trade in members of a species included in the list mentioned in paragraph (a):
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between 2 Territories; or
 - (iv) between a State and a Territory; or
 - (v) by a constitutional corporation; and
- (d) regulate and prohibit actions:
 - (i) involving or affecting members of a species included in the list mentioned in paragraph (a); and
 - (ii) whose regulation or prohibition is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries; and
- (e) provide for the making and implementation of plans to reduce, eliminate or prevent the impacts of members of species included in the list mentioned in paragraph (a) on biodiversity in the Australian jurisdiction.

Section 302

Division 7—Aid for conservation of species in foreign countries

302 Aid for conservation of species in foreign countries

On behalf of the Commonwealth, the Minister may give financial assistance to the governments of foreign countries and organisations in foreign countries to help the recovery and conservation, in those countries, of species covered by international agreements to which Australia is a party.

Division 7A—Exemptions from provisions of this Part

302A Exemption from provisions of this Part

- (1) The Minister may, by written instrument, grant an exemption (a ***Part 13 exemption***) for an action from a provision (including a regulation made under a provision) of this Part:

- (a) on the Minister's initiative; or
- (b) on application under section 302C.

Note: The Minister may request information to make an informed decision under subsection 302N(1).

Content of exemption

- (2) 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 302E.
- (3) The Minister must be satisfied that the period specified for the purposes of paragraph (2)(d) is reasonably necessary to address the national interest that is 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)(d) (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.

Section 302B

302B Effect of Part 13 exemption

While a Part 13 exemption from a provision 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 302E.

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*.

302C Application for Part 13 exemption

- (1) The following may apply to the Minister (the ***Environment Minister***) for a Part 13 exemption for an action:
 - (a) the person who proposes to take the action;
 - (b) if that person 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 302A within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 302N, days between the request and receipt of the information do not count towards this timeframe (subsection 302N(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 302F).

302D Grounds for grant of Part 13 exemption

- (1) Before granting a Part 13 exemption for an action from a provision (including a regulation made under a provision) of this Part the Minister must be satisfied that:
- (a) if the exemption were not granted, the action would contravene the provision; and
 - (b) 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 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)(b) of this section;
- (b) subsection 302G(3);
- (c) paragraph 302K(1)(a).

302E Conditions of Part 13 exemption

- (1) The Minister may impose one or more conditions on a Part 13 exemption for an action from a provision if any of the following subsections apply.

Section 302E

Conditions—general

- (2) The Minister is satisfied that:
- (a) the provision is not a regulation made for the purposes of paragraph 301A(b), (c) or (d); and
 - (b) the condition is necessary or convenient for protecting from the action, or mitigating damage that has been, will be or may be caused by the action to:
 - (i) a listed threatened species, a listed threatened ecological community, a listed migratory species or a listed marine species, or the habitat of such a species or of such an ecological community, that is in a Commonwealth area; or
 - (ii) the environment in a Commonwealth area.

Conditions—cetaceans

- (3) The Minister is satisfied that:
- (a) the provision is not a regulation made for the purposes of paragraph 301A(b), (c) or (d); and
 - (b) the action is likely to interfere with, or otherwise affect, cetaceans in, or in waters beyond the outer limits of, the Australian Whale Sanctuary; and
 - (c) the condition is necessary or convenient for:
 - (i) avoiding or mitigating the interference with or effect on the cetaceans that has been, will be or is likely to be caused by the action; or
 - (ii) protecting from the action, or mitigating damage that has been, will be or may be caused by the action to, the environment of, or the environment of waters beyond the outer limits of, the Australian Whale Sanctuary.

Conditions—bringing invasive species into Australia

- (4) The Minister is satisfied that:
- (a) the provision is a regulation made for the purposes of paragraph 301A(b); and

Section 302F

- (b) the condition relates to bringing a member of a species included in the list mentioned in paragraph 301A(a) into the Australian jurisdiction.

Conditions—trade in invasive species

- (5) The Minister is satisfied that:
 - (a) the provision is a regulation made for the purposes of paragraph 301A(c); and
 - (b) the condition relates to trade in members of a species included in the list mentioned in paragraph 301A(a):
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between 2 Territories; or
 - (iv) between a State and a Territory; or
 - (v) by a constitutional corporation.

Conditions—actions involving or affecting invasive species

- (6) The Minister is satisfied that:
 - (a) the provision is a regulation made for the purposes of paragraph 301A(d); and
 - (b) the condition:
 - (i) involves or affects members of a species included in the list mentioned in paragraph 301A(a); and
 - (ii) is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

302F Notice of Part 13 exemption

- (1) As soon as practicable after making a Part 13 exemption under section 302A, 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 302C(1)—that person; and

Section 302G

- (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.

302G Variation of Part 13 exemption

- (1) The Minister may, by written instrument, vary a Part 13 exemption:
 - (a) on the Minister's initiative; or
 - (b) on application under section 302H.

Note: The Minister may request information to make an informed decision under subsection 302N(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 302D(2) 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, in relation to the conditions as varied, of the matters set out in subsection 302E(2), (3), (4), (5) or (6).

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.

302H Application to vary Part 13 exemption

- (1) The following may apply to the Minister to vary a Part 13 exemption:
- (a) the person to whom the exemption applies (the *exempt person*);
 - (b) if a different person applied to the Minister for the exemption under subsection 302C(1)—that person, with the agreement in writing of the exempt person.
- (2) The application must:

Section 302J

- (a) be in writing; and
- (b) specify the variation applied for.

Note: For the types of variations that may be made, see subsection 302G(2).

Timeframe for decision

- (3) The Minister must decide whether to vary the exemption under section 302G within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 302N, days between the request and receipt of the information do not count towards this timeframe (subsection 302N(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 a copy of the variation to the person to whom it applies and the applicant (if a different person) (see section 302J).

302J Notice of variation of Part 13 exemption

- (1) As soon as practicable after varying a Part 13 exemption under section 302G, 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:

Section 302K

- (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.

302K Revocation of Part 13 exemption

- (1) The Minister may, by written instrument, revoke a Part 13 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 302N(1).
- Note 2: For paragraph (a), subsection 302D(2) applies in relation to determining the national interest.
- Note 3: A Part 13 exemption is taken to be revoked if the Minister decides to accept the surrender of the exemption under section 302M.
- (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.

302L Notice of revocation of Part 13 exemption

As soon as practicable after revoking a Part 13 exemption under section 302K, the Minister must:

- (a) give a copy of the revocation to:

Section 302M

- (i) the person to whom the exemption applied immediately before the revocation; and
 - (ii) if a different person applied for the exemption under subsection 302C(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.

302M Surrender of Part 13 exemption

- (1) A person to whom a Part 13 exemption applies may, in writing, request the Minister to accept the surrender of the exemption.
- (2) The Minister must decide whether 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 302N, days between the request and receipt of the information do not count towards this timeframe (subsection 302N(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 302C(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)).

302N 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 Part 13 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;
 - (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 302C(3) (application for exemption), 302H(3) (application to vary exemption) or 302M(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 8—Miscellaneous

303 Regulations

- (1) The regulations may make provision for the conservation of biodiversity in Commonwealth areas.
- (2) In particular, the regulations may prohibit or regulate actions affecting a member of a native species in a Commonwealth area. This does not limit subsection (1).

303AA Conditions relating to accreditation of plans, regimes and policies

- (1) This section applies to an accreditation of a plan, regime or policy under section 208A, 222A, 245 or 265.
- (2) The Minister may accredit a plan, regime or policy under that section even though he or she considers that the plan, regime or policy should be accredited only:
 - (a) during a particular period; or
 - (b) while certain circumstances exist; or
 - (c) while a certain condition is complied with.In such a case, the instrument of accreditation is to specify the period, circumstances or condition.
- (3) If an accreditation specifies a particular period as mentioned in subsection (2), the accreditation ceases to be in force at the end of that period.
- (4) If an accreditation specifies circumstances as mentioned in subsection (2), the Minister must, in writing, revoke the accreditation if he or she is satisfied that those circumstances have ceased to exist.
- (5) The Minister may, in writing, vary an accreditation by:

Section 303AB

- (a) specifying one or more conditions (or further conditions) to which the accreditation is subject; or
- (b) revoking or varying a condition:
 - (i) specified in the instrument of accreditation; or
 - (ii) specified under paragraph (a).
- (6) A condition may relate to reporting or monitoring.
- (7) The Minister must, in writing, revoke an accreditation if he or she is satisfied that a condition of the accreditation has been contravened.

303AB Amended policies, regimes or plans taken to be accredited

- (1) If:
 - (a) a plan, regime or policy is accredited under section 208A, 222A, 245 or 265; and
 - (b) the plan, regime or policy is amended, or is proposed to be amended; and
 - (c) the Minister is satisfied that the amendments are, or will be, minor; and
 - (d) the Minister is satisfied that the plan, regime or policy as amended meets, or will meet, the requirements of subsection 208A(1), 222A(1), 245(1) or 265(1) (as the case may be);the Minister may, by instrument in writing, determine that this subsection applies to the amendments.
- (2) If the Minister makes a determination under subsection (1), the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection 208A(1), 222A(2), 245(1) or 265(1) (as the case may be).
- (3) A determination under subsection (1) of this section is not a legislative instrument.

Part 13A—International movement of wildlife specimens

Division 1—Introduction

303BA Objects of Part

- (1) The objects of this Part are as follows:
- (a) to ensure that Australia complies with its obligations under CITES and the Biodiversity Convention;
 - (b) to protect wildlife that may be adversely affected by trade;
 - (c) to promote the conservation of biodiversity in Australia and other countries;
 - (d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way;
 - (e) to promote the humane treatment of wildlife;
 - (f) to ensure ethical conduct during any research associated with the utilisation of wildlife;
 - (h) to ensure that the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.
- Note: CITES means the Convention on International Trade in Endangered Species—see section 528.
- (2) In order to achieve its objects, this Part includes special provisions to conserve the biodiversity of Australian native wildlife.

303BAA Certain indigenous rights not affected

To avoid doubt, nothing in this Part prevents an indigenous person from continuing in accordance with law the traditional use of an area for:

- (a) hunting (except for the purposes of sale); or
- (b) food gathering (except for the purposes of sale); or

Section 303BB

(c) ceremonial or religious purposes.

303BB Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system for regulating the international movement of wildlife specimens.
- A ***CITES specimen*** is a specimen of a species included in Appendix I, II or III to the Convention on International Trade in Endangered Species (CITES).
- It is an offence to export or import a ***CITES specimen*** unless:
 - (a) the exporter or importer holds a permit; or
 - (b) an exemption applies.
- A ***regulated native specimen*** is a specimen of a native species subject to export control under this Part.
- It is an offence to export a ***regulated native specimen*** unless:
 - (a) the exporter holds a permit; or
 - (b) an exemption applies.
- A ***regulated live specimen*** is a live specimen of a species subject to import control under this Part.
- It is an offence to import a ***regulated live specimen*** unless the importer holds a permit.
- It is an offence to possess a specimen that was imported in contravention of this Part.

303BC Definitions

In this Part, unless the contrary intention appears:

Section 303BC

eligible listed threatened species means a listed threatened species other than a species in the conservation dependent category.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

export means:

- (a) export from Australia or from an external Territory; or
- (b) export from the sea;

but does not include:

- (c) export from Australia to an external Territory; or
- (d) export from an external Territory to Australia; or
- (e) export from an external Territory to another external Territory.

export from the sea, in relation to a specimen, means take in a Commonwealth marine area and then take out of that area to another country without bringing into Australia or into an external Territory.

import means:

- (a) import into Australia or into an external Territory; or
- (b) import by way of introduction from the sea;

but does not include:

- (c) import into Australia from an external Territory; or
- (d) import into an external Territory from Australia; or
- (e) import into an external Territory from another external Territory.

import by way of introduction from the sea, in relation to a specimen, means take in the marine environment not under the jurisdiction of any country and then bring into Australia or into an external Territory without having been imported into any other country.

marine environment means the sea, and includes:

Section 303BC

- (a) the air space above the sea; and
- (b) the seabed and subsoil beneath the sea.

recipient means:

- (a) in relation to a specimen that is exported—the person in the country to which the specimen is exported who is to have the care and custody of the specimen after the export; and
- (b) in relation to a specimen that is imported into Australia or into an external Territory—the person in Australia or that Territory, as the case may be, who is to have the care and custody of the specimen after the import.

relevant CITES authority, in relation to a country, means:

- (a) if the country is a party to CITES—a Management Authority of that country; or
- (b) if the country is not a party to CITES—a competent authority of that country within the meaning of Article X of CITES.

sender, in relation to a specimen that is imported into Australia or an external Territory, means the person in the country from which the specimen is imported who exports it from that country to Australia or to that Territory, as the case may be.

take includes:

- (a) in relation to an animal—harvest, catch, capture, trap and kill; and
- (b) in relation to a plant specimen—harvest, pick, gather and cut.

trade means trade within the ordinary meaning of that expression.

Note: See also section 528.

Section 303CA

Division 2—CITES specimens

Subdivision A—CITES specimens

303CA CITES specimens

- (1) A specimen is a *CITES specimen* at any time while the specimen is a CITES I specimen, a CITES II specimen or a CITES III specimen.
- (2) A specimen is a *CITES I specimen* if:
 - (a) the specimen belongs to a species included in Appendix I to CITES; or
 - (b) a declaration that the specimen is a CITES I specimen is in force under section 303CB.
- (3) A specimen is a *CITES II specimen* if:
 - (a) the specimen belongs to a species included in Appendix II to CITES; or
 - (b) a declaration that the specimen is a CITES II specimen is in force under section 303CB.
- (4) A specimen is a *CITES III specimen* if:
 - (a) the specimen belongs to a species included in Appendix III to CITES; or
 - (b) a declaration that the specimen is a CITES III specimen is in force under section 303CB.
- (5) If an annotation in an Appendix to CITES indicates that only specified kinds of specimens of a species are included in the Appendix, paragraph (2)(a), (3)(a) or (4)(a) (as applicable) refers only to specimens of the specified kinds.

Note: Specimens may be included in an Appendix to CITES subject to restrictions and conditions imposed by or under CITES. These restrictions and conditions are given effect by subsections 303CD(4) and 303CG(3).

Section 303CB

- (6) For the purposes of this section, assume that the definition of *specimen* in CITES includes a thing that is a specimen within the meaning of this Act.

303CB Stricter domestic measures

- (1) The Minister may, by legislative instrument, declare that:
- (a) a specimen that belongs to a species included in Appendix II or III to CITES is a CITES I specimen; or
 - (b) a specimen that is not a CITES I specimen because of subsection 303CA(5) is a CITES I specimen; or
 - (c) a specimen that is not a CITES II specimen because of subsection 303CA(5) is a CITES II specimen; or
 - (d) a specimen that is not a CITES III specimen because of subsection 303CA(5) is a CITES III specimen; or
 - (e) a specimen that is not a CITES specimen is a CITES I specimen or a CITES II specimen.
- (2) If a quantitative limit is imposed by or under CITES in relation to the export or import of a CITES specimen, the Minister may, by legislative instrument, declare that, for the purposes of this Part, a specified lower quantitative limit is taken to be imposed by or under CITES.

Subdivision B—Offences and permit system

303CC Exports of CITES specimens

- (1) A person commits an offence if:
- (a) the person exports a specimen; and
 - (b) the specimen is a CITES specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Section 303CD

Authorised export—permit

- (2) Subsection (1) does not apply if the specimen is exported in accordance with a permit that was issued under section 303CG, 303GB or 303GC and is in force.

Authorised export—CITES exemptions

- (3) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.
- (4) Subsection (1) does not apply if the Minister issues a certificate under subsection (5) in relation to the specimen.
- (5) If the Minister is satisfied that a specimen was acquired before the provisions of CITES applied to the specimen, the Minister may issue a certificate to that effect.
- (6) Subsection (1) does not apply if the export of the specimen is an export that, under the regulations, is taken to be an export of a personal or household effect.

Note 1: See paragraph 3 of Article VII of CITES.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2), (3), (4) and (6) (see subsection 13.3(3) of the *Criminal Code*).

303CD Imports of CITES specimens

- (1) A person commits an offence if:
- (a) the person imports a specimen; and
 - (b) the specimen is a CITES specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Section 303CD

Authorised import—permit

- (2) Subsection (1) does not apply if the specimen is imported in accordance with a permit that was issued under section 303CG, 303GB or 303GC and is in force.

Authorised import—CITES exemptions

- (3) Subsection (1) does not apply if the import of the specimen is an import that, under the regulations, is taken to be an import of a personal or household effect.

Note: See paragraph 3 of Article VII of CITES.

- (4) Subsection (1) does not apply if:
- (a) the specimen is a CITES II specimen; and
 - (b) the specimen is not a live specimen; and
 - (c) the specimen belongs to a species that is not specified in the regulations; and
 - (d) in a case where a quantitative limit in relation to the import of the specimen is imposed by or under CITES—the quantity of the specimen does not exceed:
 - (i) if a lower limit is specified in a declaration in force under subsection 303CB(2)—the lower limit; or
 - (ii) otherwise—the limit imposed by or under CITES; and
 - (e) the specimen is within the personal baggage of a person entering Australia or an external Territory; and
 - (f) the specimen is not intended for sale or for any other commercial purpose; and
 - (g) both:
 - (i) the country from which the specimen is proposed to be imported has a relevant CITES authority; and
 - (ii) permission to export the specimen from that country has been given by a relevant CITES authority of that country.
- (5) Subsection (1) does not apply if the import of the specimen is an import that, in accordance with a determination made by the

Section 303CE

Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.

- (6) Subsection (1) does not apply if:
- (a) the country from which the specimen is proposed to be imported has a relevant CITES authority; and
 - (b) a relevant CITES authority of that country has issued a certificate under paragraph 2 of Article VII of CITES in respect of the specimen.

Note 1: Paragraph 2 of Article VII of CITES deals with a specimen that was acquired before the provisions of CITES applied to the specimen.

Note 2: The defendant bears an evidential burden in relation to the matters in subsections (2), (3), (4), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

303CE Applications for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303CG.
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

303CF Further information

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.
- (3) The Minister may, if requested to do so by the applicant, agree in writing to extend the specified period for giving the information.

- (4) If, at the end of the specified period, as extended (if applicable), the applicant has not given the Minister the information, the application is taken to be withdrawn.

303CG Minister may issue permits

- (1) The Minister may, on application made by a person under section 303CE, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.
- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.
- (3) The Minister must not issue a permit unless the Minister is satisfied that:
- (a) the action or actions specified in the permit will not be detrimental to, or contribute to trade which is detrimental to:
 - (i) the survival of any taxon to which the specimen belongs; or
 - (ii) the recovery in nature of any taxon to which the specimen belongs; or
 - (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
 - (b) the specimen was not obtained in contravention of, and the action or actions specified in the permit would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
 - (c) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and

Section 303CG

- (d) if the specimen is a CITES specimen and a restriction or condition for the specimen is imposed by or under CITES:
 - (i) for a restriction or condition that is a quantitative limit for which a lower limit is specified in a declaration in force under subsection 303CB(2)—the lower limit has been, or is likely to be, complied with; or
 - (ii) otherwise—the restriction or condition has been, or is likely to be, complied with; and
- (e) if the permit authorises the export of a CITES specimen:
 - (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
 - (ii) the relevant conditions set out in the table in section 303CH have been met; and
- (f) if the permit authorises the import of a CITES specimen:
 - (i) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB); or
 - (ii) the relevant conditions set out in the table in section 303CH have been met; and
- (g) if:
 - (i) the permit authorises the import of a CITES II specimen; and
 - (ii) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB);

the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and
- (h) if the permit authorises the export of a CITES specimen that is a regulated native specimen—the conditions set out in subsection 303DG(4) have been met; and
- (i) if the permit authorises the import of a CITES specimen that is a regulated live specimen—the conditions set out in subsection 303EN(3) have been met.

Section 303CH

- (4) Subsection (3) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.
- (5) The Minister must not issue a permit to export a specimen (other than a live animal) that has been imported into Australia or an external Territory, unless the Minister is satisfied that:
- (a) the specimen was lawfully imported (section 303GY); and
 - (b) if the specimen is a CITES I specimen:
 - (i) the country to which the specimen is proposed to be exported has a relevant CITES authority; and
 - (ii) permission to import that specimen into that country has been given by a relevant CITES authority of that country.
- (6) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303CH Specific conditions relating to the export or import of CITES specimens for commercial purposes

- (1) The following table sets out the conditions mentioned in paragraphs 303CG(3)(e) and (f):

Specific conditions			
Item	Category of specimen	Action	Specific conditions
1	CITES I	Import	(a) the proposed import would be an import from an approved CITES-registered captive breeding program in accordance with section 303FK; or (b) the specimen is, or is derived from, a plant that was artificially propagated (section 527C).

Chapter 5 Conservation of biodiversity and heritage
Part 13A International movement of wildlife specimens
Division 2 CITES specimens

Section 303CH

Specific conditions			
Item	Category of specimen	Action	Specific conditions
2	CITES I	Export	<p>(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and</p> <p>(b) the country to which the specimen is proposed to be exported has a relevant CITES authority, and permission to import that specimen into that country has been given by a relevant CITES authority of that country; and</p> <p>(c) the proposed export would be an export from:</p> <p style="padding-left: 20px;">(i) an approved CITES-registered captive breeding program in accordance with section 303FK; or</p> <p style="padding-left: 20px;">(ii) an approved artificial propagation program in accordance with section 303FL.</p>
3	CITES II	Import	<p>(a) for any specimen—the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and</p> <p>(b) for a specimen that:</p> <p style="padding-left: 20px;">(i) is specified by the Minister under subsection (2) as a declared specimen; and</p> <p style="padding-left: 20px;">(ii) is not, or is not derived from, an animal that was bred in captivity (section 527B); and</p> <p style="padding-left: 20px;">(iii) is not, or is not derived from, a plant that was artificially propagated (section 527C);</p> <p>the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU.</p>

Section 303CH

Specific conditions			
Item	Category of specimen	Action	Specific conditions
4	CITES II	Export	<p>(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and</p> <p>(b) the proposed export of the specimen would be:</p> <ul style="list-style-type: none"> (i) an export from an approved captive breeding program in accordance with section 303FK; or (ii) an export from an approved artificial propagation program in accordance with section 303FL; or (iia) an export from an approved cultivation program in accordance with section 303FLA; or (iii) an export in accordance with an approved wildlife trade operation (section 303FN); or (iv) an export in accordance with an approved wildlife trade management plan (section 303FO).
5	CITES III	Import	The country from which the specimen is proposed to be imported has a relevant CITES authority, and permission to export the specimen from that country has been given by a relevant CITES authority of that country.

Section 303CI

Specific conditions			
Item	Category of specimen	Action	Specific conditions
6	CITES III	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the proposed export of the specimen would be: (i) an export from an approved captive breeding program in accordance with section 303FK; or (ii) an export from an approved artificial propagation program in accordance with section 303FL; or (iia) an export from an approved cultivation program in accordance with section 303FLA; or (iii) an export in accordance with an approved wildlife trade operation (section 303FN); or (iv) an export in accordance with an approved wildlife trade management plan (section 303FO).

- (2) The Minister may, by notifiable instrument, specify a specimen as a declared specimen for the purposes of subparagraph (b)(i) of item 3 of the table in subsection (1).

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunseting under that Act.

303CI Time limit for making permit decision

If an application for a permit is made under section 303CE, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;

Section 303CJ

- (b) if a request for further information in relation to the application is made under section 303CF—the day on which the applicant complies with the request;
- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303CJ Duration of permits

A permit under section 303CG:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection 303CG(2A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

303CK Register of applications and decisions

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
 - (a) prescribed particulars of applications made under section 303CE after the establishment of the register; and
 - (b) prescribed particulars of decisions made by the Minister under section 303CG after the establishment of the register.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the internet.

Subdivision C—Application of CITES

303CL Application of CITES—Management Authority and Scientific Authority

For the purposes of the application of CITES to Australia:

- (a) the Minister is the Management Authority; and

Section 303CM

(b) the Secretary is the Scientific Authority.

303CM Interpretation of CITES provisions

- (1) Except so far as the contrary intention appears, an expression that:
 - (a) is used in the CITES provisions without definition; and
 - (b) is used in CITES (whether or not it is defined in, or a particular meaning is assigned to it by, CITES);has, in the CITES provisions, the same meaning as it has in CITES.
- (2) For the purposes of subsection (1), the *CITES provisions* consist of:
 - (a) this Division; and
 - (b) any other provision of this Act in so far as that other provision relates to, or to permits under, this Division.

303CN Resolutions of the Conference of the Parties to CITES

- (1) In making a decision under this Part in relation to a CITES specimen, the Minister may have regard to a relevant resolution of the Conference of the Parties under Article XI of CITES.
- (2) Subsection (1) applies to a resolution, whether made before or after the commencement of this section.

Division 3—Exports of regulated native specimens

Subdivision A—Regulated native specimens

303DA Regulated native specimens

For the purposes of this Act, a *regulated native specimen* is a specimen that:

- (a) is, or is derived from, a native animal or a native plant; and
- (b) is not included in the list referred to in section 303DB.

303DB Listing of exempt native specimens

- (1) The Minister must, by legislative instrument, establish a list of exempt native specimens.
- (2) For each specimen included in the list, there is to be a notation that states whether the inclusion of the specimen in the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.
- (3) A restriction or condition mentioned in subsection (2) may:
 - (a) consist of a quantitative limit in relation to the export of the specimen; or
 - (b) relate to the circumstances of the export of the specimen; or
 - (c) relate to the source of the specimen; or
 - (d) relate to the circumstances in which the specimen was taken or, if the specimen is derived from another specimen that was taken, the circumstances in which the other specimen was taken; or
 - (e) relate to an expiry date for the inclusion of the specimen on the list.
- (4) Subsection (3) does not limit subsection (2).
- (5) The list, as first established, must:

Section 303DC

- (a) contain the specimens referred to in Part I of Schedule 4 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section; and
 - (b) reflect the restrictions and conditions that are applicable to the inclusion of those specimens in that Part of that Schedule.
- (6) The list must not include a specimen that belongs to an eligible listed threatened species unless:
 - (a) the Minister is satisfied that the export of the specimen will not:
 - (i) adversely affect the conservation status of the species concerned; and
 - (ii) be inconsistent with any recovery plan or wildlife conservation plan; and
 - (aa) the Minister has had regard to any approved conservation advice for that species; and
 - (b) the inclusion of the specimen on the list is subject to a restriction or condition to the effect that:
 - (i) the specimen must be, or be derived from, a plant that was artificially propagated (section 527C); and
 - (ii) the specimen was propagated in an operation that has derived its stock in a way that did not breach a law of the Commonwealth, a State or a Territory.

303DC Minister may amend list

- (1) The Minister may, by legislative instrument, amend the list referred to in section 303DB by:
 - (a) doing any of the following:
 - (i) including items in the list;
 - (ii) deleting items from the list;
 - (iii) imposing a condition or restriction to which the inclusion of a specimen in the list is subject;
 - (iv) varying or revoking a condition or restriction to which the inclusion of a specimen in the list is subject; or

Section 303DC

- (b) correcting an inaccuracy or updating the name of a species.
- (1A) In deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.
- (1B) Subsection (1A) does not apply to an amendment mentioned in paragraph (1)(b).
- (1C) Subsection (1A) does not limit the matters that may be taken into account in deciding whether to amend the list referred to in section 303DB to include a specimen derived from a commercial fishery.
- (1D) In this section:
- fishery* has the same meaning as in section 303FN.
- (2) For the purposes of paragraph (1)(b), *correcting an inaccuracy* includes ensuring that the list complies with subsection 303DB(5).
- (3) Before amending the list referred to in section 303DB as mentioned in paragraph (1)(a) of this section, the Minister:
- (a) must consult such other Minister or Ministers as the Minister considers appropriate; and
 - (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
 - (c) may consult such other persons and organisations as the Minister considers appropriate.
- (4) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

Section 303DD

Subdivision B—Offence and permit system

303DD Exports of regulated native specimens

- (1) A person commits an offence if:
- (a) the person exports a specimen; and
 - (b) the specimen is a regulated native specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Exemption—permit

- (2) Subsection (1) does not apply if the specimen is exported in accordance with a permit that was issued under section 303CG, 303DG, 303GB or 303GC and is in force.

Exemption—accredited wildlife trade management plan

- (3) Subsection (1) does not apply if:
- (a) the export of the specimen would be an export in accordance with an accredited wildlife trade management plan (section 303FP); and
 - (b) the specimen is not a live native mammal, a live native reptile, a live native amphibian or a live native bird; and
 - (ba) either:
 - (i) the specimen is not a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of this subparagraph; or
 - (ii) the export is an export from an approved aquaculture program in accordance with section 303FM; and
 - (c) the specimen is not a CITES specimen; and
 - (d) the specimen does not belong to an eligible listed threatened species.

Section 303DE

Exemption—exchange of scientific specimens

- (4) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.

Note: The defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

303DE Applications for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303DG.
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

303DF Further information

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.
- (3) The Minister may, if requested to do so by the applicant, agree in writing to extend the specified period for giving the information.
- (4) If, at the end of the specified period, as extended (if applicable), the applicant has not given the Minister the information, the application is taken to be withdrawn.

Section 303DG

303DG Minister may issue permits

- (1) The Minister may, on application made by a person under section 303DE, issue a permit to the person. This subsection has effect subject to subsections (3) to (4A).
- (2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303DD.
- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 3 years after that date.
- (3) The Minister must not issue a permit authorising the export of a live native mammal, a live native reptile, a live native amphibian or a live native bird unless the Minister is satisfied that the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA).
- (3A) The Minister must not issue a permit authorising the export of a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of paragraph 303DD(3)(ba) unless the Minister is satisfied that:
 - (a) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
 - (b) the proposed export would be an export from an approved aquaculture program in accordance with section 303FM.
- (4) The Minister must not issue a permit unless the Minister is satisfied that:
 - (a) the export of the specimen will not be detrimental to, or contribute to trade which is detrimental to:
 - (i) the survival of any taxon to which the specimen belongs; or
 - (ii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and

- (b) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
 - (c) the specimen was not obtained in contravention of, and the export would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
 - (d) if the specimen belongs to an eligible listed threatened species—the export of the specimen is covered by subsection (7) or (8), and the export would not be inconsistent with any recovery plan; and
 - (e) if the specimen does not belong to an eligible listed threatened species:
 - (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
 - (ii) the proposed export would be an eligible commercial purpose export (within the meaning of section 303FJ).
- (4A) If the Minister is considering whether to issue a permit relating to a specimen that belongs to a particular eligible listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species.
- (5) Subsection (4) does not apply in relation to a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be.
- (6) The Minister must not issue a permit to export from Australia or an external Territory a specimen (other than a live animal) that has been imported into Australia or that Territory, as the case may be, unless the Minister is satisfied that the specimen was lawfully imported (section 303GY).

Eligible listed threatened species

- (7) This subsection covers the export of a specimen if:

Section 303DG

- (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or
- (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
- (ba) the export of the specimen would be an export from an approved cultivation program in accordance with section 303FLA; or
- (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM;

and the export of the specimen will not adversely affect the conservation status of the species concerned.

Note: See also subsection (3).

- (8) This subsection covers the export of a specimen if:
- (a) the export of the specimen would be an export for the purposes of research in accordance with section 303FC; or
 - (b) the export of the specimen would be an export for the purposes of education in accordance with section 303FD; or
 - (c) the export of the specimen would be an export for the purposes of exhibition in accordance with section 303FE; or
 - (d) the export of the specimen would be an export for the purposes of conservation breeding or propagation in accordance with section 303FF.

Section has effect subject to section 303GA

- (9) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303DH Time limit for making permit decision

If an application for a permit is made under section 303DE, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303DF—the day on which the applicant complies with the request;
- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303DI Duration of permits

A permit under section 303DG:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection 303DG(2A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

303DJ Register of applications and decisions

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
 - (a) prescribed particulars of applications made under section 303DE after the establishment of the register; and
 - (b) prescribed particulars of decisions made by the Minister under section 303DG after the establishment of the register.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the internet.

Division 4—Imports of regulated live specimens

Subdivision A—Regulated live specimens

303EA Regulated live specimens

For the purposes of this Act, a *regulated live specimen* is a specimen that:

- (a) is a live animal or a live plant; and
- (b) is not included in Part 1 of the list referred to in section 303EB.

303EB Listing of specimens suitable for live import

- (1) The Minister must, by legislative instrument, establish a list of specimens that are taken to be suitable for live import.
- (2) The list is to be divided into 2 Parts, as follows:
 - (a) Part 1 is to be a list of unregulated specimens;
 - (b) Part 2 is to be a list of allowable regulated specimens.
- (3) The list may only contain specimens that are live animals or live plants.
- (4) Part 1 of the list, as first established, must contain only the specimens referred to in Part I of Schedule 5 or Part I of Schedule 6 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.
- (5) Part 1 of the list must not contain a CITES specimen.
- (6) Part 1 of the list is taken to include a live plant the introduction of which into Australia is not inconsistent with the *Biosecurity Act 2015*.
- (7) For each specimen included in Part 2 of the list (except a specimen referred to in subsection (11A)), there is to be a notation that states

Section 303EC

whether the inclusion of the specimen in that part of the list is subject to restrictions or conditions and, if so, the nature of those restrictions or conditions.

- (8) A restriction or condition referred to in subsection (7) may:
 - (a) consist of a quantitative limit in relation to the import of the specimen; or
 - (b) relate to the circumstances of the import of the specimen; or
 - (c) relate to the source of the specimen; or
 - (d) relate to the circumstances in which the specimen was taken.
- (9) Subsection (8) does not limit subsection (7).
- (10) Part 2 of the list, as first established, must contain only specimens that were, at any time before the commencement of this section, the subject of an import permit granted under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.
- (11) For the purposes of subsection (10), a specimen is taken to have been the subject of an import permit if, and only if, the specimen was identified in the permit at the species or sub-species level.
- (11A) Part 2 of the list is taken to include a live plant that is a CITES specimen the introduction of which into Australia is not inconsistent with the *Biosecurity Act 2015*.

303EC Minister may amend list

- (1) The Minister may, by legislative instrument, amend the list referred to in section 303EB by:
 - (a) doing any of the following:
 - (i) including items in a particular part of the list;
 - (ii) deleting items from a particular part of the list;
 - (iii) imposing a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject;
 - (iv) varying or revoking a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject; or

Section 303ED

- (b) correcting an inaccuracy or updating the name of a species.
- (2) For the purposes of paragraph (1)(b), ***correcting an inaccuracy*** includes ensuring that the list complies with subsections 303EB(4) and (10).
- (3) Before amending the list referred to in section 303EB as mentioned in paragraph (1)(a) of this section, the Minister:
 - (a) must consult such other Minister or Ministers as the Minister considers appropriate; and
 - (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
 - (c) may consult such other persons and organisations as the Minister considers appropriate.
- (5) The Minister must not amend the list referred to in section 303EB by including an item in the list, unless:
 - (a) the amendment is made following consideration of a relevant report under section 303ED or 303EE; or
 - (b) the amendment is made following consideration of a relevant review under section 303EJ.
- (6) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.

Subdivision B—Assessments relating to the amendment of the list of specimens suitable for import

303ED Amendment of list on the Minister’s own initiative

- (1) The Minister may formulate a proposal for the list referred to in section 303EB to be amended by including an item.
- (2) Unless subsection (3) applies, the Minister must:
 - (a) cause to be conducted an assessment of the potential impacts on the environment of the proposed amendment; and

Section 303EE

- (b) cause to be prepared a report on those impacts.
The report must be prepared in accordance with section 303EF and be given to the Minister.
- (3) This subsection applies if:
- (a) Biosecurity Australia has prepared a report (whether before or after the amendment was proposed) on the potential impacts on the environment if the specimen were to be imported; and
 - (b) the report is of a type specified in regulations made for the purposes of this paragraph; and
 - (c) the report is given to the Minister; and
 - (d) the Minister determines that subsection (2) does not apply to the proposed amendment.
- (4) A determination made under paragraph (3)(d) is not a legislative instrument.

303EE Application for amendment of list

- (1) A person may, in accordance with the regulations, apply to the Minister for the list referred to in section 303EB to be amended by including an item.
- (2) The Minister must not consider the application unless either subsection (3) or (4) applies to the proposed amendment.
- (3) This subsection applies to the proposed amendment if:
- (a) subsection (4) does not apply to the proposed amendment; and
 - (b) an assessment is made of the potential impacts on the environment of the proposed amendment; and
 - (c) a report on those impacts is given to the Minister.
- The report must be prepared in accordance with section 303EF.
- (4) This subsection applies to the proposed amendment if:
- (a) Biosecurity Australia has prepared a report (whether before or after the amendment was proposed) on the potential

Section 303EF

- impacts on the environment if the specimen were to be imported; and
 - (b) the report is of a type specified in regulations made for the purposes of this paragraph; and
 - (c) the report has been given to the Minister; and
 - (d) the Minister determines that subsection (3) does not apply to the proposed amendment.
- (5) A determination made under paragraph (4)(d) is not a legislative instrument.

303EF Requirement for assessments

- (1) The assessment under subsection 303ED(2) or 303EE(3) must provide for:
- (a) if the Minister determines that this paragraph applies—the preparation of terms of reference for a report on the relevant impacts; or
 - (b) if the Minister determines that this paragraph applies—all of the following:
 - (i) the preparation of draft terms of reference for a report on the relevant impacts;
 - (ii) the publication of the draft terms of reference for public comment for a period of at least 10 business days that is specified by the Minister;
 - (iii) the finalisation of the terms of reference, to the Minister’s satisfaction, taking into account the comments (if any) received on the draft terms of reference.
- (2) The assessment must also provide for:
- (a) the preparation of a draft of a report on the relevant impacts; and
 - (b) the publication of the draft report for public comment for a period of at least 20 business 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) any other matter prescribed by the regulations.
- (3) A determination made under paragraph (1)(a) or (b) is not a legislative instrument.

303EG Timing of decision about proposed amendment

- (1) If the Minister receives a report under section 303ED or 303EE in relation to a proposed amendment, the Minister must decide whether or not to make the proposed amendment within:
 - (a) 30 business days; or
 - (b) if the Minister, by writing, specifies a longer period—that longer period;after the first business day after the day on which the report was received.

Notice of extension of time

- (2) If the Minister specifies a longer period for the purposes of subsection (1), he or she must:
 - (a) if section 303EE applies—give a copy of the specification to the applicant; and
 - (b) publish the specification in accordance with the regulations.

303EH Requesting further information

- (1) If:
 - (a) section 303EE applies; and
 - (b) the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to make the proposed amendment;the Minister may request the applicant to give the Minister, within the period specified in the request, information relevant to making the decision.

Section 303EI

- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.
- (3) The Minister may, if requested to do so by the applicant, agree in writing to extend the specified period for giving the information.
- (4) If, at the end of the specified period, as extended (if applicable), the applicant has not given the Minister the information, the application is taken to be withdrawn.

303EI Notice of refusal of proposed amendment

If section 303EE applies and the Minister refuses to make the proposed amendment, the Minister must give the applicant notice of the refusal.

303EJ Reviews

If, following consideration of a relevant report under section 303ED or 303EE, the Minister has made a decision to include, or refusing to include, an item in the list referred to in section 303EB, the Minister may review that decision at any time during the period of 5 years after the decision was made.

Subdivision C—Offence and permit system

303EK Imports of regulated live specimens

- (1) A person commits an offence if:
 - (a) the person imports a specimen; and
 - (b) the specimen is a regulated live specimen.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

Exemption—permit

- (2) Subsection (1) does not apply if:

Section 303EL

- (a) the specimen is included in Part 2 of the list referred to in section 303EB; and
- (b) the specimen is imported in accordance with a permit that was issued under section 303CG, 303EN, 303GB or 303GC and is in force.

Exemption—testing permit

- (3) Subsection (1) does not apply if the specimen is imported in accordance with a permit that was issued under section 303GD and is in force.

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

303EL Applications for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 303EN.
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

303EM Further information

- (1) The Minister may, within 40 business days after the application is made, request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (2) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.
- (3) The Minister may, if requested to do so by the applicant, agree in writing to extend the specified period for giving the information.
- (4) If, at the end of the specified period, as extended (if applicable), the applicant has not given the Minister the information, the application is taken to be withdrawn.

Section 303EN

303EN Minister may issue permits

- (1) The Minister may, on application made by a person under section 303EL, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303EK.
- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 3 years after that date.
- (3) The Minister must not issue a permit unless the Minister is satisfied that:
 - (a) the proposed import would not be:
 - (i) likely to threaten the conservation status of a species or ecological community; or
 - (ii) likely to threaten biodiversity; and
 - (b) the specimen is included in Part 2 of the list referred to in section 303EB; and
 - (c) if any restriction or condition is applicable to the specimen under a notation in Part 2 of the list referred to in section 303EB—that restriction or condition has been, or is likely to be, complied with; and
 - (d) the specimen was not obtained in contravention of, and the import would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
 - (e) if the specimen belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with.

Section 303EO

- (4) This section has effect subject to section 303GA.

Note: Section 303GA deals with controlled actions, and actions for which a non-Part 13A permit is required.

303EO Time limit for making permit decision

If an application for a permit is made under section 303EL, the Minister must either issue, or refuse to issue, the permit within 40 business days after whichever is the latest of the following days:

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303EM—the day on which the applicant complies with the request;
- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303EP Duration of permits

A permit under section 303EN:

- (a) comes into force on the date on which it is issued; and
- (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection 303EN(2A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

303EQ Register of applications and decisions

- (1) As soon as practicable after the commencement of this section, the Minister must cause to be established a register that sets out:
 - (a) prescribed particulars of applications made under section 303EL after the establishment of the register; and
 - (b) prescribed particulars of decisions made by the Minister under section 303EN after the establishment of the register.
- (2) The register may be maintained by electronic means.

Section 303ER

- (3) The register is to be made available for inspection on the internet.

Subdivision D—Marking of certain specimens for the purposes of identification

303ER Object

The object of this Subdivision is:

- (a) to comply with Australia's obligations under:
 - (i) the Biodiversity Convention; and
 - (ii) CITES; and
 - (b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries;
- by requiring the marking of certain live specimens for the purposes of identification.

Note: See Article 8 of the Biodiversity Convention.

303ES Specimens to which Subdivision applies

This Subdivision applies to a regulated live specimen if:

- (a) the specimen has been imported in accordance with:
 - (i) a permit under this Division; or
 - (ii) a permit or authority under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or
- (b) the specimen is the progeny of a specimen referred to in paragraph (a).

303ET Extended meaning of *marking*

A reference in this Subdivision to the ***marking*** of a specimen includes a reference to the following:

- (a) in the case of a live plant:
 - (i) the marking or labelling of a container in which the plant is kept or in which the plant is growing; and
 - (ii) the placement of a label or tag on the plant;
- (b) in the case of a live animal:

- (i) the implantation of a scannable device in the animal;
and
- (ii) the placement of a band on any part of the animal; and
- (iii) the placement (whether by piercing or otherwise) of a tag or ring on any part of the animal; and
- (iv) the marking or labelling of a container within which the animal is kept.

303EU Secretary may make determinations about marking of specimens

Determinations

- (1) The Secretary may, by legislative instrument, make a determination about the marking of specified kinds of specimens for the purposes of identification.

Matters that may be covered by determination

- (2) Without limiting subsection (1), a determination by the Secretary under that subsection may:
 - (a) require specimens to be marked; and
 - (b) deal with the manner in which specimens are to be marked;
and
 - (c) deal with the times at which marking is to occur; and
 - (d) deal with the removal or destruction of marks; and
 - (e) deal with the replacement or modification of marks; and
 - (f) require that marking be carried out by persons approved in writing by the Secretary under that determination; and
 - (g) deal with the circumstances in which marks may be, or are required to be, rendered useless; and
 - (h) in the case of a mark that consists of a label, tag, band or device:
 - (i) set out specifications relating to the label, tag, band or device; and

Section 303EV

- (ii) require that any destruction or removal of the label, tag, band or device be carried out by a person approved in writing by the Secretary under that determination.

Marking of animals not to involve undue pain etc.

- (3) In the case of a live animal, a determination under subsection (1) must not require marking that involves:
 - (a) undue pain or distress to the animal; or
 - (b) undue risk of the death of the animal.

Marking of plants not to involve undue risk of death

- (4) In the case of a live plant, a determination under subsection (1) must not require marking that involves undue risk of the death of the plant.

303EV Offences

Owner to ensure specimens marked etc.

- (1) If a determination under section 303EU applies to a specimen, the owner of the specimen must comply with the determination.

Person not to remove or interfere with mark etc.

- (2) A person contravenes this subsection if:
 - (a) a specimen is marked in accordance with a determination under section 303EU; and
 - (b) the person engages in conduct; and
 - (c) the conduct causes the removal of the mark or interference with the mark, or renders the mark unusable.

Offence

- (3) A person who contravenes subsection (1) or (2) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.

Section 303EW

- (4) Subsection (2) does not apply if the person engages in the conduct in accordance with a determination under section 303EU.

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

- (5) In subsections (1) and (2), strict liability applies to the circumstance that a determination was made under section 303EU.

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

303EW This Subdivision does not limit conditions of permits

This Subdivision does not limit section 303GE (which deals with conditions of permits).

Section 303FA

Division 5—Concepts relating to permit criteria

Subdivision A—Non-commercial purpose exports and imports

303FA Eligible non-commercial purpose exports

For the purposes of this Part, the export of a specimen is an *eligible non-commercial purpose export* if, and only if:

- (a) the export of the specimen would be an export for the purposes of research in accordance with section 303FC; or
- (b) the export of the specimen would be an export for the purposes of education in accordance with section 303FD; or
- (c) the export of the specimen would be an export for the purposes of exhibition in accordance with section 303FE; or
- (d) the export of the specimen would be an export for the purposes of conservation breeding or propagation in accordance with section 303FF; or
- (e) the export of the specimen would be an export of a household pet in accordance with section 303FG; or
- (f) the export of the specimen would be an export of a personal item in accordance with section 303FH; or
- (g) the export of a specimen would be an export for the purposes of a travelling exhibition in accordance with section 303FI.

303FB Eligible non-commercial purpose imports

For the purposes of this Part, the import of a specimen is an *eligible non-commercial purpose import* if, and only if:

- (a) the import of the specimen would be an import for the purposes of research in accordance with section 303FC; or
- (b) the import of the specimen would be an import for the purposes of education in accordance with section 303FD; or
- (c) the import of the specimen would be an import for the purposes of exhibition in accordance with section 303FE; or

Section 303FC

- (d) the import of the specimen would be an import for the purposes of conservation breeding or propagation in accordance with section 303FF; or
- (e) the import of the specimen would be an import of a household pet in accordance with section 303FG; or
- (f) the import of the specimen would be an import of a personal item in accordance with section 303FH; or
- (g) the import of a specimen would be an import for the purposes of a travelling exhibition in accordance with section 303FI.

303FC Export or import for the purposes of research

- (1) The export of a specimen is an export for the purposes of research in accordance with this section if:
 - (a) the specimen will be used for the purpose of scientific research; and
 - (b) the objects of the research are covered by any or all of the following subparagraphs:
 - (i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;
 - (ii) the conservation of biodiversity;
 - (iii) the maintenance and/or improvement of human health; and
 - (c) the export is not primarily for commercial purposes; and
 - (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of research in accordance with this section if:
 - (a) the specimen will be used for the purpose of scientific research; and
 - (b) the objects of the research are covered by any or all of the following subparagraphs:

Section 303FD

- (i) the acquisition of a better understanding, and/or increased knowledge, of a taxon to which the specimen belongs;
- (ii) the conservation of biodiversity;
- (iii) the maintenance and/or improvement of human health; and
- (c) the import is not primarily for commercial purposes; and
- (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FD Export or import for the purposes of education

- (1) The export of a specimen is an export for the purposes of education in accordance with this section if:
 - (a) the specimen will be used for the purpose of education or training; and
 - (b) the export is not primarily for commercial purposes; and
 - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of education in accordance with this section if:
 - (a) the specimen will be used for the purpose of education or training; and
 - (b) the import is not primarily for commercial purposes; and
 - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FE Export or import for the purposes of exhibition

- (1) The export of a specimen is an export for the purposes of exhibition in accordance with this section if:
 - (a) the specimen will be used for the purpose of an exhibition; and
 - (b) the export is not primarily for commercial purposes; and

Section 303FF

- (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of exhibition in accordance with this section if:
 - (a) the specimen will be used for the purpose of an exhibition; and
 - (b) the import is not primarily for commercial purposes; and
 - (c) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (3) In this section:
exhibition includes a zoo or menagerie.

303FF Export or import for conservation breeding or propagation

- (1) The export of a specimen is an export for the purposes of conservation breeding or propagation in accordance with this section if:
 - (a) the specimen is a live animal or a live plant; and
 - (b) the specimen is for use in a program the object of which is the establishment and/or maintenance of a breeding population; and
 - (c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and
 - (d) the export is not primarily for commercial purposes; and
 - (e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of conservation breeding or propagation in accordance with this section if:
 - (a) the specimen is a live animal or a live plant; and
 - (b) the specimen is for use in a program the object of which is the establishment and/or maintenance of a breeding population; and

Section 303FG

- (c) the program is a program that, under the regulations, is taken to be an approved co-operative conservation program; and
- (d) the import is not primarily for commercial purposes; and
- (e) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.

303FG Export or import of household pets

Export of live native animals

- (1) The export of a live native animal (other than a CITES specimen) is an export of a household pet in accordance with this section if:
 - (a) the animal is included in the list referred to in subsection (4); and
 - (b) the export is not primarily for commercial purposes; and
 - (c) such other conditions as are specified in the regulations have been, or are likely to be, satisfied.

Export of live CITES specimens

- (2) The export of a CITES specimen is an export of a household pet in accordance with this section if:
 - (a) the specimen is a live animal; and
 - (b) if the animal is a native animal—the animal is included in the list referred to in subsection (4); and
 - (c) the export is not primarily for commercial purposes; and
 - (d) such other conditions as are specified in the regulations have been, or are likely to be, satisfied.

Import of live animals

- (3) The import of a live animal is an import of a household pet in accordance with this section if:
 - (a) the conditions specified in the regulations have been, or are likely to be, satisfied; and
 - (b) the import is not primarily for commercial purposes; and

Section 303FH

- (c) the animal is included in Part 2 of the list referred to in section 303EB.

Listing of native household pet animals

- (4) The Minister must, by legislative instrument, establish a list of native household pet animals.
- (5) The list, as first established, must contain the animals referred to in Schedule 7 to the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, as in force immediately before the commencement of this section.
- (6) The Minister may, by legislative instrument, amend the list referred to in subsection (4) by:
 - (a) including or deleting items from the list; or
 - (b) correcting an inaccuracy or updating the name of a species.
- (7) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (6)(b) of this section applies.

303FH Export or import of personal items

- (1) The export of a specimen is an export of a personal item in accordance with this section if:
 - (a) the specimen is not a live specimen; and
 - (b) the export is not primarily for commercial purposes; and
 - (c) the conditions specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import of a personal item in accordance with this section if:
 - (a) the specimen is not a live specimen; and
 - (b) the import is not primarily for commercial purposes; and
 - (c) the conditions specified in the regulations have been, or are likely to be, satisfied.

Section 303FI

303FI Export or import for the purposes of a travelling exhibition

- (1) The export of a specimen is an export for the purposes of a travelling exhibition in accordance with this section if:
 - (a) the export is not primarily for commercial purposes; and
 - (b) the conditions specified in the regulations have been, or are likely to be, satisfied.
- (2) The import of a specimen is an import for the purposes of a travelling exhibition in accordance with this section if:
 - (a) the import is not primarily for commercial purposes; and
 - (b) the conditions specified in the regulations have been, or are likely to be, satisfied.

Subdivision B—Commercial purpose exports and imports

303FJ Eligible commercial purpose exports

For the purposes of this Part, the export of a specimen is an *eligible commercial purpose export* if, and only if:

- (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or
- (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
- (ba) the export of the specimen would be an export from an approved cultivation program in accordance with section 303FLA; or
- (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM; or
- (d) the export of the specimen would be an export in accordance with an approved wildlife trade operation (section 303FN); or
- (e) the export of the specimen would be an export in accordance with an approved wildlife trade management plan (section 303FO).

Note: See also subsection 303DD(3), which deals with accredited wildlife trade management plans.

303FK Export or import from an approved captive breeding program

- (1) The export of a specimen is an export from an approved captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved captive breeding program.
- (2) The export of a specimen is an export from an approved CITES-registered captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved CITES-registered captive breeding program.
- (3) The import of a specimen is an import from an approved CITES-registered captive breeding program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved CITES-registered captive breeding program.

303FL Export from an approved artificial propagation program

The export of a specimen is an export from an approved artificial propagation program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved artificial propagation program.

303FLA Export from an approved cultivation program

The export of a specimen is an export from an approved cultivation program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved cultivation program.

Section 303FM

303FM Export from an approved aquaculture program

The export of a specimen is an export from an approved aquaculture program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved aquaculture program.

303FN Approved wildlife trade operation

- (1) The export of a specimen is an export in accordance with an approved wildlife trade operation if the specimen is, or is derived from, a specimen that was taken in accordance with a wildlife trade operation declared by a declaration in force under subsection (2) to be an approved wildlife trade operation.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified wildlife trade operation is an ***approved wildlife trade operation*** for the purposes of this section.
- (3) The Minister must not declare an operation under subsection (2) unless the Minister is satisfied that:
 - (a) the operation is consistent with the objects of this Part; and
 - (b) the operation will not be detrimental to:
 - (i) the survival of a taxon to which the operation relates; or
 - (ii) the conservation status of a taxon to which the operation relates; and
 - (ba) the operation will not be likely to threaten any relevant ecosystem including (but not limited to) any habitat or biodiversity; and
 - (c) if the operation relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and
 - (d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:

Section 303FN

- (a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and
 - (b) the effectiveness of the management arrangements for the operation (including monitoring procedures).
- (5) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:
 - (a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and
 - (b) whether the legislation applies throughout the State or Territory concerned; and
 - (c) whether, in the opinion of the Minister, the legislation is effective.
- (6) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (7) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (8) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (9) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (10) For the purposes of this section, an operation is a **wildlife trade operation** if, and only if, the operation is an operation for the taking of specimens and:
 - (a) the operation is an operation that, under the regulations, is taken to be a market-testing operation; or
 - (b) the operation is an operation that, under the regulations, is taken to be a small-scale operation; or

Section 303FN

- (c) the operation is an operation that, under the regulations, is taken to be a developmental operation; or
 - (d) the operation is a commercial fishery; or
 - (e) the operation is an operation that, under the regulations, is taken to be a provisional operation; or
 - (f) the operation is an operation of a kind specified in the regulations.
- (10A) In deciding whether to declare that a commercial fishery is an approved wildlife trade operation for the purposes of this section, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.
- (10B) Subsection (10A) does not limit the matters that may be taken into account in deciding whether to declare that a fishery is an approved wildlife trade operation for the purposes of this section.
- (11) In this section:
 - fish*** includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.
 - fishery*** means a class of activities by way of fishing, including activities identified by reference to all or any of the following:
 - (a) a species or type of fish;
 - (b) a description of fish by reference to sex or any other characteristic;
 - (c) an area of waters or of seabed;
 - (d) a method of fishing;
 - (e) a class of vessels;
 - (f) a class of persons;
 - (g) a purpose of activities.

303FO Approved wildlife trade management plan

- (1) The export of a specimen is an export in accordance with an approved wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an approved wildlife trade management plan.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***approved wildlife trade management plan*** for the purposes of this section.
- (3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:
 - (a) the plan is consistent with the objects of this Part; and
 - (b) there has been an assessment of the environmental impact of the activities covered by the plan, including (but not limited to) an assessment of:
 - (i) the status of the species to which the plan relates in the wild; and
 - (ii) the extent of the habitat of the species to which the plan relates; and
 - (iii) the threats to the species to which the plan relates; and
 - (iv) the impacts of the activities covered by the plan on the habitat or relevant ecosystems; and
 - (c) the plan includes management controls directed towards ensuring that the impacts of the activities covered by the plan on:
 - (i) a taxon to which the plan relates; and
 - (ii) any taxa that may be affected by activities covered by the plan; and
 - (iii) any relevant ecosystem (for example, impacts on habitat or biodiversity);are ecologically sustainable; and
 - (d) the activities covered by the plan will not be detrimental to:
 - (i) the survival of a taxon to which the plan relates; or

Section 303FO

- (ii) the conservation status of a taxon to which the plan relates; or
 - (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
 - (e) the plan includes measures:
 - (i) to mitigate and/or minimise the environmental impact of the activities covered by the plan; and
 - (ii) to monitor the environmental impact of the activities covered by the plan; and
 - (iii) to respond to changes in the environmental impact of the activities covered by the plan; and
 - (f) if the plan relates to the taking of live specimens that belong to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and
 - (g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) In deciding whether to declare a plan under subsection (2), the Minister must have regard to:
- (a) whether legislation relating to the protection, conservation or management of the specimens to which the plan relates is in force in the State or Territory concerned; and
 - (b) whether the legislation applies throughout the State or Territory concerned; and
 - (c) whether, in the opinion of the Minister, the legislation is effective.
- (5) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (6) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).

Section 303FP

- (7) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (8) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.

303FP Accredited wildlife trade management plan

- (1) The export of a specimen is an export in accordance with an accredited wildlife trade management plan if the specimen is, or is derived from, a specimen that was taken in accordance with a plan declared by a declaration in force under subsection (2) to be an accredited wildlife trade management plan.
- (2) The Minister may, by instrument published in the *Gazette*, declare that a specified plan is an ***accredited wildlife trade management plan*** for the purposes of this section.
- (3) The Minister must not declare a plan under subsection (2) unless the Minister is satisfied that:
 - (a) the plan is in force under a law of the Commonwealth or of a State or Territory; and
 - (b) the conditions set out in subsection 303FO(3) have been met in relation to the plan; and
 - (c) the plan imposes limits in relation to the taking of specimens; and
 - (d) the compliance and enforcement measures relating to the plan are likely to be effective in preventing specimens taken in breach of the plan from being traded or exported; and
 - (e) the plan provides for the monitoring of:
 - (i) the taking of specimens under the plan; and
 - (ii) the export of specimens taken under the plan; and
 - (iii) the status of the species to which the plan relates in the wild; and
 - (iv) the impacts of the activities under the plan on the habitat of the species to which the plan relates; and

Section 303FQ

- (f) the plan provides for statistical reports about specimens taken under the plan to be given to the Minister on a regular basis; and
 - (g) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.
- (4) A declaration under subsection (2) ceases to be in force at the beginning of the fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5 years is specified in the declaration in accordance with subsection 303FT(4).
- (5) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (6) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (7) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (8) The Minister must publish on the internet copies of reports given as mentioned in paragraph (3)(f).
- (9) The Minister is not required to comply with subsection (8) to the extent to which compliance could reasonably be expected to:
 - (a) prejudice substantially the commercial interests of a person; or
 - (b) be detrimental to:
 - (i) the survival of a taxon to which the plan relates; or
 - (ii) the conservation status of a taxon to which the plan relates.

303FQ Consultation with State and Territory agencies

Before making a declaration under section 303FO or 303FP, the Minister must consult a relevant agency of each State and self-governing Territory affected by the declaration.

303FR Public consultation

- (1) Before making a declaration under section 303FN, 303FO or 303FP, the Minister must cause to be published on the internet a notice:
 - (a) setting out the proposal to make the declaration; and
 - (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
 - (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.
- (2) A period specified in a notice under subsection (1) must not be shorter than 20 business days after the date on which the notice was published on the internet.
- (3) In making a decision about whether to make a declaration under section 303FN, 303FO or 303FP, the Minister must consider any comments about the proposal to make the declaration that were given in response to an invitation under subsection (1).

303FRA Assessments

- (1) The regulations may prescribe an assessment process that is to be used for the purposes of sections 303FN, 303FO and 303FP to assess the potential impacts on the environment of:
 - (a) a wildlife trade operation; or
 - (b) the activities covered by a plan;where the operation is, or the activities are, likely to have a significant impact on the environment.
- (2) If regulations made for the purposes of subsection (1) apply to a wildlife trade operation or to a plan, the Minister must not declare:
 - (a) the operation under subsection 303FN(2); or
 - (b) the plan under subsection 303FO(2) or 303FP(2);

Section 303FS

unless the assessment process prescribed by those regulations has been followed in relation to the assessment of the operation or plan, as the case may be.

- (3) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision for:
- (a) the application of Part 8 (except sections 82, 83, 84 and 87A) and the other provisions of this Act (so far as they relate to that Part) in relation to the assessment process, subject to such modifications as are specified in the regulations; and
 - (b) exemptions from the assessment process.
- (4) In this section:

wildlife trade operation has the same meaning as in subsection 303FN(10), but does not include an operation mentioned in paragraph 303FN(10)(d).

303FS Register of declarations

- (1) The Minister must cause to be maintained a register that sets out declarations made under section 303FN, 303FO or 303FP.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the internet.

303FT Additional provisions relating to declarations

- (1) This section applies to a declaration under section 303FN, 303FO or 303FP.
- (2) A declaration may be made:
 - (a) on the Minister's own initiative; or
 - (b) on written application being made to the Minister.
- (3) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only to the extent that the plan or operation relates to a particular class of specimens. In such a case:

Section 303FT

- (a) the instrument of declaration is to specify that class of specimens; and
 - (b) the plan or operation is covered by the declaration only to the extent that the plan or operation relates to that class of specimens.
- (4) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only:
 - (a) during a particular period; or
 - (b) while certain circumstances exist; or
 - (c) while a certain condition is complied with.In such a case, the instrument of declaration is to specify the period, circumstances or condition.
- (5) If a declaration specifies a particular period as mentioned in subsection (4), the declaration ceases to be in force at the end of that period.
- (6) If a declaration specifies circumstances as mentioned in subsection (4), the Minister must, by instrument published in the *Gazette*, revoke the declaration if he or she is satisfied that those circumstances have ceased to exist.
- (7) The Minister may, by instrument published in the *Gazette*, vary a declaration by:
 - (a) specifying one or more conditions (or further conditions) to which the declaration is subject; or
 - (b) revoking or varying a condition:
 - (i) specified in the instrument of declaration; or
 - (ii) specified under paragraph (a).
- (8) A condition may relate to reporting or monitoring.
- (9) The Minister must, by instrument published in the *Gazette*, revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened.

Section 303FU

- (10) The Minister may, by instrument published in the *Gazette*, revoke a declaration at any time.
- (11) A copy of an instrument under section 303FN, 303FO or 303FP or this section is to be made available for inspection on the internet.

303FU Approved commercial import program

The import of a specimen is an import from an approved commercial import program in accordance with this section if the specimen is sourced from a program that, under the regulations, is taken to be an approved commercial import program.

Division 6—Miscellaneous

303GA Permit decision—controlled action, and action for which a non-Part 13A permit is required

- (1) This section applies if:
- (a) an application is made under section 303CE, 303DE or 303EL for a permit (the *first permit*) to authorise the taking of an action (the *proposed action*); and
 - (b) the Minister considers that:
 - (i) the proposed action may be or is a controlled action; or
 - (ii) the proposed action is related to an action (the *related action*) that may be or is a controlled action; or
 - (iii) the proposed action is an action for which a non-Part 13A permit is required; or
 - (iv) the proposed action is related to an action (the *related action*) that is an action for which a non-Part 13A permit is required.

Deferral of decision

- (2) The Minister must neither issue, nor refuse to issue, the first permit before whichever is the latest of the following days:
- (a) if subparagraph (1)(b)(i) applies—the day on which the Minister makes a decision under section 75 about whether the proposed action is a controlled action;
 - (b) if subparagraph (1)(b)(i) applies and the Minister makes a decision under section 75 that the proposed action is a controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;
 - (c) if subparagraph (1)(b)(ii) applies—the day on which the Minister makes a decision under section 75 about whether the related action is a controlled action;
 - (d) if subparagraph (1)(b)(ii) applies and the Minister makes a decision under section 75 that the related action is a

Section 303GA

controlled action—the day on which the Minister makes a decision under section 133 approving, or refusing to approve, the taking of the controlled action;

- (e) if subparagraph (1)(b)(iii) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph;
- (f) if subparagraph (1)(b)(iv) applies—the day on which a decision is made to issue, or to refuse to issue, the non-Part 13A permit referred to in that subparagraph.

Refusal of permit

- (3) The Minister must not issue the first permit if:
 - (a) subparagraph (1)(b)(i) applies; and
 - (b) the Minister makes a decision under section 75 that the proposed action is a controlled action; and
 - (c) the Minister makes a decision under section 133 refusing to approve the taking of the controlled action.
- (4) The Minister must not issue the first permit if:
 - (a) subparagraph (1)(b)(ii) applies; and
 - (b) the Minister makes a decision under section 75 that the related action is a controlled action; and
 - (c) the Minister makes a decision under section 133 refusing to approve the taking of the controlled action.
- (5) The Minister must not issue the first permit if:
 - (a) subparagraph (1)(b)(iii) applies; and
 - (b) a decision is made to refuse to issue the non-Part 13A permit referred to in that subparagraph.
- (6) The Minister must not issue the first permit if:
 - (a) subparagraph (1)(b)(iv) applies; and
 - (b) a decision is made to refuse to issue the non-Part 13A permit referred to in that subparagraph.

Section 303GB

Action for which a non-Part 13A permit is required

- (7) For the purposes of this section, an action that a person proposes to take is ***an action for which a non-Part 13A permit is required*** if the taking of the action by the person without a non-Part 13A permit would be prohibited by this Act or the regulations if it were assumed that this Part had not been enacted.
- (8) For the purposes of this section, a ***non-Part 13A permit*** is a permit issued under this Act (other than this Part) or the regulations.

Related action

- (9) For the purposes of this section, if a specimen was taken, the action of exporting or importing the specimen is related to:
 - (a) that taking; and
 - (b) any action that affected the specimen after that taking and before that export or import.
- (10) For the purposes of this section, if a specimen is derived from a specimen that was taken, the action of exporting or importing the first-mentioned specimen is related to:
 - (a) that taking; and
 - (b) any action that affected the first-mentioned specimen, or either of those specimens, after that taking and before that export or import.

303GB Exceptional circumstances permit

- (1) If:
 - (a) the Minister is considering an application by a person for a permit to be issued under section 303CG, 303DG or 303EN in relation to a specimen; and
 - (b) under this Part, the Minister is precluded from issuing that permit unless the Minister is satisfied in relation to a matter; and
 - (c) even though the Minister is not satisfied in relation to that matter, the Minister is satisfied that:

Section 303GB

- (i) the export or import of the specimen, as the case may be, would not be contrary to the objects of this Part; and
 - (ii) exceptional circumstances exist that justify the proposed export or import of the specimen; and
 - (iii) the export or import of the specimen, as the case may be, would not adversely affect biodiversity;
- the Minister may issue a permit to the person.
- (1A) The Minister must not issue a permit under this section unless the grant of that permit would not be contrary to CITES.
- (2) A permit under this section authorises the holder of the permit to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.
- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than:
 - (a) if the permit relates to a CITES specimen—6 months after that date; or
 - (b) if the permit relates to a specimen other than a CITES specimen—12 months after that date.

Duration of permit

- (3) A permit under this section:
 - (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection (2A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

Section 303GC

Further information

- (5) The Minister may, within 40 business days after an application is made as mentioned in subsection (1), request the applicant to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.
- (6) The Minister may refuse to consider the application until the applicant gives the Minister the information in accordance with the request.

Public consultation

- (7) Before issuing a permit under this section, the Minister must cause to be published on the internet a notice:
 - (a) setting out the proposal to issue the permit; and
 - (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
 - (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.
- (8) A period specified in a notice under subsection (7) must not be shorter than 5 business days after the date on which the notice was published on the internet.
- (9) In making a decision under subsection (1) about whether to issue a permit, the Minister must consider any comments about the proposal to issue the permit that were given in response to an invitation under subsection (7).

303GC Permit authorising the Secretary to export or import specimens

- (1) The Secretary may apply to the Minister for a permit to be issued under subsection (2).

Section 303GC

- (2) The Minister may, on application made by the Secretary under subsection (1), issue a permit to the Secretary. This subsection has effect subject to subsections (4) and (5).
- (3) A permit under subsection (2) authorises the Secretary to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.
- (3A) For the purpose of subsection (3), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 12 months after that date.
- (4) The Minister must not issue a permit under this section to export a specimen unless the Minister is satisfied that:
 - (a) both:
 - (i) the recipient of the specimen will be a relevant CITES authority of a country; and
 - (ii) the specimen will be used by that relevant CITES authority for the purpose of the identification of a specimen and/or for the purpose of education or training; or
 - (b) both:
 - (i) the specimen has been seized under this Act; and
 - (ii) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.
- (5) The Minister must not issue a permit under this section to import a specimen unless the Minister is satisfied that:
 - (a) the specimen will be used by the Secretary for the purposes of the identification of a specimen; or
 - (b) both:
 - (i) the sender of the specimen will be a relevant CITES authority of a country; and

Section 303GD

- (ii) the specimen will be used for the purpose of the identification of a specimen and/or for the purpose of education or training; or
 - (c) the specimen was exported from Australia in contravention of:
 - (i) this Part; or
 - (ii) the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*; or
 - (d) the specimen will be used to facilitate investigations in or outside Australia in relation to trade relating to wildlife.
- (6) A permit under this section:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection (3A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

303GD Testing permit—section 303EE assessments

Applications for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under subsection (5).
- (2) The application must be accompanied by the fee (if any) prescribed by the regulations.

Further information

- (3) The Minister may, within 40 business days after the application is made, request the person to give the Minister, within the period specified in the request, further information for the purpose of enabling the Minister to deal with the application.

Section 303GD

- (4) The Minister may refuse to consider the application until the person gives the Minister the information in accordance with the request.

Minister may issue permits

- (5) The Minister may, on application made by a person under subsection (1), issue a permit to the person. This subsection has effect subject to subsections (7) and (8).
- (6) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303EK.
- (6A) For the purpose of subsection (6), the ***permitted period*** is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.
- (7) The Minister must not issue a permit to a person unless the Minister is satisfied that:
- (a) the person has made an application to the Minister under section 303EE for the list referred to in section 303EB to be amended by including an item; and
 - (b) if the proposed amendment were made, the specimen would be covered by the item; and
 - (c) the specimen is not a CITES specimen; and
 - (d) if an assessment is to be made under subsection 303EE(3) of the potential impacts on the environment of the proposed amendment—the terms of reference for a report on the assessment have been:
 - (i) prepared as mentioned in paragraph 303EF(1)(a); or
 - (ii) finalised as mentioned in subparagraph 303EF(1)(b)(iii); and
 - (e) the person proposes to conduct tests on the specimen in Australia in order to obtain information for the assessment; and

Section 303GE

- (f) the information is required for the assessment; and
 - (g) it is not reasonably practicable for the person to obtain the information without conducting the tests in Australia; and
 - (h) the tests will be conducted in a controlled environment.
- (8) The Minister must not issue a permit under this section unless the permit is subject to one or more conditions about holding the specimen in quarantine.

Duration of permit

- (9) A permit under this section:
- (a) comes into force on the date on which it is issued; and
 - (b) unless it is sooner cancelled, remains in force until all of the following periods have ended:
 - (i) the permitted period (within the meaning of subsection (6A));
 - (ii) each period for which one or more conditions of the permit are expressed to apply.

Investigations

- (10) A reference in this section to **tests on the specimen** includes a reference to investigations relating to the specimen.

303GE Conditions of permits

- (1) This section applies to a permit issued under this Part.
- (2) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (3).
- (3) The Minister may, in accordance with the regulations:
 - (a) vary or revoke a condition of a permit; or
 - (b) impose further conditions of a permit.
- (4) The Minister's powers under subsection (3) may be exercised:
 - (a) on the Minister's own initiative; or

Section 303GF

- (b) on the application of the holder of the permit concerned.
 - (5) If a permit authorises its holder to take a particular action, a condition of the permit may require the holder to do, or not do, an act or thing before, at or after the time when the action takes place.
 - (5A) Without limiting subsection (5), a condition of a permit may be expressed to apply for a period that will not end until after the export or import of a specimen under the permit has occurred, including for example:
 - (a) a period the length of which is known when the condition is imposed (such as a period that is expressed as a specified number of years); or
 - (b) a period the length of which is unknown when the condition is imposed (such as a period that is expressed as the life of the specimen, or the life of progeny of the specimen).
- Note: Conditions may, for example, relate to how a specimen, and its progeny, are kept or dealt with during their lifetimes.
- (6) If a person is given an authority under section 303GG by the holder of a permit, subsections (5) and (5A) apply to the person in a corresponding way to the way in which they apply to the holder of the permit.
 - (7) Subsections (4), (5), (5A) and (6) are to be disregarded in determining the meaning of a provision of this Act (other than a provision of this Part) that relates to conditions of permits issued otherwise than under this Part.

303GF Contravening conditions of a permit

- (1) This section applies to a permit issued under this Part.
- (2) A person commits an offence if:
 - (a) the person is:
 - (i) the holder of a permit; or
 - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and

Section 303GF

- (b) the person engages in conduct; and
- (c) the conduct results in a contravention of a condition of the permit.

Penalty: 300 penalty units.

- (3) The holder of a permit commits an offence if:
 - (a) the person is:
 - (i) the holder of a permit; or
 - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in a contravention of a condition of the permit; and
 - (d) the condition relates to:
 - (i) the sale or other disposal of a live animal or a live plant; or
 - (ii) the sale or other disposal of the progeny of a live animal or a live plant; or
 - (iii) the release from captivity of a live animal; or
 - (iv) the release from captivity of the progeny of a live animal; or
 - (v) the escape of a live plant.

Penalty: 600 penalty units.

- (4) For the purposes of subsection (3), a person is taken to have released an animal from captivity if:
 - (a) that animal has escaped from captivity; and
 - (b) either:
 - (i) the person allowed the animal to escape; or
 - (ii) the person failed to take all reasonable measures to prevent the animal from escaping.
- (4A) For the purposes of subsection (3), a person is taken to have allowed a plant to escape if:
 - (a) the plant has grown or propagated in the wild; and

Section 303GG

- (b) either:
 - (i) the person allowed the plant to escape; or
 - (ii) the person failed to take all reasonable measures to prevent the plant from growing or propagating in the wild.
- (5) In subsections (2) and (3), strict liability applies to the circumstance that the person was given an authority under section 303GG.

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

303GG Authorities under permits

- (1) This section applies to a permit issued under this Part.
- (2) 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.
- (3) Subject to subsection (4), the holder of a permit may give 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.
- (4) 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.
- (5) 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.
- (6) The giving of an authority does not prevent the taking of any action by the holder of the permit.

Section 303GH

- (7) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

303GH Transfer of permits

- (1) This section applies to a permit issued under this Part.
- (2) On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.
- (3) In deciding whether to transfer the permit to another person, the Minister must consider whether the transferee is a suitable person to hold the permit, having regard to the matters set out in the regulations.

303GI Suspension or cancellation of permits

- (1) This section applies to a permit issued under this Part.
- (2) The Minister may, in accordance with the regulations:
- (a) suspend a permit for a specified period; or
 - (b) cancel a permit.

303GJ Review of decisions

- (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; or
 - (f) to issue or refuse a certificate under subsection 303CC(5); or
 - (g) of the Secretary under a determination in force under section 303EU; or
 - (h) to make or refuse a declaration under section 303FN, 303FO or 303FP; or

Section 303GK

- (i) to vary or revoke a declaration under section 303FN, 303FO or 303FP.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
- (3) In this section:

permit means a permit under this Part.

303GK Permit to be produced

Export permit

- (1) For the purposes of this Part, if the holder of a permit to export a specimen exports that specimen, he or she is not to be taken to have exported that specimen in accordance with that permit unless, before exporting the specimen, he or she:
 - (a) produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
 - (b) received written notice from the Secretary authorising the export of the specimen without the production of the permit.
- (2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
 - (a) is satisfied that the production of the permit is impracticable; and
 - (b) endorses a copy of the permit to show that the notice is being given; and
 - (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

Import permit

- (3) For the purposes of this Part, if the holder of a permit to import a specimen imports that specimen, he or she is not to be taken to have imported that specimen in accordance with that permit unless,

Section 303GL

before or within a reasonable time after importing the specimen, he or she produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the import of the specimen.

Authorities under section 303GG

- (4) If a person is given an authority under section 303GG by the holder of a permit, this section applies to the person in a corresponding way to the way in which it applies to the holder of the permit.

Electronic communication

- (5) Nothing in this section prevents the holder of a permit producing a permit, or causing a permit to be produced, by means of an electronic communication.

303GL Pre-CITES certificate to be produced

Export certificate

- (1) If a person exports a specimen and wishes to rely on a certificate issued under subsection 303CC(5), he or she is not entitled to rely on that certificate unless, before exporting the specimen, he or she:
- (a) produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
 - (b) received written notice from the Secretary authorising the export of the specimen without the production of the certificate.
- (2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
- (a) is satisfied that the production of the certificate is impracticable; and
 - (b) endorses a copy of the certificate to show that the notice is being given; and

Section 303GM

- (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

Import certificate

- (3) If a person imports a specimen and wishes to rely on a certificate referred to in paragraph 303CD(6)(b), he or she is not entitled to rely on the certificate unless, before or within a reasonable time after importing the specimen, he or she produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the import of the specimen.

Electronic communication

- (4) Nothing in this section prevents a person producing a certificate, or causing a certificate to be produced, by means of an electronic communication.

303GM Fees

- (1) This section applies to a permit under this Part.
- (2) Such fees (if any) as are prescribed are payable in respect of the following:
 - (a) the issue 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.

303GN Possession of illegally imported specimens

Object

- (1) The object of this section is:
 - (a) to comply with Australia's obligations under:
 - (i) the Biodiversity Convention; and
 - (ii) CITES; and

Section 303GN

(b) to otherwise further the objects of this Part;
by prohibiting the possession of illegally imported specimens and
the progeny of such specimens.

Note: See Article 8 of the Biodiversity Convention.

*Possession of CITES specimens and unlisted regulated live
specimens*

- (2) A person commits an offence if:
- (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
 - (b) the specimen is:
 - (i) a CITES specimen; or
 - (ii) a regulated live specimen that is not included in the list referred to in section 303EB;and the person is reckless as to that fact; and
 - (c) the specimen does not belong to a native species.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

- (3) Subsection (2) does not apply if:
- (a) the specimen was lawfully imported; or
 - (b) the specimen was not imported, but all of the specimens of which it is the progeny were lawfully imported.

Note 1: For *lawfully imported*, see section 303GY.

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

- (4) Subsection (2) does not apply if the specimen was neither imported, nor the progeny of any other specimen that was imported.

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

- (5) Subsection (2) does not apply if the defendant has a reasonable excuse.

Section 303GO

Note: The defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Possession of listed regulated live specimens

- (6) A person commits an offence if:
- (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
 - (b) the specimen is a regulated live specimen that is included in Part 2 of the list referred to in section 303EB, and the person is reckless as to that fact; and
 - (c) the specimen does not belong to a native species; and
 - (d) either:
 - (i) the specimen was unlawfully imported; or
 - (ii) the specimen was not imported, but any of the specimens of which it is the progeny was unlawfully imported.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

- (7) Subsection (6) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Unlawfully imported

- (8) For the purposes of this section, a specimen is ***unlawfully imported*** if, and only if, it was imported, but was not lawfully imported (section 303GY).

303GO Regulations relating to welfare

- (1) This section applies to regulations made for the purposes of paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).
- (2) The conditions specified in those regulations in relation to a live animal may:

Section 303GP

- (a) deal with the welfare of the animal:
 - (i) when the animal is taken; or
 - (ii) when the animal is being held after it has been taken; or
 - (iii) when the animal is being prepared or shipped; or
 - (iv) when the animal is under the control of the proposed recipient; and
 - (b) may deal with eliminating or minimising the risk of:
 - (i) injury to the animal; or
 - (ii) adverse effects on the health of the animal; or
 - (iii) cruel treatment of the animal.
- (3) The conditions specified in those regulations in relation to a live plant may:
- (a) deal with the welfare of the plant:
 - (i) when the plant is taken; or
 - (ii) when the plant is being held after it has been taken; or
 - (iii) when the plant is being prepared or shipped; or
 - (iv) when the plant is under the control of the proposed recipient; and
 - (b) may deal with eliminating or minimising the risk of:
 - (i) injury to the plant; or
 - (ii) adverse effects on the health of the plant.
- (4) Subsections (2) and (3) do not limit paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).

303GP Cruelty—export or import of animals

- (1) A person commits an offence if:
- (a) the person exports or imports a live animal in a manner that subjects the animal to cruel treatment; and
 - (b) the person knows that, or is reckless as to whether, the export or import subjects the animal to cruel treatment; and
 - (c) the animal is a CITES specimen; and
 - (d) the person contravenes section 303CC or 303CD in relation to the export or import of the animal.

Section 303GQ

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person exports a live animal in a manner that subjects the animal to cruel treatment; and
 - (b) the person knows that, or is reckless as to whether, the export subjects the animal to cruel treatment; and
 - (c) the animal is a regulated native specimen; and
 - (d) the person contravenes section 303DD in relation to the export of the animal.

Penalty: Imprisonment for 2 years.

- (3) A person commits an offence if:
- (a) the person imports a live animal in a manner that subjects the animal to cruel treatment; and
 - (b) the person knows that, or is reckless as to whether, the import subjects the animal to cruel treatment; and
 - (c) the animal is a regulated live specimen; and
 - (d) the person contravenes section 303EK in relation to the import of the animal.

Penalty: Imprisonment for 2 years.

- (4) This section does not limit section 303GE.

303GQ Imports of specimens contrary to the laws of a foreign country

- (1) A person must not intentionally import a specimen if the person knows that:
- (a) the specimen was exported from a foreign country; and
 - (b) at the time the specimen was exported, the export of the specimen was prohibited by a law of the foreign country that corresponds to this Part.

Penalty: Imprisonment for 5 years.

Section 303GR

- (2) A prosecution must not be instituted for an offence against this section unless a relevant CITES authority of the foreign country has requested:
- (a) the investigation of the offence; or
 - (b) assistance in relation to a class of offences in which the offence is included.

303GR Evidence

- (1) In any proceedings for an offence against this Part:
- (a) any record kept in accordance with the regulations or another law of the Commonwealth or a law of a State or Territory is admissible as prima facie evidence of the facts stated in the record; and
 - (b) a copy of an entry in such a record, being a copy certified by the person by whom the record is kept to be a true copy of the entry, is admissible as prima facie evidence of the facts stated in the entry; and
 - (c) a document purporting to be a record kept in accordance with the regulations or another law of the Commonwealth, or a law of a State or Territory, or purporting to be such a certified copy as is referred to in paragraph (b), is taken, unless the contrary is established, to be such a record or certified copy, as the case may be.
- (2) If, in any proceedings for an offence against this Part, a record referred to in paragraph (1)(a) is tendered as prima facie evidence of a fact stated in the record, the person alleged to have committed the offence may require the person who kept that record to be called as a witness for the prosecution in the proceedings.

303GS Evidence of examiner

- (1) The Minister may, by writing, appoint appropriately qualified persons to be examiners for the purposes of this Part.

Section 303GS

- (2) Subject to subsection (4), a certificate signed by an examiner appointed under subsection (1) setting out, in relation to a substance, matter, specimen or thing, one or more of the following:
- (a) that he or she is appointed as the examiner under subsection (1);
 - (b) when and from whom the substance, matter, specimen or thing was received;
 - (c) what labels or other means of identification accompanied the substance, matter, specimen or thing when it was received;
 - (d) what container held the substance, matter, specimen or thing when it was received;
 - (e) a description, including the weight, of the substance, matter, specimen or thing when it was received;
 - (f) the name of any method used to analyse the substance, matter, specimen or thing or any portion of it;
 - (g) the results of any such analysis;
 - (h) how the substance, matter, specimen or thing was dealt with after handling by the examiner, including details of:
 - (i) the quantity of the substance, matter, specimen or thing retained after analysis; and
 - (ii) names of any persons to whom any of the substance, matter, specimen or thing was given after analysis; and
 - (iii) measures taken to secure any retained quantity of the substance, matter, specimen or thing after analysis;
- is admissible in any proceeding for an offence against this Part as prima facie evidence of the matters in the certificate and the correctness of the results of the analysis.
- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate unless the contrary is established.
- (4) A certificate is not to be admitted in evidence in accordance with subsection (2) in proceedings for an offence against this Part unless:
- (a) the person charged with the offence; or

Section 303GT

- (b) a solicitor who has appeared for the person in those proceedings;
has, at least 14 days before the certificate is sought to be admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.
- (5) Subject to subsection (6), if, under subsection (2), a certificate is admitted in evidence in proceedings for an offence against this Part, the person charged with the offence may require the person giving the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.
- (6) Subsection (5) does not entitle the person charged to require the person giving a certificate to be called as a witness for the prosecution unless:
 - (a) the prosecutor has been given at least 4 days notice of the person's intention to require the examiner to be so called; or
 - (b) the court, by order, allows the person charged to require the person giving the certificate to be so called.
- (7) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under subsection (2) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

303GT Protection of witness

- (1) A witness for the prosecution in any proceedings for an offence against this Part is not to be compelled to disclose:
 - (a) the fact that the witness received any information; or
 - (b) the nature of any information received by the witness; or
 - (c) the name of the person who gave the witness any information.

Section 303GU

- (2) An authorised officer who is a witness in any proceedings for an offence against this Part is not to be compelled to produce any report:
 - (a) that was made or received by the authorised officer in confidence in his or her capacity as an authorised officer; or
 - (b) that contains information received by the authorised officer in confidence.
- (3) Subsections (1) and (2) are to be disregarded in determining the compellability of witnesses in proceedings for an offence against a provision of this Act other than this Part.

303GU Forms and declarations—persons arriving in Australia or an external Territory

The regulations may provide for forms to be completed, or declarations to be made, in relation to specimens by persons arriving in Australia or an external Territory.

303GV Saving of other laws

- (1) This Part is in addition to the following laws:
 - (a) the *Customs Act 1901*;
 - (b) the *Biosecurity Act 2015*;
 - (c) any other law of the Commonwealth or of an external Territory, whether passed or made before or after the commencement of this Part.
- (2) The holder of a permit under this Part authorising the export or import of a specimen is not, by reason only of being the holder of the permit, exempt from compliance with any law referred to in paragraph (1)(a), (b) or (c) that applies in relation to that specimen.
- (3) Without limiting subsection (1), this Part, and regulations made for the purposes of this Part, do not authorise or permit the doing of any act in contravention of the *Biosecurity Act 2015* or of a law of an external Territory relating to quarantine.

303GW Part not to apply to certain specimens

Transshipment

- (1) For the purposes of this Part, if a specimen is brought into Australia from a country:
 - (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;that specimen:
 - (c) is taken not to have been imported into Australia; and
 - (d) when it leaves Australia, is taken not to be exported from Australia.
- (2) For the purposes of this Part, if a specimen is brought into an external Territory:
 - (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;that specimen:
 - (c) is taken not to have been imported into that Territory; and
 - (d) when it leaves that Territory, is taken not to be exported from that Territory.
- (3) For the purposes of subsection (1), a specimen is to be taken to be brought into Australia for the purpose of transshipment to another country if, and only if:
 - (a) the specimen is brought into Australia in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving Australia will be due solely to the arrangements for its transport; and
 - (c) it will be under customs control under the *Customs Act 1901* all the time that it is in Australia.
- (4) For the purposes of subsection (2), a specimen is taken to be brought into an external Territory for the purpose of transshipment to another country if, and only if:

Section 303GW

- (a) the specimen is brought into that Territory in the course of being transported to an identified person in the other country; and
- (b) any delay in its leaving that Territory will be due solely to the arrangements for its transport; and
- (c) it will be under the control of an authorised officer all the time that it is in that Territory.

Emergency

- (5) For the purposes of this Part, if:
 - (a) the Minister, the Director of Biosecurity, a prescribed person or a prescribed organisation is satisfied that, in order to meet an emergency involving danger to the life or health of a human or an animal, it is necessary or desirable that a specimen that could be used in treating that person or animal should be sent out of, or brought into, Australia or an external Territory; and
 - (b) that specimen is sent out of, or brought into, Australia or that Territory, as the case requires, to meet that emergency;that specimen is taken not to have been exported or imported, as the case may be.

Quarantine

- (6) Subject to subsections (1), (2) and (5), if, in accordance with the *Biosecurity Act 2015* or a law of an external Territory relating to quarantine, a person exercising powers under that Act or law imports a specimen that is subject to biosecurity control under the *Biosecurity Act 2015* or subject to quarantine, then, for the purposes of this Part, that specimen is taken to have been imported by:
 - (a) if a person holds a permit to import that specimen—the holder of that permit; or
 - (b) in any other case—a person whose identity is not known;but this subsection does not affect the commission of any offence committed before the importation of that specimen.

Definitions

(7) In this section:

aircraft's stores and *ship's stores* have the same meanings respectively as they have in Part VII of the *Customs Act 1901*.

303GX Part not to apply to certain specimens used by traditional inhabitants

(1) In this section:

area in the vicinity of the Protected Zone means an area in respect of which a notice is in force under subsection (2).

Australian place means a place in Australia that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

Papua New Guinea place means a place in Papua New Guinea that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

prescribed specimen means a specimen of a kind specified in a notice in force under subsection (3).

Protected Zone means the zone established under Article 10 of the Torres Strait Treaty, being the area bounded by the line described in Annex 9 to that treaty.

Torres Strait Treaty means the Treaty between Australia and the Independent State of Papua New Guinea that was signed at Sydney on 18 December 1978.

traditional activities has the same meaning as in the Torres Strait Treaty.

traditional inhabitants has the same meaning as in the *Torres Strait Fisheries Act 1984*.

Section 303GX

- (2) The Minister may, by notifiable instrument, declare an area adjacent to the Protected Zone to be an area in the vicinity of the Protected Zone for the purposes of this section.
- (3) The Minister may, by notifiable instrument, declare that a specimen of a kind specified in the notice is a prescribed specimen for the purposes of this section.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunseting under that Act.

- (4) For the purposes of this Part, if a prescribed specimen that is owned by, or is under the control of, a traditional inhabitant and that has been used, is being used or is intended to be used by him or her in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone, is:
 - (a) brought to an Australian place from a Papua New Guinea place; or
 - (b) taken from an Australian place to a Papua New Guinea place;then, subject to subsection (5), that specimen:
 - (c) in the case where the specimen is brought into Australia as mentioned in paragraph (a)—is taken not to have been imported into Australia; and
 - (d) in the case where the specimen is taken from Australia as mentioned in paragraph (b)—is taken not to have been exported from Australia.
- (5) If:
 - (a) a prescribed specimen that has been brought into Australia is, under subsection (4), taken not to have been imported into Australia; and
 - (b) that prescribed specimen is brought to a place in Australia that is not in the Protected Zone or in an area in the vicinity of the Protected Zone;the prescribed specimen is taken to have been imported into Australia upon being brought to the place referred to in paragraph (b).

303GY When a specimen is *lawfully imported*

For the purposes of this Part, a specimen is *lawfully imported* if, and only if, it was imported and:

- (a) in a case where the specimen was imported after the commencement of this Part—it was not imported in contravention of this Part; or
- (b) in a case where the specimen was imported when the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* was in force—it was not imported in contravention of that Act; or
- (c) in a case where the specimen was imported before the commencement of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*—it was not imported in contravention of:
 - (i) the Customs (Endangered Species) Regulations; or
 - (ii) the Customs (Prohibited Imports) Regulations.

Part 14—Conservation agreements

304 Object of this Part

- (1) The object of this Part is to provide for:
 - (a) conservation agreements between the Commonwealth and persons related to the protection and conservation of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of declared World Heritage properties;
 - (iii) the National Heritage values of National Heritage places;
 - (iv) the Commonwealth Heritage values of Commonwealth Heritage places;
 - (v) the ecological character of a declared Ramsar wetland;
 - (vi) the environment, in respect of the impact of a radiological exposure action;
 - (vii) the environment in a Commonwealth marine area;
 - (viii) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development;
 - (viii) the environment on Commonwealth land; and
 - (b) the effect of conservation agreements; and
 - (c) the publication of conservation agreements.
- (2) Conservation agreements are agreements whose primary object is to enhance the conservation of matters referred to in paragraph (1)(a). They may relate to private or public land, or to marine areas.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

305 Minister or Restoration Contributions Holder may enter into conservation agreements

- (1) The Minister or the Restoration Contributions Holder may, on behalf of the Commonwealth, enter into an agreement (a ***conservation agreement***) with a person for the protection and conservation, or restoration of all or any of the following:
- (a) biodiversity in the Australian jurisdiction;
 - (b) the world heritage values of a declared World Heritage property in the Australian jurisdiction;
 - (c) the National Heritage values of a National Heritage place;
 - (d) the Commonwealth Heritage values of a Commonwealth Heritage place (whether inside or outside the Australian jurisdiction);
 - (e) the ecological character of a declared Ramsar wetland in the Australian jurisdiction;
 - (f) the environment, in respect of the impact of a radiological exposure action in the Australian jurisdiction;
 - (g) the environment in a Commonwealth marine area in the Australian jurisdiction;
 - (ga) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development in the Australian jurisdiction;
 - (h) the environment on Commonwealth land in the Australian jurisdiction.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

- (1A) The protection and conservation, or restoration of the matters in subsection (1) include all or any of the following:
- (a) the protection, conservation and management of any listed species or ecological communities, or their habitats;
 - (b) the management of things in a way necessary for the protection and conservation, or restoration of:
 - (i) the world heritage values of a declared World Heritage property; or

Section 305

- (ii) the National Heritage values of a National Heritage place; or
- (iii) the Commonwealth Heritage values of a Commonwealth Heritage place; or
- (iv) the ecological character of a declared Ramsar wetland; or
- (v) the environment, in respect of the impact of a radiological exposure action; or
- (vi) the environment in a Commonwealth marine area; or
- (via) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; or
- (vii) the environment on Commonwealth land;
- (c) the abatement of processes, and the mitigation or avoidance of actions, that might adversely affect:
 - (i) biodiversity; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (v) the ecological character of a declared Ramsar wetland; or
 - (vi) the environment, in respect of the impact of a radiological exposure action; or
 - (vii) the environment in a Commonwealth marine area; or
 - (viii) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; or
 - (viii) the environment on Commonwealth land.

Note: When the Minister or the Restoration Contributions Holder is considering entering into a conservation agreement, the Minister or the Restoration Contributions Holder must take into account any responsibilities of other Commonwealth Ministers that may be affected by the agreement.

- (2) However, the Minister or the Restoration Contributions Holder must not enter into a conservation agreement unless satisfied that:
- (a) in the case of a proposed agreement wholly or partly for the protection and conservation, or restoration of biodiversity—the agreement:
 - (i) will result in a net benefit to the conservation of biodiversity; and
 - (ii) is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan; and
 - (b) in the case of a proposed agreement wholly or partly for the protection and conservation, or restoration of heritage values—the agreement:
 - (i) will result in a net benefit to the conservation of those heritage values; and
 - (ii) is not inconsistent with at least one of the Australian World Heritage management principles, the National Heritage management principles and the Commonwealth Heritage management principles; and
 - (c) in the case of a proposed agreement wholly or partly for the protection and conservation, or restoration of the ecological character of a declared Ramsar wetland—the agreement:
 - (i) will result in a net benefit to the conservation of that ecological character; and
 - (ii) is not inconsistent with the Australian Ramsar management principles; and
 - (d) in the case of a proposed agreement wholly or partly for the protection and conservation, or restoration of the environment, in respect of the impact of radiological exposure actions—the agreement does not relate to the construction or operation of any of the following nuclear installations:
 - (i) a nuclear fuel fabrication plant;
 - (ii) a nuclear power plant;
 - (iii) an enrichment plant;
 - (iv) a reprocessing facility; and

Section 305

- (e) in the case of a proposed agreement wholly or partly for the protection and conservation, or restoration of the environment in a Commonwealth marine area—the agreement will result in a net benefit to the conservation of the environment in that area; and
 - (ea) in the case of a proposed agreement wholly or partly for the protection and conservation, or restoration of a water resource, in respect of the impacts of actions involving unconventional gas development or large coal mining development—the agreement will result in a net benefit to the conservation of the water resource; and
 - (f) in the case of a proposed agreement wholly or partly for the protection and conservation, or restoration of the environment on Commonwealth land—the agreement will result in a net benefit to the conservation of the environment on that land.
- (2A) Subparagraph (2)(d)(ii) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.
- (3) For the purposes of subsection (2), in deciding whether a proposed agreement will result in a net benefit to the conservation as mentioned in paragraph (2)(a), (b), (c), (e) or (f), the Minister or the Restoration Contributions Holder must have regard to the matters (if any) prescribed by the regulations.
- (3A) If:
- (a) the Minister or the Restoration Contributions Holder is considering whether to enter into a proposed conservation agreement that is wholly or partly for the protection and conservation, or restoration of biodiversity; and
 - (b) the agreement would or could affect a particular listed threatened species or listed threatened ecological community;
- the Minister or the Restoration Contributions Holder must, in deciding whether to enter into the agreement, have regard to any approved conservation advice for the species or community.

Section 306

- (4) A conservation agreement must not cover all or part of a Commonwealth reserve.
- (5) Under subsection (1), the Minister or the Restoration Contributions Holder may enter into a conservation agreement covering land with one of the following persons who has a usage right relating to the land:
 - (a) an indigenous person;
 - (b) a body corporate wholly owned by indigenous persons;
 - (c) a body corporate established by or under an Act for the purposes of holding for the benefit of indigenous persons land vested in it by or under that Act;
 - (d) the trustee of a trust that holds land for the benefit of indigenous persons.

This does not limit subsection (1).

- (6) The Minister or the Restoration Contributions Holder must take account of the following when entering into a conservation agreement that is wholly or partly for the protection and conservation, or restoration of biodiversity as described in subsection (5):
 - (a) paragraph (j) of Article 8 of the Biodiversity Convention;
 - (b) paragraph (c) of Article 10 of the Biodiversity Convention;
 - (c) paragraph 4 of Article 18 of the Biodiversity Convention;
 - (d) objective 1.8.2 of the National Strategy for the Conservation of Australia's Biological Diversity, published by the Commonwealth in 1996.

306 Content of conservation agreements

- (1) Without limiting section 305, a conservation agreement may provide, for example, for all or any of the following:
 - (a) activities that promote the protection and conservation, or restoration of all or any of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of a declared World Heritage property;

Section 306

- (iii) the National Heritage values of a National Heritage place;
- (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
- (v) the ecological character of a declared Ramsar wetland;
- (vi) the environment, in respect of the impact of a radiological exposure action;
- (vii) the environment in a Commonwealth marine area;
- (viii) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development;
- (ix) the environment on Commonwealth land;
- (b) controlling or prohibiting, in any place covered by the agreement, actions or processes that might adversely affect:
 - (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (v) the ecological character of a declared Ramsar wetland; or
 - (vi) the environment, in respect of the impact of a radiological exposure action; or
 - (vii) the environment in a Commonwealth marine area; or
 - (viii) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; or
 - (ix) the environment on Commonwealth land;
- (c) requiring a person bound by the agreement not to obstruct access by a person authorised under the agreement to places covered by the agreement for the purpose of monitoring compliance with the agreement;

Section 306

- (d) requiring a person bound by the agreement to give such an authorised person information requested by the authorised person that is in the first-mentioned person's control and is relevant to compliance with the agreement;
 - (e) requiring the Commonwealth to provide financial, technical or other assistance to a person bound by the agreement;
 - (g) the commencement and duration of the agreement.
- (2) Without limiting section 305 or subsection (1) of this section, a conservation agreement entered into with the owner of a place may provide, for example, for all or any of the following:
- (a) requiring the owner to carry out specified activities, or to do specified things, that promote the conservation of all or any of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of a declared World Heritage property;
 - (iii) the National Heritage values of a National Heritage place;
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
 - (v) the ecological character of a declared Ramsar wetland;
 - (vi) the environment, in respect of the impact of a radiological exposure action;
 - (vii) the environment in a Commonwealth marine area;
 - (viii) the environment on Commonwealth land;
 - (b) restricting the use of the place, or requiring the owner to refrain from, control or refuse to permit, actions or processes that may adversely affect:
 - (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
 - (ii) the world heritage values of a declared World Heritage property; or

Section 306A

- (iii) the National Heritage values of a National Heritage place; or
- (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
- (v) the ecological character of a declared Ramsar wetland; or
- (vi) the environment, in respect of the impact of a radiological exposure action; or
- (vii) the environment in a Commonwealth marine area; or
- (viii) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; or
- (ix) the environment on Commonwealth land;
- (c) requiring the owner to permit access to the place by specified persons;
- (d) requiring the owner to contribute towards costs incurred in implementing the agreement;
- (e) specifying the manner in which any money paid to the owner under the agreement is to be applied by the owner;
- (f) requiring the owner to repay to the Commonwealth any money paid to the owner under the agreement if the owner commits a specified breach of the agreement or in other specified circumstances;
- (g) providing for any other matter relating to the conservation or enhancement of the place, including the preparation and implementation of a plan of management for the place.

306A Conservation agreement entered into by the Minister may include declaration that actions do not need approval under Part 9

- (1) A conservation agreement, other than an agreement entered into by the Restoration Contributions Holder, may include a declaration to the effect that actions in a specified class do not need approval under Part 9 for the purposes of a specified provision of Part 3. The

Section 307

declaration may specify conditions relating to the taking of actions in the class.

- (2) The Minister must not enter into a conservation agreement that contains a declaration under subsection (1) unless the Minister is satisfied that the actions to which the declaration relates are not likely to have a significant impact on the matter protected by the provision of Part 3 proposed to be specified in the declaration.

307 Conservation agreements to be legally binding

A conservation agreement is legally binding on:

- (a) the Commonwealth; and
- (b) the person or persons with whom the Minister or the Restoration Contributions Holder entered into the agreement on behalf of the Commonwealth; and
- (c) anyone else who is a successor to the whole or any part of any interest that a person mentioned in paragraph (b) had, when the agreement was entered into, in any place covered by the agreement.

307A Conservation agreements entered into by the Minister may deal with remediation or mitigation measures

When this section applies

- (1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened, or may have contravened, a provision of Part 3.

Conservation agreements may provide for measures to repair or mitigate damage

- (2) The Minister may enter into a conservation agreement with the person that provides for the protection and conservation, or restoration of a matter referred to in section 305 by providing for the taking of measures to repair or mitigate damage to the matter

Section 307A

protected by the provision of Part 3 (whether or not the damage may or will be, or has been, caused by the action).

- (3) The conservation agreement may state that specified provisions of the agreement, being provisions for the taking of measures as mentioned in subsection (2), are provisions that may be enforced in the Federal Court under this section. A provision of the agreement to which such a statement applies is a **remediation provision**.
- (4) If the conservation agreement contains a statement as mentioned in subsection (3), that statement must specify the provision of Part 3 referred to in subsection (1).

Federal Court may order compliance with remediation provision

- (5) If the Minister considers that the person has contravened a remediation provision, the Minister may apply to the Federal Court for an order under subsection (6).
- (6) If the Federal Court is satisfied that the person has contravened a remediation provision, the Court may make one or more of the following orders:
 - (a) an order directing the person to comply with the remediation provision;
 - (b) any other order that the Court considers appropriate.

Civil penalty for contravention of remediation provision

- (7) The person must not contravene a remediation provision.
- (8) Subsection (7) is a civil penalty provision. Under section 481, the Federal Court may order the person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the provision of Part 3 referred to in subsection (1).

This section does not limit sections 305, 306 and 307

- (9) This section does not limit anything in sections 305, 306 and 307.

308 Variation and termination of conservation agreements

- (1) A conservation agreement may be varied by a variation agreement entered into by the Minister or the Restoration Contributions Holder, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c).
- (2) Sections 305 and 306 apply in relation to variation agreements in the same way as they apply in relation to conservation agreements.
- (3) A conservation agreement may be terminated:
 - (a) by agreement between the Minister or the Restoration Contributions Holder, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c); or
 - (b) in such other manner, or in such circumstances (if any), as the agreement specifies.
- (4) If the Minister or the Restoration Contributions Holder is satisfied that a conservation agreement is not capable of achieving its purpose, the Minister or Restoration Contributions Holder may, by notifiable instrument, terminate the agreement or vary it in any way the Minister or Restoration Contributions Holder thinks necessary to ensure it becomes capable of achieving its purpose.
- (5) The Minister or the Restoration Contributions Holder may make a notifiable instrument under subsection (4) in relation to a conservation agreement without the agreement of the person or persons bound by the conservation agreement under paragraph 307(b) or (c).
- (7) If a conservation agreement is varied by a notifiable instrument, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) may, by written notice given to the Minister or the Restoration Contributions Holder, terminate the agreement.
- (8) If a conservation agreement is terminated or varied by a notifiable instrument, the person or persons bound by the conservation

Section 309

agreement under paragraph 307(b) or (c) are not entitled to any compensation in respect of the termination or variation.

- (9) For the purposes of this section:
- (a) a thing required or permitted to be done by the Minister in relation to a conservation agreement is required or permitted to be done by the Minister only in relation to a conservation agreement entered into by the Minister; and
 - (b) a thing required or permitted to be done by the Restoration Contributions Holder in relation to a conservation agreement is required or permitted to be done by the Restoration Contributions Holder only in relation to a conservation agreement entered into by the Restoration Contributions Holder.

Note: See Parts 17 and 18 for remedies for breach of conservation agreements.

309 Publication of conservation agreements

- (1) As soon as practicable after a conservation agreement has been entered into or varied, other than by a notifiable instrument made under subsection 308(4), the Minister or the Restoration Contributions Holder must publish the conservation agreement as entered into or varied, on the Department's website.
- (3) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister or the Restoration Contributions Holder is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would result in harm being done to:
 - (a) components of biodiversity; or
 - (b) the world heritage values of a declared World Heritage property; or
 - (c) the National Heritage values of a National Heritage place; or
 - (d) the Commonwealth Heritage values of a Commonwealth Heritage place.

Section 309

- (4) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister or the Restoration Contributions Holder is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would disclose matters that the Minister or the Restoration Contributions Holder is satisfied are commercial-in-confidence.
- (5) The Minister or the Restoration Contributions Holder must not be satisfied that matter is commercial-in-confidence unless a person demonstrates to the Minister or the Restoration Contributions Holder that:
 - (a) release of information under subsection (1) about the matter 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) For the purposes of this section:
 - (a) a thing required or permitted to be done by the Minister in relation to a conservation agreement is required or permitted to be done only in relation to a conservation agreement entered into by the Minister; and
 - (b) a thing required or permitted to be done by the Restoration Contributions Holder in relation to a conservation agreement is required or permitted to be done only in relation to a conservation agreement entered into by the Restoration Contributions Holder.

Section 310

310 List of conservation agreements

The Minister or the Restoration Contributions Holder must:

- (a) maintain an up-to-date list of conservation agreements that are in force; and
- (b) take reasonable steps to ensure that copies of the list are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

311 Commonwealth, State and Territory laws

- (1) A provision of a conservation agreement has no effect to the extent (if any) to which it is inconsistent with a law of the Commonwealth, or of a State or Territory.
- (2) For the purposes of subsection (1), a provision of a conservation agreement is not taken to be inconsistent with a law of the Commonwealth, or of a State or Territory, if both the provision and the law are capable of being complied with.

312 Minister or the Restoration Contributions Holder must not give preference

The Minister or the Restoration Contributions Holder must not, in exercising powers on behalf of the Commonwealth under this Part, give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

Part 15—Protected areas

Division 1—Managing World Heritage properties

Subdivision A—Simplified outline of this Division

313 Simplified outline of this Division

The following is a simplified outline of this Division:

The Commonwealth may submit a property for inclusion in the World Heritage List only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing properties on the World Heritage List that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other properties on the World Heritage List, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to World Heritage properties in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared World Heritage properties.

Note: Section 12 prohibits an action that has a significant impact on the world heritage values of a declared World Heritage property, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

Section 314

Subdivision B—Seeking agreement on World Heritage listing

314 Special provisions relating to World Heritage nominations

- (1) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:
 - (a) the proposed submission of the property (so far as it relates to the area); and
 - (b) management arrangements for the property (so far as they relate to the area).
- (2) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property in a State or self-governing Territory only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
 - (a) the proposed submission of the property; and
 - (b) management arrangements for the property.
- (3) A failure to comply with this section does not affect the submission of a property to the World Heritage Committee for inclusion in the World Heritage List or the status of a property as a declared World Heritage property.

Subdivision C—Notice of submission of property for listing

315 Minister must give notice of submission of property for listing etc.

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
 - (a) the Commonwealth submits a property to the World Heritage Committee for inclusion in the World Heritage List;

Section 316

- (b) the Commonwealth extends the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;
 - (c) the Commonwealth restricts the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;
 - (d) the Commonwealth withdraws the submission of a property for inclusion in the World Heritage List;
 - (e) a property submitted by the Commonwealth is included in the World Heritage List;
 - (f) all or part of a property is removed from the World Heritage List.
- (2) The notice must specify the area included in, or excluded or deleted from, the submission or World Heritage List as a result of the event.
- (3) A failure to comply with this section does not affect the status of an area as a declared World Heritage property.

Subdivision D—Plans for listed World Heritage properties in Commonwealth areas**316 Making plans***Minister must make plan*

- (1) The Minister must make a written plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the property:
- (a) is included in the World Heritage List; or
 - (b) becomes entirely within one or more Commonwealth areas.

Amending and replacing plan

- (2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

Section 317

Requirements for plan

- (3) A plan must not be inconsistent with:
- (a) Australia's obligations under the World Heritage Convention; or
 - (b) the Australian World Heritage management principles.

Note: Section 323 explains what Australian World Heritage management principles are.

Ensuring plans reflect current management principles

- (4) If the Australian World Heritage management principles change so that a plan (the **earlier plan**) is inconsistent with them, the Minister must make another plan:
- (a) amending the earlier plan so it is not inconsistent with them; or
 - (b) revoking and replacing the earlier plan.

Plan may be in same document as another plan

- (5) To avoid doubt, a plan under this section for a property may be in the same document as:
- (a) a plan under this section for another property; or
 - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

Commonwealth reserves

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the World Heritage Convention.

317 Notice of plans

The Minister must give notice of the making of a plan under section 316, in accordance with the regulations.

Section 318

318 Commonwealth compliance with plans

- (1) The Commonwealth or a Commonwealth agency must not:
 - (a) contravene a plan made under section 316; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 316 for a particular property described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the property are not inconsistent with the Australian World Heritage management principles.

319 Review of plans every 5 years

- (1) The Minister must cause a review of a plan made under section 316 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian World Heritage management principles in force at the time.

Note: Section 323 explains what Australian World Heritage management principles are.

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

320 Application

This Subdivision applies in relation to a property that:

- (a) is:
 - (i) in a State; or
 - (ii) in a self-governing Territory; or

Section 321

- (iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and
- (b) is not entirely within one or more Commonwealth areas.

321 Co-operating to prepare and implement plans

- (1) This section applies in relation to a property that is included in the World Heritage List.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

- (3) Subsection (2) does not apply in relation to so much of a property as is in the Great Barrier Reef Marine Park.

Note: A zoning plan must be prepared under the *Great Barrier Reef Marine Park Act 1975* for areas that are part of the Great Barrier Reef Marine Park. In preparing a zoning plan, regard must be had to the Australian World Heritage management principles.

322 Commonwealth responsibilities

- (1) This section applies in relation to a property that is a declared World Heritage property.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the property in a way that is not inconsistent with:
 - (a) the World Heritage Convention; and
 - (b) the Australian World Heritage management principles; and

- (c) if the property is on the World Heritage List and a plan for managing the property has been prepared as described in section 321—that plan.

Subdivision F—Australian World Heritage management principles

323 Australian World Heritage management principles

- (1) The regulations must prescribe principles for the management of natural heritage and cultural heritage. The principles prescribed are the *Australian World Heritage management principles*.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the World Heritage Convention.
- (3) 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.

Subdivision G—Assistance for protecting World Heritage properties

324 Commonwealth assistance for protecting declared World Heritage properties

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared World Heritage property to:
 - (a) a State or self-governing Territory in which the property occurs; or
 - (b) any other person.

Chapter 5 Conservation of biodiversity and heritage

Part 15 Protected areas

Division 1 Managing World Heritage properties

Section 324

- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Division 1A—Managing National Heritage places

Subdivision A—Preliminary

324A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the National Heritage List if the Minister is satisfied that the place has one or more National Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's National Heritage values and may invite public comments on the proposed inclusion of the place in the National Heritage List.

The Minister must make plans to protect and manage the National Heritage values of National Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

The Commonwealth must try to prepare and implement plans for managing other National Heritage places, in co-operation with the States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to National Heritage places in States and Territories.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of National Heritage places.

Note: Section 15B prohibits an action that has a significant impact on the National Heritage values of a National Heritage place, unless the person taking the action has the approval of the Minister or certain other requirements are met.

Section 324B

324B National Heritage place may be made up of geographically distinct or non-contiguous locations etc.

For the purposes of this Act, a National Heritage place, or a place being nominated or assessed for inclusion in the National Heritage List as a National Heritage place, may be made up of locations, areas, regions or other elements that are not contiguous, or not geographically proximate.

Note 1: *Place* is defined in section 528 to include locations, areas, regions, buildings and other structures, and their immediate surroundings.

Note 2: This section is subject to subsection 324JJ(5A).

Subdivision B—The National Heritage List

324C The National Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the *National Heritage List*.
- (2) A place may be included in the National Heritage List only if:
 - (a) the place is within the Australian jurisdiction; and
 - (b) the Minister is satisfied that the place has one or more National Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the National Heritage List is called a *National Heritage place*.
- (4) The National Heritage List is not a legislative instrument.

324D Meaning of *National Heritage values*

- (1) A place has a *National Heritage value* if and only if the place meets one of the criteria (the *National Heritage criteria*) prescribed by the regulations for the purposes of this section. The

Section 324E

National Heritage value of the place is the place's heritage value that causes the place to meet the criterion.

- (2) The **National Heritage values** of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.The regulations may prescribe criteria for other heritage values of places.
- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

Subdivision BA—Inclusion of places in the National Heritage List: usual process

324E Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the National Heritage List.

The usual process involves the following steps:

- (a) from time to time, the Minister invites people to nominate places for inclusion in the National Heritage List, and gives the nominations to the Australian Heritage Council (see sections 324J and 324JA);

Section 324F

- (c) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it thinks should be assessed (see sections 324JB, 324JC and 324JD);
- (d) the Minister finalises the list of places that are to be assessed (see sections 324JE and 324JF);
- (e) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 324JG);
- (f) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 324JH and 324JI);
- (g) the Minister decides whether a place that has been assessed should be included in the National Heritage List (see section 324JJ).

324F Definitions

In this Subdivision:

eligible for assessment consideration has the meaning given by subsection 324JB(3).

finalised priority assessment list has the meaning given by subsection 324JE(4).

proposed priority assessment list has the meaning given by subsection 324JB(1).

324J Minister may invite nominations from time to time

- (1) The Minister may, from time to time, publish a notice inviting people to nominate places for inclusion in the National Heritage List.
- (2) A notice under subsection (1):
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and

Section 324JA

- (b) must invite people to nominate, to the Minister, places for inclusion in the National Heritage List; 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 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.

324JA Minister to give nominations to Australian Heritage Council*Giving nominations to Australian Heritage Council*

- (1) Within 30 business days after the cut-off date specified in the notice inviting nominations under subsection 324J(1), the Minister must give the Australian Heritage Council the nominations received by the Minister by the cut-off date, other than any nominations rejected under subsection (4).

Minister may reject nominations

- (4) 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 324J(3)(b) or (c) have not been complied with in relation to the nomination.

Section 324JB

- (5) If a nomination is rejected under paragraph (4)(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.

324JB Australian Heritage Council to prepare proposed priority assessment list

- (1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 324JA(1), the Council must prepare and give to the Minister a list (the ***proposed priority assessment list***) in relation to the nominations.
- (2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration as the Australian Heritage Council considers it appropriate to include in the list, having regard to:
- (b) the Council's own views about what should be given priority; and
 - (c) the Council's capacity to make assessments under this Division while still performing its other functions; and
 - (d) any other matters that the Council considers appropriate.
- (3) A place is ***eligible for assessment consideration*** in relation to the assessment period if:
- (a) the place has been nominated by a nomination referred to in subsection (1) or was nominated in relation to the most recent previous list prepared under this section; or
 - (b) the Council itself wishes to nominate the place for inclusion in the National Heritage List; or
 - (c) each part of the place is a place to which paragraph (a) or (b) applies.
- (4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any National Heritage values. For this purpose, the

Section 324JC

Council is not required to have regard to any information beyond the information that was included in the nomination.

- (5) The proposed priority assessment list is not a legislative instrument.

324JC Matters to be included in proposed priority assessment list

- (1) The proposed priority assessment list is to include, for each place in the list:
- (a) a description of the place; and
 - (b) an assessment completion time; and
 - (c) any other information required by the regulations.
- (2) The assessment completion time for a place must be either:
- (a) the end of the period of 12 months starting on the day the finalised priority assessment list is published under subsection 324JF(1); or
 - (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take longer than the period under paragraph (a)—the end of that longer period.

324JD Statement to be given to Minister with proposed priority assessment list

- (1) When the Australian Heritage Council gives the Minister the priority assessment list, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to:
- (a) for each place that is included in the list—why the Council included the place in the list; and
 - (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 324JB(3)(a)—why the Council did not include the place in the list.

Section 324JE

- (2) The statement must also identify, as a place nominated by the Australian Heritage Council, any place that is included in the list because the Council itself wishes to nominate the place or part of it (as mentioned in paragraphs 324JB(3)(b) and (c)).

324JE The finalised priority assessment list

- (1) Within 20 business days after the Minister, under section 324JB, receives the proposed priority assessment list, the Minister may, in writing, make changes to the list as mentioned in subsection (2).
- (2) The changes the Minister may make are as follows:
 - (a) including a place in the list (and also including the matters referred to in subsection 324JC(1));
 - (b) omitting a place from the list (and also omitting the matters referred to in subsection 324JC(1));
 - (c) changing the assessment completion time for a place in the 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 list, as changed (if at all) by the Minister, becomes the ***finalised priority assessment list***.
- (5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.
- (6) The finalised priority assessment list is not a legislative instrument.

324JF Publication of finalised priority assessment list

- (1) The Australian Heritage Council must publish the finalised priority assessment list on the internet.

Section 324JG

- (2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

324JG Australian Heritage Council to invite comments on places in finalised priority assessment list

- (1) In relation to each place included in the finalised priority assessment list, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
- (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
 - (b) must identify the place or places to which the notice relates; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place or places meet any of the National Heritage criteria; and
 - (ii) whether the place or places should be included in the National Heritage List; and
 - (d) 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
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
 - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and

Section 324JH

- (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
 - (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

324JH Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister

- (1) In relation to each place included in the finalised priority assessment list, the Australian Heritage Council must (by the time required by section 324JI):
 - (a) make a written assessment whether the place meets any of the National Heritage criteria; 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 a place, the Australian Heritage Council, subject to subsections (3) and (4):
 - (a) must take into account the comments the Council receives in response to the notice under subsection 324JG(1) in relation to the place; and
 - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
 - (c) may seek, and have regard to, information or advice from any source.
- (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:
 - (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 324JG(1) in relation to the place; or

Section 324JH

- (b) the Council considers that regulations referred to in paragraph 324JG(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the National Heritage criteria.
- (5) If, in making an assessment, the Australian Heritage Council considers that a place might have one or more National Heritage values, the Council must:
 - (a) take all practicable steps:
 - (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
 - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and
 - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the National Heritage List.
- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
 - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.
- (7) If:

Section 324JI

- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
- (b) there are Indigenous persons who:
 - (i) have rights or interests in all or part of the place; and
 - (ii) are neither owners nor occupiers of all or part of the place; and
- (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent those Indigenous persons in relation to those rights and interests;

the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

324JI Time by which assessments to be provided to Minister

- (1) Subsection 324JH(1) must be complied with, in relation to a place included in the finalised priority assessment list, by the assessment completion time specified in the list for the place, or by that time as extended under this section.
- (2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council 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.

Section 324JIA

324JIA Discontinuing assessment of a place*Discontinuance on Council's recommendation*

- (1) The Australian Heritage Council may, at any time before an assessment in relation to a place is given to the Minister under section 324JH, recommend to the Minister that the assessment of the place under this Subdivision be discontinued.
- (2) A recommendation made under subsection (1) must:
 - (a) be in writing; and
 - (b) set out the Council's reasons for recommending that the assessment of the place be discontinued.
- (3) The Minister must consider the recommendation and may, if the Minister considers it appropriate to do so, direct the Council to discontinue the assessment of the place.
- (4) If the Minister does not give a direction under subsection (3) within 3 months after being given the Council's recommendation, the Council must continue with the assessment of the place.

Discontinuance on Minister's initiative

- (5) The Minister may, on the Minister's own initiative, if the Minister considers it appropriate to do so, direct the Council to discontinue the assessment of a place under this Subdivision at any time before an assessment of the place is given to the Minister under section 324JH.

Further information

- (6) In deciding whether to make a direction under this section, the Minister may request the Council to provide any of the following:
 - (a) any comments received by the Council in response to the notice under subsection 324JG(1) in relation to the place;
 - (b) any other information relevant to the Minister's decision that the Minister reasonably believes the Council can provide.

Section 324JJ

- (7) In deciding whether to make a direction, the Minister may request any person to provide any information relevant to the Minister's decision that the Minister reasonably believes the person can provide.

Publication of reasons

- (8) If the Minister, under this section, directs the Council to discontinue the assessment of a place, the Minister must, as soon as practicable:
- (a) give the Council a copy of the direction; and
 - (b) publish a copy of the direction, and the Minister's reasons for making it, on the Department's website.

Effect of direction

- (9) If the Minister makes a direction under this section in relation to a place, the place is taken to be no longer included in the finalised priority assessment list.

Direction not a legislative instrument

- (10) A direction given under subsection (3) or (5) is not a legislative instrument.

324JJ Decision about inclusion of a place in the National Heritage List

Minister to decide whether or not to include place

- (1) After receiving from the Australian Heritage Council an assessment under section 324JH whether a place (the ***assessed place***) meets any of the National Heritage criteria, the Minister must:
- (a) by instrument published in the *Gazette*, include in the National Heritage List:
 - (i) the assessed place or a part of the assessed place; and

Section 324JJ

- (ii) the National Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
- (b) in writing, decide not to include the assessed place in the National Heritage List.

Note: The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).

- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by the regulations.
- (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
 - (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the National Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.
- (5A) Despite section 324B, if the assessed place is made up of locations, areas, regions or other elements that are not contiguous, or not geographically proximate, the Minister may include the assessed place, or a part of the assessed place, in the National Heritage List only if the Minister is satisfied that each of the locations, areas, regions or other elements:

Section 324JJ

- (a) has been assessed for inclusion in the National Heritage List, whether together or separately; and
 - (b) has one or more of the same National Heritage values as the other locations, areas, regions or elements that make up the place.
- (5B) To avoid doubt, the Minister may comply with subsection (1) by taking action under section 324LB (expansion of National Heritage place) to add the assessed place, or a part of the assessed place, to an existing National Heritage place.

Additional requirements if Minister decides to include place

- (6) If the Minister includes the assessed place, or a part of the assessed place (the ***listed part of the assessed place***), in the National Heritage List, he or she must, within a reasonable time:
 - (a) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
 - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 324J(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
 - (c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and
 - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.
- (7) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may

Section 324JK

satisfy the requirements of paragraph (6)(a) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the assessed place;
- (c) displays in public buildings at or near the assessed place.

Additional requirements if Minister decides not to include place

- (8) If the Minister decides not to include the assessed place in the National Heritage List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the internet; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 324J(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (8) applies in a case where the Minister decides that none of the assessed place is to be included in the National Heritage List.

Subdivision BB—Inclusion of places in the National Heritage List: emergency process

324JK Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the emergency process for the inclusion of places in the National Heritage List.

Section 324JL

The emergency process involves the following steps:

- (a) the Minister may include a place in the National Heritage List if it is under threat (see section 324JL);
- (b) the Minister asks the Australian Heritage Council to assess the place (see section 324JM);
- (c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 324JN);
- (d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 324JO and 324JP);
- (e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 324JQ).

324JL Minister may include place in National Heritage List if under threat

(1) If the Minister believes that:

- (a) a place has or may have one or more National Heritage values; and
- (b) any of those values is under threat of a significant adverse impact; and
- (c) that threat is both likely and imminent;

the Minister may, by instrument published in the *Gazette*, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have.

(2) If:

- (a) the place is included in the National Heritage List under subsection (1); and
- (b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;

that process ceases to apply to the place when it is included in the List under subsection (1).

Section 324JM

Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 324JQ(1) or (4) and a person subsequently nominates the place under that Subdivision.

- (3) If the place is included in the National Heritage List under subsection (1), the Minister must:
- (a) within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):
 - (i) on the internet; and
 - (ii) in accordance with any other requirements specified in the regulations; and
 - (b) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the National Heritage List.
- (4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.

324JM Minister to ask Australian Heritage Council for assessment

- (1) If the Minister includes a place in the National Heritage List under section 324JL, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the National Heritage criteria.
- (2) The request must specify the assessment completion time for the assessment.

Section 324JN

Note: When specifying an assessment completion time, the 12-month period referred to in subsection 324JQ(1) should be considered.

324JN Publication of listing of place and inviting comments

- (1) If the Australian Heritage Council receives a request under subsection 324JM(1) in relation to a place that has been included in the National Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.
- (2) A notice under subsection (1) in relation to a place:
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must contain the following:
 - (i) a description of the place;
 - (ii) a statement that the place has been included in the National Heritage List, and that specifies the National Heritage values that have been included in the List in relation to the place;
 - (iii) the date on which the place was so included; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place meets any of the National Heritage criteria; and
 - (ii) whether the place should continue to be included in the National Heritage List; and
 - (d) 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
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.
- (3) The regulations may provide for either or both of the following:
 - (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

Section 324JO

324JO Australian Heritage Council to assess place and give assessment to Minister

- (1) Section 324JH applies in relation to a request under subsection 324JM(1) as if:
 - (a) a reference in section 324JH to a place included in the finalised priority assessment list were a reference to the place to which the request relates; and
 - (b) a reference in section 324JH to the notice under subsection 324JG(1) in relation to the place were a reference to the notice under subsection 324JN(1) in relation to the place; and
 - (c) a reference in section 324JH to regulations referred to in paragraph 324JG(4)(b) were a reference to regulations referred to in paragraph 324JN(3)(b); and
 - (d) a reference in section 324JH to whether the place should be included in the National Heritage List were a reference to whether the place should continue to be included in the National Heritage List.
- (2) A reference in another provision of this Act to section 324JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

324JP Time by which assessments to be provided to Minister

- (1) Section 324JI applies in relation to a request under subsection 324JM(1) as if:
 - (a) a reference in section 324JI to a place included in the finalised priority assessment list were a reference to the place to which the request relates; and
 - (b) a reference in section 324JI to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.
- (2) A reference in another provision of this Act to section 324JI, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

Section 324JQ

324JQ Decision about place remaining in the National Heritage List

Minister to decide whether place should remain listed

- (1) Within 12 months after the inclusion of a place in the National Heritage List under section 324JL, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):
 - (a) do one of the following:
 - (i) state that the place remains in the National Heritage List with its boundary unaltered;
 - (ii) alter the boundary of the place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
 - (iii) remove from the National Heritage List the place and its National Heritage values; and
 - (b) if the place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:
 - (i) state that specified National Heritage values included in the List under section 324JL for the place remain in the List for the place;
 - (ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324JL for the place;
 - (iii) remove from the List for the place specified National Heritage values that were included in the List under section 324JL for the place.
- (2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 324JH in relation to the place.
- (3) The Minister must not take action under subsection (1) that results in the place remaining in the National Heritage List (whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more National Heritage values.

Section 324JQ

Listing lapses automatically if action not taken within 12 months of listing

- (4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed National Heritage values, are automatically removed from the National Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

Matters to be considered

- (5) For the purpose of deciding what action to take under subsection (1) in relation to the place:
- (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Disapplying section 324L

- (6) Section 324L does not apply to:
- (a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the National Heritage List; or
 - (b) the removal of the place and its National Heritage values under subparagraph (1)(a)(iii) of this section; or
 - (c) the removal of a National Heritage value of the place under subparagraph (1)(b)(iii) of this section.

Section 324JQ

Minister to publish copy or summary of subsection (1) notice

- (7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

Additional requirements if place etc. is removed under subsection (1)

- (8) If, under subsection (1), the Minister removes from the National Heritage List the place or a National Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:
- (a) publish a copy of the instrument referred to in subsection (1) on the internet; and
 - (b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

Requirements if place is removed under subsection (4)

- (9) If, under subsection (4), the place, and its listed National Heritage values, are removed from the National Heritage List, the Minister must, within 10 business days after the removal:
- (a) publish notice of the removal on the internet; and
 - (b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

Alternative methods of notifying owners and occupiers

- (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Minister may

Section 324JR

satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
- (c) displays in public buildings at or near the place.

Subdivision BC—Other provisions relating to the National Heritage List

324JR Co-ordination with Scientific Committee—Council undertaking assessment

- (1) This section applies if:
 - (a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) before giving the assessment to the Minister, the Council becomes aware that:
 - (i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; 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 Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).
- (4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:

Section 324JR

- (a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and
 - (b) invite the Scientific Committee to give the Council its comments in relation to that matter; and
 - (c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee 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 Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a), the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.
- (6) If:
 - (a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and
 - (b) the Australian Heritage Council has been given a copy of that assessment;the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.
- (7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 324R.

324JS Co-ordination with Scientific Committee—Council given assessment to Minister

- (1) This section applies if:
 - (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) the Council is aware that:
 - (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; 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 Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
 - (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
 - (b) give the Scientific Committee a copy of the assessment.
- (3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (4) Subsections (2) and (3) have effect despite section 324R.

324K Listing process not affected by changing boundaries of a place

- (1) This section is about compliance with a provision of Subdivision BA or BB that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of that Subdivision.
- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.
- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

Section 324L

324L Removal of places or National Heritage values from the National Heritage List

- (1) The Minister may remove all or part of a place from the National Heritage List only if the Minister is satisfied that:
- (a) ignoring subsection 324D(2), the place no longer has any National Heritage values or the part no longer contributes to any of the National Heritage values of the place; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place or part of a place may also be removed from the National Heritage List under subsection 324JQ(1).

- (2) The Minister may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Minister is satisfied that:
- (a) ignoring subsection 324D(2), the place no longer has the National Heritage value or values; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.

- (3) The Minister may remove all or part of a place, or a National Heritage value of a place, only by an instrument including a statement of the reasons for the removal.

Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

Note 2: For requirements relating to the instrument under the *Legislation Act 2003*, see subsections (5) and (6) of this section.

- (4) The instrument must deal with only one of the following kinds of removal:
- (a) removal (***removal for loss of value***) of a place, part or National Heritage value because of paragraph (1)(a) or (2)(a);
 - (b) removal of a place, part or National Heritage value because of paragraph (1)(b) or (2)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

Section 324LA

- (5) If the instrument deals only with removal for loss of value:
- (a) it is a legislative instrument; and
 - (b) it takes effect on the first day it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.
- (6) If subsection (5) does not apply to the instrument, it is a notifiable instrument.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunseting under that Act.

324LA Amendment of National Heritage values of a place

- (1) The Minister may, by instrument published in the *Gazette*, do any of the following in relation to a National Heritage place:
- (a) add one or more National Heritage values to the entry for the place in the National Heritage List;
 - (b) amend the National Heritage values included in the List for the place.
- (2) The Minister may do so only if the Minister is satisfied that:
- (a) it is appropriate to do so; and
 - (b) after the instrument is made, the place will continue to meet one or more National Heritage criteria.
- Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).
- (3) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.
- (4) Subsections 324JJ(6) and (7) apply if the Minister makes an instrument under this section, as if:
- (a) references in those subsections to the Minister including the assessed place or a part of it were references to the Minister making a change under subsection (1) in relation to the place; and

Section 324LB

- (b) the reference in paragraph 324JJ(6)(b) to a person who responded to a notice under subsection 324J(1) were a reference to a person who responded to a notice under paragraph 324M(1)(b) (invitation to the public) in relation to the amended National Heritage values of the place.
- (5) An instrument made under subsection (1) is not a legislative instrument.

324LB Expansion of National Heritage place

- (1) The Minister may, by instrument published in the *Gazette*, alter the boundary of a National Heritage place (the *listed place*) as described in the National Heritage List so as to add a place to the listed place, if the Minister is satisfied that the added place:
 - (a) has been assessed for inclusion in the National Heritage List (either on its own or as part of a larger place); and
 - (b) has one or more of the same National Heritage values as the listed place.
- Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).
- (2) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.
 - (3) Subsections 324JJ(6) and (7) apply if the Minister makes an instrument under this section, as if:
 - (a) references in those subsections to the assessed place were references to the added place; and
 - (b) the reference in paragraph 324JJ(6)(b) to a person who responded to a notice under subsection 324J(1) were a reference to a person who responded to a notice under paragraph 324M(1)(b) (invitation to the public) in relation to the added place.
 - (4) An instrument made under subsection (1) is not a legislative instrument.

324LC Alignment with boundaries of declared World Heritage property

- (1) The Minister may, by instrument published in the *Gazette*, alter the boundaries of a National Heritage place to align them with the boundaries of a declared World Heritage property, if the Minister is satisfied that the National Heritage place and the declared World Heritage property are the same, or substantially the same, place.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

- (2) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.
- (3) An instrument made under subsection (1) is not a legislative instrument.

324M Minister must consider advice of the Australian Heritage Council and public comments

- (1) Before making a change under section 324L on the ground mentioned in paragraph 324L(1)(a) or (2)(a) (removal for loss of value), or under section 324LA, 324LB or 324LC, in relation to a place on the National Heritage List, the Minister must:
- (a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed change; and
 - (b) publish, on the internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:
 - (i) describing the proposed change; and
 - (ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed change.

The Minister must publish the notice within 20 business days of giving the request.

Section 324N

- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.
- (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.
- (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the National Heritage values of the place concerned.
- (5) The Minister must:
 - (a) decide whether to make the change; and
 - (b) if the Minister decides to make the change—make an instrument to effect the change under section 324L, 324LA, 324LB or 324LC;within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.

324N Minor amendments to the National Heritage List

- (1) The Minister may, by written instrument, amend the National Heritage List in relation to a National Heritage place for one or more of the following reasons:
 - (a) to fix a typographical error in the entry for the place;
 - (b) to make a correction to the description of the boundaries of the place;
 - (c) to correct an error in the description of the National Heritage values for the place;
 - (d) to reflect a change in name, or additional name, for the place.
- (2) An instrument made under subsection (1) is not a legislative instrument.
- (3) If the Minister makes an instrument under subsection (1), the Minister must, as soon as practicable, publish a copy on the Department's website.

Section 324P

324P National Heritage List must be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the National Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the National Heritage List is available on the internet.

Note: The copies of the National Heritage List made publicly available may not contain certain information kept confidential under section 324Q.

324Q Certain information may be kept confidential

- (1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged 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 place's precise location;
 - (b) the place's heritage values;
 - (c) any other information about the place.
- (2) It is sufficient compliance with this Act if only a general description of the place, its location or its National Heritage values is included in:
 - (a) the National Heritage List as made publicly available; or
 - (b) an instrument or other document created for the purposes of this Act.

324R Disclosure of Australian Heritage Council's assessments and advice

- (1) A member of the Australian Heritage Council 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 Council or another member of the Council:
 - (a) an assessment under section 324JH whether a place meets any of the National Heritage criteria, any information relating

Section 324R

- to the assessment or any information about the nomination (if any) that led to the making of the assessment;
 - (b) advice under section 324M concerning a place 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 a place does not exist after:
 - (i) publication in the *Gazette* of an instrument under paragraph 324JJ(1)(a) or subsection 324JQ(1) in relation to the place; or
 - (ii) the Minister decides under paragraph 324JJ(1)(b) not to include the place in the National Heritage List; and
 - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:
 - (i) registration under the *Legislation Act 2003* of a legislative instrument under section 324L relating to the place; or
 - (ia) publication in the *Gazette* of an instrument made under section 324LA, 324LB or 324LC relating to the place; or
 - (ii) the Minister decides under section 324M not to remove the place or a part of the place, or one or more of the place's National Heritage values, from the National Heritage List.
- (2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:
- (a) a place being, or not being, included in the National Heritage List; or
 - (b) National Heritage values of a place being, or not being, included in the List; or
 - (c) a place or part of a place, or one or more National Heritage values of a place, being removed from the List.

Section 324R

- (2B) Subsection (1) does not apply to a disclosure of particular information if:
- (a) the Chair of the Australian Heritage Council 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).
- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 324JH whether a place meets the National Heritage criteria; or
 - (b) advice under section 324M concerning a place;
- the member must give a copy of the assessment or advice to anyone who asks for it.
- (4) If:
- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
 - (b) the member is aware that, under section 324Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its National Heritage values;
- 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.

Section 324S

Subdivision C—Management plans for National Heritage places in Commonwealth areas

324S Management plans for National Heritage places in Commonwealth areas

- (1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place that is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the first time the place satisfies both of the following paragraphs:
 - (a) the place is included in the National Heritage List;
 - (b) the place is entirely within one or more Commonwealth areas.
- Note: However, section 324T precludes the Minister from making plans for managing certain places.
- (2) The Minister may, in writing, amend a plan or revoke and replace a plan.
 - (3) The Minister must give notice, in accordance with the regulations, if the Minister:
 - (a) makes a plan for a National Heritage place; or
 - (b) amends such a plan; or
 - (c) revokes and replaces such a plan.
 - (4) A plan must:
 - (a) address the matters prescribed by the regulations; and
 - (b) not be inconsistent with the National Heritage management principles (see Subdivision E).
 - (5) If the National Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the Minister must as soon as practicable make a written instrument:
 - (a) amending the earlier plan to make it consistent with the principles; or
 - (b) revoking and replacing the earlier plan.

Section 324T

- (6) Before making, amending or revoking and replacing a plan, the Minister must:
 - (a) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment; and
 - (b) seek and consider comments from the Australian Heritage Council about those matters.
- (7) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

324T Restriction on ability to make plans

Despite section 324S, the Minister must not make a plan for managing so much of a National Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

324U Compliance with plans by the Commonwealth and Commonwealth agencies

- (1) The Commonwealth or a Commonwealth agency must not:
 - (a) contravene a plan made under section 324S; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 324S for a particular National Heritage place described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the National Heritage management principles.

Section 324V

324V Multiple plans in the same document

To avoid doubt, a plan for managing a National Heritage place may be in the same document as:

- (a) one or more other plans for managing National Heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

324W Review of plans at least every 5 years

- (1) At least once in every 5 year period after a plan for managing a National Heritage place is made under section 324S, the Minister must cause a review of the plan to be carried out.
- (2) The review must:
 - (a) assess whether the plan is consistent with the National Heritage management principles in force at the time; and
 - (b) assess whether the plan is effective in protecting and conserving the National Heritage values of the place; and
 - (c) make recommendations for the improved protection of the National Heritage values of the place.
- (3) The person carrying out the review must publish, on the internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:
 - (a) whether the plan is consistent with the National Heritage management principles; and
 - (b) the effectiveness of the plan in protecting and conserving the National Heritage values of the place.
- (4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

**Subdivision D—Management of National Heritage places in
States and self-governing Territories**

324X Plans and Commonwealth responsibilities

- (1) This section applies to a National Heritage place that is not entirely within one or more Commonwealth areas and is:
 - (a) in a State; or
 - (b) in a self-governing Territory; or
 - (c) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the place, that is not inconsistent with the National Heritage management principles, is prepared and implemented in co-operation with the State or Territory.
- (2A) Subsection (2) does not apply in relation to so much of a place as is in the Great Barrier Reef Marine Park.

Note: A zoning plan must be prepared under the *Great Barrier Reef Marine Park Act 1975* for areas that are part of the Great Barrier Reef Marine Park. In preparing a zoning plan, regard must be had to the National Heritage management principles.
- (3) The Commonwealth, and each Commonwealth agency, must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the place in a way that is not inconsistent with:
 - (a) the National Heritage management principles; or
 - (b) the plan for managing the place, if one has been prepared under subsection (2).

Subdivision E—The National Heritage management principles

324Y National Heritage management principles

- (1) The regulations must prescribe principles for managing National Heritage places. The principles prescribed are the *National Heritage management principles*.
- (2) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles if the obligations relate to:
 - (a) a constitutional corporation, the Commonwealth or a Commonwealth agency; or
 - (b) 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; or
 - (c) either or both of the following:
 - (i) a Commonwealth area;
 - (ii) a Territory; or
 - (d) the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; or
 - (e) 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.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.
- (4) Paragraph (2)(e) applies only to a prescribed obligation that is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.

Subdivision F—Obligations of Commonwealth agencies**324Z Obligation to assist the Minister and the Australian Heritage Council**

- (1) A Commonwealth agency that owns or controls a place that has, or might have, one or more National Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's National Heritage values.
- (2) A Commonwealth agency that owns or controls all or part of a National Heritage place must take all reasonable steps to assist the Minister to make a plan under section 324S for the place.

324ZA Protecting National Heritage values of places sold or leased

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a National Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.
- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the National Heritage values of the place, unless the agency is satisfied that:
 - (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
 - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
 - (a) such a covenant:

Section 324ZA

- (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
 - (ii) could be insufficient to ensure the ongoing protection of the National Heritage values of the place; or
 - (b) the agency is satisfied as described in subsection (2).
- The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).
- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:
 - (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the National Heritage values of the place; or
 - (b) advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.
 - (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.
 - (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the National Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

Subdivision G—Assistance for protecting National Heritage places

324ZB Commonwealth assistance for protecting National Heritage places

- (1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a National Heritage place to:
 - (a) a State or self-governing Territory in which the place or part of the place is located; or
 - (b) any other person.
- (2) The Commonwealth may give the assistance subject to conditions.

Subdivision H—Reviewing and reporting on the National Heritage List

324ZC Reviewing and reporting on the National Heritage List

- (1) At least once in every 5 year period after the National Heritage List is established, the Minister must ensure that:
 - (a) a review of the National Heritage List is carried out; and
 - (b) a report of that review is tabled in each House of the Parliament.
- (2) The report must include details of:
 - (a) the number of places included in the National Heritage List; and
 - (b) any significant damage or threat to the National Heritage values of those places; and
 - (c) how many plans under Subdivisions C and D for managing National Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
 - (d) the operation of any conservation agreements under Part 14 that affect National Heritage places; and

Chapter 5 Conservation of biodiversity and heritage

Part 15 Protected areas

Division 1A Managing National Heritage places

Section 324ZC

- (e) all nominations, assessments and changes to the National Heritage List under this Division during the period of review; and
- (f) compliance with this Act in relation to National Heritage places; and
- (g) any other matters that the Minister considers relevant.

Division 2—Managing wetlands of international importance

Subdivision A—Simplified outline of this Division

325 Simplified outline of this Division

The following is a simplified outline of this Division:

The Commonwealth may designate a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing wetlands listed under the Ramsar Convention that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other wetlands listed under the Ramsar Convention, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to declared Ramsar wetlands in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared Ramsar wetlands.

Note: Section 16 prohibits an action that has a significant impact on an internationally important wetland, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

Section 326

Subdivision B—Seeking agreement on Ramsar designation

326 Commonwealth must seek agreement before designation

- (1) The Commonwealth may designate for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention a wetland containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:
 - (a) the proposed designation of the wetland (so far as it relates to the area); and
 - (b) management arrangements for the wetland (so far as they relate to the area).
- (2) The Commonwealth may designate a wetland in a State or self-governing Territory for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
 - (a) the proposed submission of the wetland; and
 - (b) management arrangements for the wetland.
- (3) A failure to comply with this section does not affect the designation of a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention or the status of a wetland as a declared Ramsar wetland.

Subdivision C—Notice of designation of wetland

327 Minister must give notice of designation of wetland etc.

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
 - (a) the Commonwealth designates a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention;

- (b) the Commonwealth extends the boundaries of a wetland it has included in the List;
 - (c) the Commonwealth restricts the boundaries of a wetland it has included in the List;
 - (d) the Commonwealth deletes from the List a wetland it previously included in the List.
- (2) The notice must specify the area included in, or excluded or deleted from, the List as a result of the event.
- (3) A failure to comply with this section does not affect the status of an area as a declared Ramsar wetland.

Subdivision D—Plans for listed wetlands in Commonwealth areas

328 Making plans

Minister must make plan

- (1) The Minister must make a written plan for managing a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the wetland:
 - (a) is included in the List; or
 - (b) becomes entirely within one or more Commonwealth areas.

Amending and replacing plan

- (2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

Requirements for plan

- (3) A plan must not be inconsistent with:
 - (a) Australia's obligations under the Ramsar Convention; or
 - (b) the Australian Ramsar management principles.

Section 329

Note: Section 335 explains what Australian Ramsar management principles are.

Ensuring plans reflect current management principles

- (4) If the Australian Ramsar management principles change so that a plan (the **earlier plan**) is inconsistent with them, the Minister must make another plan:
- (a) amending the earlier plan so it is not inconsistent with them; or
 - (b) revoking and replacing the earlier plan.

Plan may be in same document as another plan

- (5) To avoid doubt, a plan under this section for a wetland may be in the same document as:
- (a) a plan under this section for another wetland; or
 - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

Commonwealth reserves

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a wetland as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the Ramsar Convention.

329 Notice of plans

The Minister must give notice of the making of a plan under section 328, in accordance with the regulations.

330 Commonwealth compliance with plans

- (1) The Commonwealth or a Commonwealth agency must not:
- (a) contravene a plan made under section 328; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or

Section 331

the Commonwealth agency (as appropriate), would contravene such a plan.

- (2) If there is no plan in force under section 328 for a particular wetland described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the wetland are not inconsistent with the Australian Ramsar management principles.

331 Review of plans every 5 years

- (1) The Minister must cause a review of a plan made under section 328 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian Ramsar management principles in force at the time.

Note: Section 335 explains what Australian Ramsar management principles are.

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

332 Application

This Subdivision applies in relation to a wetland that:

- (a) is:
- (i) in a State; or
 - (ii) in a self-governing Territory; or
 - (iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and
- (b) is not entirely within one or more Commonwealth areas.

Section 333

333 Co-operating to prepare and implement plans

- (1) This section applies in relation to a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the wetland in a way that is not inconsistent with Australia's obligations under the Ramsar Convention or the Australian Ramsar management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

334 Commonwealth responsibilities

- (1) This section applies in relation to a wetland that is a declared Ramsar wetland.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the wetland in a way that is not inconsistent with:
 - (a) the Ramsar Convention; and
 - (b) the Australian Ramsar management principles; and
 - (c) if the wetland is included in the List of Wetlands of International Importance kept under the Ramsar Convention and a plan for managing the property has been prepared as described in section 333—that plan.

Subdivision F—Australian Ramsar management principles

335 Australian Ramsar management principles

- (1) The regulations must prescribe principles for the management of wetlands included in the List of Wetlands of International Importance kept under the Ramsar Convention. The principles prescribed are the *Australian Ramsar management principles*.

- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the Ramsar Convention.

Subdivision G—Assistance for protecting wetlands

336 Commonwealth assistance for protecting declared Ramsar wetlands

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared Ramsar wetland to:
 - (a) a State or self-governing Territory in which the wetland occurs; or
 - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Division 3—Managing Biosphere reserves

337 Definition of *Biosphere reserve*

A *Biosphere reserve* is an area designated for inclusion in the World Network of Biosphere Reserves by the International Co-ordinating Council of the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

338 Planning for management of Biosphere reserves

- (1) The Minister may make and implement a written plan for managing a Biosphere reserve, or a part of a Biosphere reserve, entirely within one or more Commonwealth areas. The plan must not be inconsistent with the Australian Biosphere reserve management principles.
- (2) The Commonwealth may co-operate with a State or self-governing Territory to prepare and implement a plan for managing a Biosphere reserve in the State or Territory. The plan must not be inconsistent with the Australian Biosphere reserve management principles.

339 Commonwealth activities in Biosphere reserves

The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that it exercises its powers and performs its functions in relation to a Biosphere reserve in a way that is not inconsistent with:

- (a) the Australian Biosphere reserve management principles; or
- (b) a plan prepared as described in section 338 for managing the Biosphere reserve.

340 Australian Biosphere reserve management principles

- (1) The regulations must prescribe principles for the management of Biosphere reserves. The principles prescribed are the ***Australian Biosphere reserve management principles***.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with the Statutory Framework of the World Network of Biosphere Reserves established under the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

341 Commonwealth assistance for protecting Biosphere reserves

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a Biosphere reserve to:
 - (a) a State or self-governing Territory in which the reserve or part of the reserve occurs; or
 - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Section 341A

Division 3A—Managing Commonwealth Heritage places

Subdivision A—Preliminary

341A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the Commonwealth Heritage List if the place is in a Commonwealth area, or is owned or leased by the Commonwealth or a Commonwealth agency outside the Australian jurisdiction, and the Minister is satisfied that the place has one or more Commonwealth Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's Commonwealth Heritage values and may invite public comments on the proposed inclusion of the place in the Commonwealth Heritage List.

Commonwealth agencies must make plans to protect and manage the Commonwealth Heritage values of Commonwealth Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

Commonwealth agencies also have other obligations.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of Commonwealth Heritage places.

341B Extension to places etc. outside the Australian jurisdiction

This Division extends to places, acts and omissions outside the Australian jurisdiction, except so far as the contrary intention appears.

341BA Commonwealth Heritage place may be made up of geographically distinct or non-contiguous locations etc.

For the purposes of this Act, a Commonwealth Heritage place, or a place being nominated or assessed for inclusion in the Commonwealth Heritage List as a Commonwealth Heritage place, may be made up of locations, areas, regions or other elements that are not contiguous, or not geographically proximate.

Note 1: *Place* is defined in section 528 to include locations, areas, regions, buildings and other structures, and their immediate surroundings.

Note 2: This section is subject to subsection 341JI(5A).

Subdivision B—The Commonwealth Heritage List

341C The Commonwealth Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the *Commonwealth Heritage List*.
- (2) A place may be included in the Commonwealth Heritage List only if:
 - (a) the place either:
 - (i) is entirely within a Commonwealth area; or
 - (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth Authority; and
 - (b) the Minister is satisfied that the place has one or more Commonwealth Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the Commonwealth Heritage List is called a *Commonwealth Heritage place*.
- (4) The Commonwealth Heritage List is not a legislative instrument.

Section 341D

341D Meaning of *Commonwealth Heritage values*

- (1) A place has a *Commonwealth Heritage value* if and only if the place meets one of the criteria (the *Commonwealth Heritage criteria*) prescribed by the regulations for the purposes of this section. The *Commonwealth Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *Commonwealth Heritage values* of a Commonwealth Heritage place are the Commonwealth Heritage values of the place included in the Commonwealth Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.The regulations may prescribe criteria for other heritage values of places.
- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

Subdivision BA—Inclusion of places in the Commonwealth Heritage List: usual process

341E Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List.

The usual process involves the following steps:

Section 341F

- (a) from time to time, the Minister invites people to nominate places for inclusion in the Commonwealth Heritage List, and gives the nominations to the Australian Heritage Council (see sections 341H and 341J);
- (b) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it thinks should be assessed (see sections 341JA, 341JB and 341JC);
- (c) the Minister finalises the list of places that are to be assessed (see sections 341JD and 341JE);
- (d) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 341JF);
- (e) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 341JG and 341JH);
- (f) the Minister decides whether a place that has been assessed should be included in the Commonwealth Heritage List (see section 341JI).

341F Definitions

In this Subdivision:

eligible for assessment consideration has the meaning given by subsection 341JA(3).

finalised priority assessment list has the meaning given by subsection 341JD(4).

proposed priority assessment list has the meaning given by subsection 341JA(1).

Section 341H

341H Minister may invite nominations from time to time

- (1) The Minister may, from time to time, publish a notice inviting people to nominate places for inclusion in the Commonwealth Heritage List.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(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, places for inclusion in the Commonwealth Heritage List; 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 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.

341J Minister to give nominations to Australian Heritage Council

Giving nominations to Australian Heritage Council

- (1) Within 30 business days after the cut-off date specified in the notice inviting nominations under subsection 324H(1), the Minister must give the Australian Heritage Council the nominations received by the Minister by the cut-off date, other than any nominations rejected under subsection (4).

Section 341JA

Minister may reject nominations

- (4) 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 341H(3)(b) or (c) have not been complied with in relation to the nomination.
- (5) If a nomination is rejected under paragraph (4)(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.

341JA Australian Heritage Council to prepare proposed priority assessment list

- (1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 341J(1), the Council must prepare and give to the Minister a list (the ***proposed priority assessment list***) in relation to the nominations.
- (2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration as the Australian Heritage Council considers it appropriate to include in the list, having regard to:
 - (a) the Council's own views about what should be given priority; and
 - (b) the Council's capacity to make assessments under this Division while still performing its other functions; and
 - (c) any other matters that the Council considers appropriate.
- (3) A place is ***eligible for assessment consideration*** if:
 - (a) the place has been nominated by a nomination referred to in subsection (1) or was nominated in relation to the most recent previous list prepared under this section; or
 - (b) the Council itself wishes to nominate the place for inclusion in the Commonwealth Heritage List; or

Section 341JB

- (c) each part of the place is a place to which paragraph (a) or (b) applies.
- (4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any Commonwealth Heritage values. For this purpose, the Council is not required to have regard to any information beyond the information that was included in the nomination.
- (5) The proposed priority assessment list is not a legislative instrument.

341JB Matters to be included in proposed priority assessment list

- (1) The proposed priority assessment list is to include, for each place in the list:
 - (a) a description of the place; and
 - (b) an assessment completion time; and
 - (c) any other information required by the regulations.
- (2) The assessment completion time for a place must be either:
 - (a) the end of the period of 12 months starting on the day the finalised priority assessment list is published under section 341JE(1); or
 - (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take longer than the period under paragraph (a)—the end of that longer period.

341JC Statement to be given to Minister with proposed priority assessment list

- (1) When the Australian Heritage Council gives the Minister the priority assessment list, the Council must also give the Minister a

Section 341JD

statement setting out such information as the Council considers appropriate relating to:

- (a) for each place that is included in the list—why the Council included the place in the list; and
 - (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 341JA(3)(a)—why the Council did not include the place in the list.
- (2) The statement must also identify, as a place nominated by the Australian Heritage Council, any place that is included in the list because the Council itself wishes to nominate the place or part of it (as mentioned in paragraphs 341JA(3)(b) and (c)).

341JD The finalised priority assessment list

- (1) Within 20 business days after the Minister, under section 341JA, receives the proposed priority assessment list, the Minister may, in writing, make changes to the list as mentioned in subsection (2).
- (2) The changes the Minister may make are as follows:
 - (a) including a place in the list (and also including the matters referred to in subsection 341JA(1));
 - (b) omitting a place from the list (and also omitting the matters referred to in subsection 341JA(1));
 - (c) changing the assessment completion time for a place in the 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 list, as changed (if at all) by the Minister, becomes the ***finalised priority assessment list***.
- (5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.

Section 341JE

- (6) The finalised priority assessment list is not a legislative instrument.

341JE Publication of finalised priority assessment list

- (1) The Australian Heritage Council must publish the finalised priority assessment list on the internet.
- (2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

341JF Australian Heritage Council to invite comments on places in finalised priority assessment list

- (1) In relation to each place included in the finalised priority assessment list, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
- (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
 - (b) must identify the place or places to which the notice relates; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place or places meet any of the Commonwealth Heritage criteria; and
 - (ii) whether the place or places should be included in the Commonwealth Heritage List; and
 - (d) 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

Section 341JG

- (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
 - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
 - (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

341JG Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister

- (1) In relation to each place included in the finalised priority assessment list, the Australian Heritage Council must (by the time required by section 341JH):
- (a) make a written assessment whether the place meets any of the Commonwealth Heritage criteria; 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 a place, the Australian Heritage Council, subject to subsections (3) and (4):
- (a) must take into account the comments the Council receives in response to the notice under subsection 341JF(1) in relation to the place; and
 - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
 - (c) may seek, and have regard to, information or advice from any source.

Section 341JG

- (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:
 - (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 341JF(1) in relation to the place; or
 - (b) the Council considers that regulations referred to in paragraph 341JF(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the Commonwealth Heritage criteria.
- (5) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more Commonwealth Heritage values, the Council must:
 - (a) take all practicable steps:
 - (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
 - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the Commonwealth Heritage criteria; and
 - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the Commonwealth Heritage List.
- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
 - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

Section 341JH

- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.
- (7) If:
- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
 - (b) there are Indigenous persons who:
 - (i) have rights or interests in all or part of the place; and
 - (ii) are neither owners nor occupiers of all or part of the place; and
 - (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent those Indigenous persons in relation to those rights and interests;
- the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

341JH Time by which assessments to be provided to Minister

- (1) Subsection 341JG(1) must be complied with, in relation to a place included in the finalised priority assessment list, by the assessment completion time specified in the list for the place, or by that time as extended under this section.
- (2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council 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.

Section 341JHA

- (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.

341JHA Discontinuing assessment of a place

Discontinuance on Council's recommendation

- (1) The Australian Heritage Council may, at any time before an assessment in relation to a place is given to the Minister under section 341JG, recommend to the Minister that the assessment of the place under this Subdivision be discontinued.
- (2) A recommendation made under subsection (1) must:
 - (a) be in writing; and
 - (b) set out the Council's reasons for recommending that the assessment of the place be discontinued.
- (3) The Minister must consider the recommendation and may, if the Minister considers it appropriate to do so, direct the Council to discontinue the assessment of the place.
- (4) If the Minister does not give a direction under subsection (3) within 3 months after being given the Council's recommendation, the Council must continue with the assessment of the place.

Discontinuance on Minister's initiative

- (5) The Minister may, on the Minister's own initiative, if the Minister considers it appropriate to do so, direct the Council to discontinue the assessment of a place under this Subdivision at any time before an assessment of the place is given to the Minister under section 341JG.

Further information

- (6) In deciding whether to make a direction under this section, the Minister may request the Council to provide any of the following:

Section 341JI

- (a) any comments received by the Council in response to the notice under subsection 341JF(1) in relation to the place;
 - (b) any other information relevant to the Minister's decision that the Minister reasonably believes the Council can provide.
- (7) In deciding whether to make a direction, the Minister may request any person to provide any information relevant to the Minister's decision that the Minister reasonably believes the person can provide.

Publication of reasons

- (8) If the Minister, under this section, directs the Council to discontinue the assessment of a place, the Minister must, as soon as practicable:
- (a) give the Council a copy of the direction; and
 - (b) publish a copy of the direction, and the Minister's reasons for making it, on the Department's website.

Effect of direction

- (9) If the Minister makes a direction under this section in relation to a place, the place is taken to be no longer included in the finalised priority assessment list.

Direction not a legislative instrument

- (10) A direction given under subsection (3) or (5) is not a legislative instrument.

341JI Decision about inclusion of a place in the Commonwealth Heritage List

Minister to decide whether or not to include place

- (1) After receiving from the Australian Heritage Council an assessment under section 341JG whether a place (the ***assessed place***) meets any of the Commonwealth Heritage criteria, the Minister must:

Section 341JI

- (a) by instrument published in the *Gazette*, include in the Commonwealth Heritage List:
 - (i) the assessed place or a part of the assessed place; and
 - (ii) the Commonwealth Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
- (b) in writing, decide not to include the assessed place in the Commonwealth Heritage List.

Note: The Minister may include a place in the Commonwealth Heritage List only if the Minister is satisfied that the place has one or more Commonwealth Heritage values (see subsection 341C(2)).

- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by regulations.
- (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
 - (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the Commonwealth Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 341JG(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.
- (5A) Despite section 341BA, if the assessed place is made up of locations, areas, regions or other elements that are not contiguous, or not geographically proximate, the Minister may include the

Section 341JJ

assessed place, or a part of the assessed place, in the Commonwealth Heritage List only if the Minister is satisfied that each of the locations, areas, regions or other elements:

- (a) has been assessed for inclusion in the Commonwealth Heritage List, whether together or separately; and
 - (b) has one or more of the same Commonwealth Heritage values as the other locations, areas, regions or elements that make up the place.
- (5B) To avoid doubt, the Minister may comply with subsection (1) by taking action under section 341LB (expansion of Commonwealth Heritage place) to add the assessed place, or a part of the assessed place, to an existing Commonwealth Heritage place.

Additional requirements if Minister decides to include place

- (6) If the Minister includes the assessed place, or a part of the assessed place (the ***listed part of the assessed place***), in the Commonwealth Heritage List, he or she must, within a reasonable time:
- (a) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
 - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the Commonwealth Heritage List; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 341H(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the Commonwealth Heritage List; and
 - (c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and
 - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

Section 341JI

- (7) Paragraph (6)(a) does not apply unless the assessed place is within the Australian jurisdiction.
- (8) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
 - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the assessed place;
 - (c) displays in public buildings at or near the assessed place.

Additional requirements if Minister decides not to include place

- (9) If the Minister decides not to include the assessed place in the Commonwealth Heritage List, the Minister must, within 10 business days after making the decision:
 - (a) publish the decision on the internet; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 341H(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (9) applies in a case where the Minister decides that none of the assessed place is to be included in the Commonwealth Heritage List.

Subdivision BB—Inclusion of places in the Commonwealth Heritage List: emergency process

341JJ Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the emergency process for the inclusion of places in the Commonwealth Heritage List.

The emergency process involves the following steps:

- (a) the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK);
- (b) the Minister asks the Australian Heritage Council to assess the place (see section 341JL);
- (c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 341JM);
- (d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 341JN and 341JO);
- (e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 341JP).

341JK Minister may include place in Commonwealth Heritage List if under threat

- (1) If the Minister believes:
- (a) a place has or may have one or more Commonwealth Heritage values; and
 - (b) any of those values is under threat of a significant adverse impact; and
 - (c) that threat is both likely and imminent;
- the Minister may, by instrument published in the *Gazette*, include in the Commonwealth Heritage List the place and the

Section 341JK

Commonwealth Heritage values the Minister believes the place has or may have.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(2).

(2) If:

- (a) the place is included in the Commonwealth Heritage List under subsection (1); and
- (b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;

that process ceases to apply to the place when it is included in the List under subsection (1).

Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 341JP(1) or (4) and a person subsequently nominates the place under that Subdivision.

(3) If the place is included in the Commonwealth Heritage List under subsection (1), the Minister must:

- (a) in any case—within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):
 - (i) on the internet; and
 - (ii) in accordance with any other requirements specified in the regulations; and
- (b) if the place is within the Australian jurisdiction—take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the Commonwealth Heritage List.

(4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

Section 341JL

- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
- (c) displays in public buildings at or near the place.

341JL Minister to ask Australian Heritage Council for assessment

- (1) If the Minister includes a place in the Commonwealth Heritage List under section 341JK, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the Commonwealth Heritage criteria.
- (2) The request must specify the assessment completion time for the assessment.

Note: When specifying an assessment completion time, the 12-month period referred to in subsection 341JP(1) should be considered.

341JM Publication of listing of place and inviting comments

- (1) If the Australian Heritage Council receives a request under subsection 341JL(1) in relation to a place that has been included in the Commonwealth Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.
- (2) A notice under subsection (1) in relation to a place:
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must contain the following:
 - (i) a description of the place;
 - (ii) a statement that the place has been included in the Commonwealth Heritage List, and that specifies the Commonwealth Heritage values that have been included in the List in relation to the place;
 - (iii) the date on which the place was so included; and

Section 341JN

- (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place meets any of the Commonwealth Heritage criteria; and
 - (ii) whether the place should continue to be included in the Commonwealth Heritage List; and
 - (d) 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
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.
- (3) The regulations may provide for either or both of the following:
- (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

341JN Australian Heritage Council to assess place and give assessment to Minister

- (1) Section 341JG applies in relation to a request under subsection 341JL(1) as if:
- (a) a reference in section 341JG to a place included in the finalised priority assessment list were a reference to the place to which the request relates; and
 - (b) a reference in section 341JG to the notice under subsection 341JF(1) in relation to the place were a reference to the notice under subsection 341JM(1) in relation to the place; and
 - (c) a reference in section 341JG to regulations referred to in paragraph 341JF(4)(b) were a reference to regulations referred to in paragraph 341JM(3)(b); and
 - (d) a reference in section 341JG to whether the place should be included in the Commonwealth Heritage List were a reference to whether the place should continue to be included in the Commonwealth Heritage List.

Section 341JO

- (2) A reference in another provision of this Act to section 341JG, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

341JO Time by which assessments to be provided to Minister

- (1) Section 341JH applies in relation to a request under subsection 341JL(1) as if:
- (a) a reference in section 341JH to a place included in the finalised priority assessment list were a reference to the place to which the request relates; and
 - (b) a reference in section 341JH to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.
- (2) A reference in another provision of this Act to section 341JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

341JP Decision about place remaining in the Commonwealth Heritage List

Minister to decide whether place should remain listed

- (1) Within 12 months after the inclusion of a place in the Commonwealth Heritage List under section 341JK, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):
- (a) do one of the following:
 - (i) state that the place remains in the Commonwealth Heritage List with its boundary unaltered;
 - (ii) alter the boundary of the place described in the Commonwealth Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
 - (iii) remove from the Commonwealth Heritage List the place and its Commonwealth Heritage values; and

Section 341JP

- (b) if the place is not removed from the Commonwealth Heritage List under subparagraph (a)(iii)—do all or any of the following:
 - (i) state that specified Commonwealth Heritage values included in the List under section 341JK for the place remain in the List for the place;
 - (ii) include in the List for the place specified Commonwealth Heritage values of the place that were not included in the List under section 341JK for the place;
 - (iii) remove from the List for the place specified Commonwealth Heritage values that were included in the List under section 341JK for the place.
- (2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 341JG in relation to the place.
- (3) The Minister must not take action under subsection (1) that results in the place remaining in the Commonwealth Heritage List (whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more Commonwealth Heritage values.

Listing lapses automatically if action not taken within 12 months of listing

- (4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed Commonwealth Heritage values, are automatically removed from the Commonwealth Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

Matters to be considered

- (5) For the purpose of deciding what action to take under subsection (1) in relation to the place:

Section 341JP

- (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the place meets any of the Commonwealth Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 341JG(1) with the assessment; and
- (b) the Minister may seek, and have regard to, information or advice from any source.

Disapplying section 341L

- (6) Section 341L does not apply to:
 - (a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the Commonwealth Heritage List; or
 - (b) the removal of the place and its Commonwealth Heritage values under subparagraph (1)(a)(iii) of this section; or
 - (c) the removal of a Commonwealth Heritage value of the place under subparagraph (1)(b)(iii) of this section.

Minister to publish copy or summary of subsection (1) notice

- (7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

Additional requirements if place etc. is removed under subsection (1)

- (8) If, under subsection (1), the Minister removes from the Commonwealth Heritage List the place or a Commonwealth Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:

Section 341JP

- (a) in any case—publish a copy of the instrument referred to in subsection (1) on the internet; and
- (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 341JK(3).

Requirements if place is removed under subsection (4)

- (9) If, under subsection (4), the place, and its listed Commonwealth Heritage values, are removed from the Commonwealth Heritage List, the Minister must, within 10 business days after the removal:
 - (a) in any case—publish notice of the removal on the internet; and
 - (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

Note: For the obligation to identify owners or occupiers, see subsection 341JK(3).

Alternative methods of notifying owners and occupiers

- (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Council may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
 - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.

**Subdivision BC—Other provisions relating to the
Commonwealth Heritage List**

**341JQ Co-ordination with Scientific Committee—Council
undertaking assessment**

- (1) This section applies if:
 - (a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) before giving the assessment to the Minister, the Council becomes aware that:
 - (i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; 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 Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).
- (4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:
 - (a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and
 - (b) invite the Scientific Committee to give the Council its comments in relation to that matter; and
 - (c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in response to that invitation within 14 days, or such longer

Section 341JR

period as is specified in the invitation, after being given the invitation.

- (5) If the Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a), the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.
- (6) If:
 - (a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and
 - (b) the Australian Heritage Council has been given a copy of that assessment;the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.
- (7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 341R.

341JR Co-ordination with Scientific Committee—Council given assessment to Minister

- (1) This section applies if:
 - (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) the Council is aware that:
 - (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and

Section 341K

- (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 Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
 - (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
 - (b) give the Scientific Committee a copy of the assessment.
- (3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (4) Subsections (2) and (3) have effect despite section 341R.

341K Listing process not affected by changing boundaries of a place

- (1) This section is about compliance with a provision of Subdivision BA or BB that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of that Subdivision.
- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.
- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

341L Removal of places or Commonwealth Heritage values from the Commonwealth Heritage List

- (1) The Minister must remove all or part of a place from the Commonwealth Heritage List as soon as practicable after the Minister becomes aware that:
 - (a) the place or part is no longer in a Commonwealth area; or

Section 341L

- (b) the place or part is no longer owned or leased by the Commonwealth or a Commonwealth agency, if the place or part is outside the Australian jurisdiction.
 - (2) The Minister may remove all or part of a place from the Commonwealth Heritage List only if the Minister is satisfied that:
 - (a) ignoring subsection 341D(2), the place no longer has any Commonwealth Heritage values or the part no longer contributes to any of the Commonwealth Heritage values of the place; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.
- Note: A place or part of a place may also be removed from the Commonwealth Heritage List under subsection 341JP(1).
- (3) The Minister may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Minister is satisfied that:
 - (a) ignoring subsection 341D(2), the place no longer has the Commonwealth Heritage value or values; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.
 - (4) The Minister may remove all or part of a place, or a Commonwealth Heritage value of a place, only by an instrument including a statement of the reasons for the removal.
- Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).
- Note 2: For requirements relating to the instrument under the *Legislation Act 2003*, see subsections (6) and (7) of this section.
- (5) The instrument must deal with only one of the following kinds of removal:
 - (a) removal (***removal for loss of value***) of a place, part or Commonwealth Heritage value because of paragraph (2)(a) or (3)(a);
 - (b) removal of a place, part or Commonwealth Heritage value because of subsection (1) or paragraph (2)(b) or (3)(b).

Section 341LA

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

- (6) If the instrument deals only with removal for loss of value:
- (a) it is a legislative instrument; and
 - (b) it takes effect on the first day it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.
- (7) If subsection (6) does not apply to the instrument, it is a notifiable instrument.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunsetting under that Act.

341LA Amendment of Commonwealth Heritage values of a place

- (1) The Minister may, by instrument published in the *Gazette*, do any of the following in relation to a Commonwealth Heritage place:
- (a) add one or more Commonwealth Heritage values to the entry for the place in the Commonwealth Heritage List;
 - (b) amend the Commonwealth Heritage values included in the List for the place.
- (2) The Minister may do so only if the Minister is satisfied that:
- (a) it is appropriate to do so; and
 - (b) after the instrument is made, the place will continue to meet one or more Commonwealth Heritage criteria.
- Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).
- (3) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.
- (4) Subsections 341JI(6) and (7) apply if the Minister makes an instrument under this section, as if:

Section 341LB

- (a) references in those subsections to the Minister including the assessed place were references to the Minister making a change under subsection (1) in relation to the place; and
 - (b) the reference in paragraph 341JI(6)(b) to the assessed place being nominated by, or included in or including a place nominated by, a person who responded to a notice under subsection 341H(1) were a reference to a person who responded to a notice under paragraph 341M(1)(b) (invitation to the public) in relation to the changed Commonwealth Heritage values of the place.
- (5) An instrument made under subsection (1) is not a legislative instrument.

341LB Expansion of Commonwealth Heritage place

- (1) The Minister may, by instrument published in the *Gazette*, alter the boundary of a Commonwealth Heritage place (the *listed place*) as described in the Commonwealth Heritage List so as to add a place to the listed place.
 - (2) The Minister may do so only if the Minister is satisfied that the added place:
 - (a) meets the requirements specified in subsection 341C(2); and
 - (b) has been assessed for inclusion in the Commonwealth Heritage List (either on its own or as part of a larger place); and
 - (c) has one or more of the same Commonwealth Heritage values as the listed place.
- Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).
- (3) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.
 - (4) Subsections 341JI(6) and (7) apply if the Minister makes an instrument under this section, as if:

- (a) references in those subsections to the assessed place were references to the added place; and
 - (b) the reference in paragraph 341JI(6)(b) to a person who responded to a notice under subsection 341H(1) were a reference to a person who responded to a notice under paragraph 341M(1)(b) (invitation to the public) in relation to the added place.
- (5) An instrument made under subsection (1) is not a legislative instrument.

341LC Alignment with boundaries of declared World Heritage property

- (1) The Minister may, by instrument published in the *Gazette*, alter the boundaries of a Commonwealth Heritage place to align them with the boundaries of a declared World Heritage property, if the Minister is satisfied that the Commonwealth Heritage place and the declared World Heritage property are the same, or substantially the same, place.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).

- (2) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.
- (3) An instrument made under subsection (1) is not a legislative instrument.

341M Minister must consider advice of the Australian Heritage Council and public comments

- (1) Before making a change under section 341L on the ground mentioned in paragraph 341L(2)(a) or (3)(a) (removal for loss of value), or under section 341LA, 341LB or 341LC, in relation to a place on the Commonwealth Heritage List, the Minister must:

Section 341M

- (a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed change; and
 - (b) publish, on the internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:
 - (i) describing the proposed change; and
 - (ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed change.
- The Minister must publish the notice within 20 business days of giving the request.
- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.
 - (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.
 - (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the Commonwealth Heritage values of the place concerned.
 - (5) The Minister must:
 - (a) decide whether to make the change; and
 - (b) if the Minister decides to make the change—make an instrument to effect the change under section 341L, 341LA, 341LB or 341LC;within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.
 - (6) However, the time limit in subsection (5) does not apply if the place is wholly or partly outside the Australian jurisdiction.

341N Minor amendments to the Commonwealth Heritage List

- (1) The Minister may, by written instrument, amend the Commonwealth Heritage List in relation to a Commonwealth Heritage place for one or more of the following reasons:
 - (a) to fix a typographical error in the entry for the place;
 - (b) to make a correction to the description of the boundaries of the place;
 - (c) to correct an error in the description of the Commonwealth Heritage values for the place;
 - (d) to reflect a change in name, or additional name, for the place.
- (2) An instrument made under subsection (1) is not a legislative instrument.
- (3) If the Minister makes an instrument under subsection (1), the Minister must, as soon as practicable, publish a copy on the Department's website.

341P Commonwealth Heritage List must be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the Commonwealth Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the Commonwealth Heritage List is available on the internet.

Note: The copies of the Commonwealth Heritage List made publicly available may not contain certain information kept confidential under section 341Q.

341Q Certain information may be kept confidential

- (1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged 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 place's precise location;

Section 341R

- (b) the place's heritage values;
 - (c) any other information about the place.
- (2) It is sufficient compliance with this Act if only a general description of the place, its location or its Commonwealth Heritage values is included in:
 - (a) the Commonwealth Heritage List as made publicly available; or
 - (b) an instrument or other document created for the purposes of this Act.

341R Disclosure of Australian Heritage Council's assessments and advice

- (1) A member of the Australian Heritage Council 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 Council or another member of the Council:
 - (a) an assessment under section 341JG whether a place meets any of the Commonwealth Heritage criteria, 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 341M concerning a place 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 a place does not exist after:
 - (i) publication in the *Gazette* of an instrument under paragraph 341JI(1)(a) or subsection 341JP(1) in relation to the place; or
 - (ii) the Minister decides under paragraph 341JI(1)(b) not to include the place in the Commonwealth Heritage List; and
 - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:

Section 341R

- (i) registration under the *Legislation Act 2003* of an instrument under section 341L relating to the place; or
 - (ia) publication in the *Gazette* of an instrument made under section 341LA, 341LB or 341LC relating to the place; or
 - (ii) the Minister decides under section 341M not to remove the place or a part of the place, or one or more of the place's Commonwealth Heritage values, from the Commonwealth Heritage List.
- (2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:
 - (a) a place being, or not being, included in the Commonwealth Heritage List; or
 - (b) Commonwealth Heritage values of a place being, or not being, included in the List; or
 - (c) a place or part of a place, or one or more Commonwealth Heritage values of a place, being removed from the List.
- (2B) Subsection (1) does not apply to a disclosure of particular information if:
 - (a) the Chair of the Australian Heritage Council 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).
- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
 - (a) an assessment under section 341JG whether a place meets the Commonwealth Heritage criteria; or
 - (b) advice under section 341M concerning a place;the member must give a copy of the assessment or advice to anyone who asks for it.

Section 341S

(4) If:

- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
- (b) the member is aware that, under section 341Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its Commonwealth Heritage values;

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.

Subdivision C—Management plans for Commonwealth Heritage places

341S Management plans for Commonwealth Heritage places

- (1) A Commonwealth agency must make a written plan to protect and manage the Commonwealth Heritage values of a Commonwealth Heritage place it owns or controls. The agency must do so within the period mentioned either:
 - (a) at the time the agency starts owning or controlling the place, in the agency's heritage strategy under section 341ZA; or
 - (b) after that time, in the agency's first such strategy.

Note: However, a Commonwealth agency must not make plans for managing certain places (see section 341U).

- (2) The Commonwealth agency may, in writing, amend the plan or revoke and replace the plan.
- (3) A Commonwealth agency must give notice, in accordance with the regulations, if the agency:
 - (a) makes a plan for a Commonwealth Heritage place; or
 - (b) amends such a plan; or
 - (c) revokes and replaces such a plan.

Note: Subdivision E imposes other obligations on Commonwealth agencies.

Section 341T

- (4) A plan must:
 - (a) address the matters prescribed by the regulations; and
 - (b) not be inconsistent with the Commonwealth Heritage management principles (see Subdivision D).
- (5) If the Commonwealth Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the agency concerned must as soon as practicable make a written instrument:
 - (a) amending the earlier plan to make it consistent with the principles; or
 - (b) revoking and replacing the earlier plan.
- (6) Before making, amending or revoking and replacing a plan, the agency concerned must:
 - (a) ask the Minister for advice on the proposed plan or amendment and must take account of any such advice received from the Minister; and
 - (b) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment.
- (7) The Minister must consult with the Australian Heritage Council in preparing an advice for the purposes of this section.
- (8) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

341T Endorsing management plans for Commonwealth Heritage places

- (1) A Commonwealth agency that makes a plan for managing a Commonwealth Heritage place may ask the Minister to endorse the plan. If the Commonwealth agency does so, it must give the Minister a copy of the plan.
- (1A) The Minister must decide within 60 business days of being given the copy of the plan whether or not to endorse the plan.

Section 341U

- (1B) Within 10 business days of making the decision, the Minister must inform the Commonwealth agency in writing of the decision and publish on the internet a notice of the decision.
- (2) The Minister:
 - (a) may only endorse a plan that the Minister is satisfied provides for the conservation of the Commonwealth Heritage values of the place concerned; and
 - (b) must not endorse a plan that the Minister considers is inconsistent with the Commonwealth Heritage management principles (see Subdivision D).
- (3) The Minister may, at any time, revoke an endorsement of a plan if the Minister considers it appropriate to do so.

341U Restriction on ability to make plans

Despite section 341S, a Commonwealth agency must not make a plan for managing so much of a Commonwealth Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

341V Compliance with plans by the Commonwealth and Commonwealth agencies

- (1) The Commonwealth or a Commonwealth agency must not:
 - (a) contravene a plan made under section 341S; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 341S for a particular Commonwealth Heritage place, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the Commonwealth Heritage management principles.

341W Multiple plans in the same document

To avoid doubt, a plan for managing a Commonwealth Heritage place may be in the same document as:

- (a) one or more other plans for managing Commonwealth Heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

341X Review of plans at least every 5 years

- (1) At least once in every 5 year period after a plan for managing a Commonwealth Heritage place is made under section 341S, the Commonwealth agency concerned must cause a review of the plan to be carried out.
- (2) The review must:
 - (a) assess whether the plan is consistent with the Commonwealth Heritage management principles in force at the time; and
 - (b) assess whether the plan is effective in protecting and conserving the Commonwealth Heritage values of the place; and
 - (c) make recommendations for the improved protection of the Commonwealth Heritage values of the place.
- (3) The person carrying out the review must publish, on the internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:
 - (a) whether the plan is consistent with the Commonwealth Heritage management principles; and
 - (b) the effectiveness of the plan in protecting and conserving the Commonwealth Heritage values of the place.
- (4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

Section 341Y

Subdivision D—The Commonwealth Heritage management principles

341Y Commonwealth Heritage management principles

- (1) The regulations must prescribe principles for managing Commonwealth Heritage places. The principles prescribed are the *Commonwealth Heritage management principles*.
- (2) The regulations may prescribe obligations to implement or give effect to the Commonwealth Heritage management principles.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.

Subdivision E—Obligations of Commonwealth agencies

341Z Obligation to assist the Minister and the Australian Heritage Council

A Commonwealth agency that owns or controls a place that has, or might have, one or more Commonwealth Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's Commonwealth Heritage values.

341ZA Heritage strategies

- (1) If a Commonwealth agency owns or controls one or more places, the agency must:
 - (a) prepare a written heritage strategy for managing the places to protect and conserve their Commonwealth Heritage values; and
 - (b) give a copy of the strategy to the Minister;
as soon as practicable and in any event within 2 years after the later of:
 - (c) the time the agency first owns or controls a place; and
 - (d) the commencement of this section.

Section 341ZB

Note: The heritage strategy will apply to every place the agency owns or controls.

- (1A) Before making a heritage strategy, the Commonwealth agency must consult the Australian Heritage Council and take into account any advice the agency receives from the Council.
- (2) The Commonwealth agency may, in writing, amend the heritage strategy or revoke and replace the heritage strategy. The Commonwealth agency must give the Minister a copy of the amended or replacement strategy within 20 business days of the amendment or replacement.
- (3) A heritage strategy must:
 - (a) mention the period within which the Commonwealth agency must make a plan under section 341S; and
 - (b) mention the period within which the Commonwealth agency must do the things mentioned in subsection 341ZB(1); and
 - (c) address the matters prescribed by the regulations (if any); and
 - (d) not be inconsistent with the Commonwealth Heritage management principles.
- (4) The Minister must advise the Commonwealth agency whether or not the agency's heritage strategy (whether original, amended or replacement) is inconsistent with the Commonwealth Heritage management principles.
- (5) At least once in every 3 year period after a heritage strategy is made, the Commonwealth agency concerned must cause a review of the strategy to be carried out.
- (6) The agency must give the Minister a written report of the review. The report must address the matters prescribed by the regulations (if any).

341ZB Heritage assessments and registers

- (1) A Commonwealth agency must do all of the following within the period mentioned in its heritage strategy:

Section 341ZC

- (a) conduct a program to identify Commonwealth Heritage values for each place it owns or controls;
 - (b) produce a register that sets out, for each place it owns or controls, the Commonwealth Heritage values (if any) of that place;
 - (c) give the Minister a written report that includes:
 - (i) details of the program; and
 - (ii) a copy of the register.
- (2) The regulations may prescribe all or any of the following:
 - (a) how Commonwealth heritage values may be identified for a place;
 - (b) matters a register must address;
 - (c) matters a report to the Minister must address.
- (3) A Commonwealth agency must keep its register up to date.
- (4) A register may be kept electronically.
- (5) If a report under paragraph (1)(c) indicates that a place owned or controlled by a Commonwealth agency may have one or more Commonwealth Heritage values, information from the report may be used or referred to in a nomination of the place for inclusion in the Commonwealth Heritage List.

341ZC Minimising adverse impact on heritage values

A Commonwealth agency must not take an action that has, will have or is likely to have an adverse impact on the National Heritage values of a National Heritage place or the Commonwealth Heritage values of a Commonwealth Heritage place, unless:

- (a) there is no feasible and prudent alternative to taking the action; and
- (b) all measures that can reasonably be taken to mitigate the impact of the action on those values are taken.

341ZE Protecting Commonwealth Heritage values of places sold or leased

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a Commonwealth Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.
- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the Commonwealth Heritage values of the place, unless the agency is satisfied that:
 - (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
 - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
 - (a) such a covenant:
 - (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
 - (ii) could be insufficient to ensure the ongoing protection of the Commonwealth Heritage values of the place; or
 - (b) the agency is satisfied as described in subsection (2).The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).
- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:

Section 341ZG

- (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the Commonwealth Heritage values of the place; or
 - (b) advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.
- (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.
- (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

Subdivision G—Assistance for protecting Commonwealth Heritage places

341ZG Commonwealth assistance for protecting Commonwealth Heritage places

- (1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a Commonwealth Heritage place to any person.
- (2) The Commonwealth may give the assistance subject to conditions.

Subdivision H—Reviewing and reporting on the Commonwealth Heritage List

341ZH Reviewing and reporting on the Commonwealth Heritage List

- (1) At least once in every 5 year period after the Commonwealth Heritage List is established, the Minister must ensure that:
 - (a) a review of the Commonwealth Heritage List is carried out;
and
 - (b) a report of that review is tabled in each House of the Parliament.
- (2) The report must include details of:
 - (a) the number of places included in the Commonwealth Heritage List; and
 - (b) any significant damage or threat to the Commonwealth Heritage values of those places; and
 - (c) how many plans under Subdivision C for managing Commonwealth Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
 - (d) the operation of any conservation agreements under Part 14 that affect Commonwealth Heritage places; and
 - (e) all nominations, assessments and changes to the Commonwealth Heritage List under this Division during the period of review; and
 - (f) compliance with this Act in relation to Commonwealth Heritage places; and
 - (g) any other matters that the Minister considers relevant.

Division 4—Commonwealth reserves

Subdivision A—Simplified outline of this Division

342 Simplified outline of this Division

The following is a simplified outline of this Division:

Commonwealth reserves can be declared over areas of land or sea:

- (a) that the Commonwealth owns or leases; or
- (b) that are in a Commonwealth marine area; or
- (c) outside Australia that the Commonwealth has international obligations to protect.

A Proclamation must assign the reserve to a particular category, that affects how the reserve is managed and used.

Some activities can be undertaken in a reserve only if a management plan provides for them. Commonwealth agencies must comply with a management plan. Regulations can be made to control a wide range of activities in reserves.

The Minister may approve a management plan prepared by the Director and any Board for a reserve.

In agreement with indigenous people, the Minister can set up a Board for a reserve including land leased from indigenous people.

Subdivision B—Declaring and revoking Commonwealth reserves

343 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

Section 344

The Governor-General can proclaim Commonwealth reserves over areas of land or sea:

- (a) that the Commonwealth owns; or
- (b) that the Commonwealth or the Director leases; or
- (c) that are in a Commonwealth marine area; or
- (d) outside Australia that the Commonwealth has international obligations to protect.

A Proclamation must assign the reserve to a particular category that affects how the reserve is managed and used.

Proclamations can be made to alter and revoke reserves.

The Director must consult publicly before some Proclamations are made.

344 Declaring Commonwealth reserves

Declaring a Commonwealth reserve

- (1) The Governor-General may, by Proclamation, declare as a Commonwealth reserve:
 - (a) an area of land:
 - (i) that is owned by the Commonwealth in a Territory; or
 - (ii) that is owned by the Commonwealth outside a Territory; or
 - (iii) that is held under lease by the Commonwealth or the Director in a Territory; or
 - (iv) that is held under lease by the Commonwealth or the Director outside a Territory; or
 - (v) outside Australia and in respect of which Australia has obligations relating to biodiversity or heritage under an agreement with one or more other countries that may appropriately be met by declaring the area a Commonwealth reserve; or

Section 344

- (b) an area of sea:
 - (i) in a Commonwealth marine area; or
 - (ii) outside Australia and in respect of which Australia has obligations relating to biodiversity or heritage under an agreement with one or more other countries that may appropriately be met by declaring the area a Commonwealth reserve; or
- (c) an area of land described in paragraph (a) and sea described in paragraph (b).

Note 1: Section 351 sets out some prerequisites for making Proclamations.

Note 2: A reference to Australia generally includes its coastal sea. See section 15B of the *Acts Interpretation Act 1901*.

Limits on acquiring land for reservation

- (2) If land:
 - (a) is in:
 - (i) a State or self-governing Territory (except the Northern Territory); or
 - (ii) the Northern Territory outside both Uluru-Kata Tjuta National Park and the Alligator Rivers Region (as defined by the *Environment Protection (Alligator Rivers Region) Act 1978*); and
 - (b) is dedicated or reserved under a law of the State or Territory for purposes related to nature conservation or the protection of areas of historical, archaeological or geological importance or of areas having special significance in relation to indigenous persons;

the Commonwealth must not acquire the land for the purposes of declaring it a Commonwealth reserve, without the consent of the State or Territory.

Uluru-Kata Tjuta National Park

- (3) ***Uluru-Kata Tjuta National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Uluru-Kata Tjuta

Section 345

National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

345 Extent of Commonwealth reserve

- (1) A Commonwealth reserve includes:
- (a) land or seabed to the depth stated in the Proclamation declaring the Commonwealth reserve; and
 - (b) the waters and seabed under any sea in the area declared as a Commonwealth reserve.

- (2) In this Act:

land includes subsoil of land and any body of water (whether flowing or not) except the sea.

seabed includes:

- (a) the surface of a coral formation; and
- (b) subsoil of seabed (including coral beneath the surface of a coral formation).

345A Commonwealth usage rights vest in Director

- (1) When a Commonwealth reserve is declared, a usage right that relates to land or seabed in the reserve and is held by the Commonwealth vests in the Director, by force of this subsection.
- (2A) However, subsection (2) does not apply to:
- (a) a usage right acquired by the Commonwealth in relation to the Jabiru town land (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
 - (b) a usage right acquired by the Commonwealth that is prescribed by the regulations for the purposes of this paragraph.
- (2) If the Commonwealth acquires a usage right relating to land or seabed in a Commonwealth reserve, the usage right vests in the Director.

Section 346

- (3) This section does not vest in the Director a usage right in respect of minerals, despite subsections (1) and (2).

346 Content of Proclamation declaring Commonwealth reserve

Content of Proclamation

- (1) The Proclamation declaring an area to be a Commonwealth reserve must:
- (a) give a name to the reserve; and
 - (b) state the purposes for which the reserve is declared; and
 - (c) state the depth of any land included in the reserve; and
 - (d) state the depth of the seabed that is under any sea included in the reserve; and
 - (e) assign the reserve to a category (an *IUCN category*) prescribed in regulations made for the purposes of this subsection.

Assigning different zones of a reserve to different IUCN categories

- (2) A Proclamation may also divide a reserve into zones and assign each zone to an IUCN category.

Assigning leasehold land to IUCN categories

- (3) Before the Governor-General makes a Proclamation assigning a Commonwealth reserve or zone including land or seabed held by the Commonwealth or the Director under lease to a particular IUCN category, the Minister must be satisfied that the category to which it is proposed to assign the reserve or zone is consistent with the terms of the lease.

347 Assigning Commonwealth reserves and zones to IUCN categories

Before the Governor-General makes a Proclamation assigning a Commonwealth reserve, or a zone within a Commonwealth

Section 348

reserve, to a particular IUCN category, the Minister must be satisfied:

- (a) that the reserve or zone:
 - (i) has the characteristics (if any) prescribed by the regulations for the category; and
 - (ii) meets the criteria (if any) prescribed by the regulations for the category; and
- (b) that the reserve or zone should be managed in accordance with the Australian IUCN reserve management principles for the category.

348 Australian IUCN reserve management principles

- (1) The regulations must prescribe principles for each IUCN category. The principles prescribed for an IUCN category are the *Australian IUCN reserve management principles* for the category.
- (2) The principles prescribed for an IUCN category must identify the purpose or purposes for which a Commonwealth reserve, or zone of a Commonwealth reserve, assigned to the category is primarily to be managed.

350 Revocation and alteration of Commonwealth reserves

- (1) The Governor-General may revoke or amend a Proclamation under this Subdivision by another Proclamation.

Note: Section 351 sets out some prerequisites for making Proclamations.

- (2) Before the Governor-General makes a Proclamation that results in land, sea or seabed ceasing to be included in a Commonwealth reserve, the Minister must be satisfied:
 - (a) that the Proclamation, if made, would be in accordance with a resolution passed by each House of Parliament on a motion; and
 - (b) that notice of the motion was given at least 15 sitting days of that House before the motion was moved.

Section 351

- (3) Subsection (2) does not apply to a Proclamation that results in land, sea or seabed ceasing to be included in one Commonwealth reserve or zone and being included in another Commonwealth reserve or zone.
- (4) If the Director ceases to hold land or seabed in a Commonwealth reserve under lease:
 - (a) the land or seabed ceases to be part of the reserve by force of this paragraph; and
 - (b) the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land or seabed in a Commonwealth reserve, to reflect the fact that the land or seabed is no longer part of the reserve.
- (5) Subsection (4) does not apply if the Director ceases to hold the land or seabed under a lease because:
 - (a) the Commonwealth becomes the owner of the land or seabed; or
 - (b) the Director surrenders the lease in consideration of the grant to the Director of another lease of that land or seabed.
- (6) Except as described in subsection (4), land, sea or seabed in a Commonwealth reserve does not cease to be within the reserve merely because a usage right relating to the land, sea or seabed is transferred, assigned, surrendered, extinguished or changed in any way.
- (7) A **usage right** is an estate or a legal or equitable charge, power, privilege, authority, licence or permit.

Note: Section 2B of the *Acts Interpretation Act 1901* defines **estate**.

351 Report before making Proclamation

Minister must consider report before Proclamation made

- (1) Before the Governor-General makes a Proclamation under this Subdivision, the Minister must consider a report prepared by the Director on the matter to be dealt with by the Proclamation.

Section 351*Procedure for preparing report*

- (2) In preparing a report, the Director must:
- (a) publish in the *Gazette* and in accordance with the regulations (if any) a notice:
 - (i) stating the matter to be dealt with by the Proclamation; and
 - (ii) inviting the public to comment on the matter to be dealt with by the Proclamation; and
 - (iii) specifying the address to which comments may be sent; and
 - (iv) specifying the day by which any comments must be sent; and
 - (b) consider any comments made in response to the invitation; and
 - (c) include in the report the comments and the Director's views on the comments.

Content of notice inviting comments

- (3) A notice stating the matter to be dealt with by a Proclamation to declare a Commonwealth reserve must include a statement of:
- (a) the proposed name of the reserve; and
 - (b) the proposed boundaries of the reserve and of any zones into which the reserve is to be divided; and
 - (c) the purpose for which the reserve is to be declared; and
 - (d) which IUCN category the reserve (and, if applicable, each zone of the reserve) is to be assigned to; and
 - (e) the purposes for which it is intended to manage and use the reserve.

Content of notice relating to revocation of Commonwealth reserve

- (4) A notice stating the matter to be dealt with by a Proclamation to cause any land, sea or seabed to cease to be part of a Commonwealth reserve must state the boundaries of that land, sea or seabed.

Section 352

Time for comment

- (5) The day specified in the notice as the day by which any comments must be sent must be at least 60 days after the last day on which the notice is published in the *Gazette* or in accordance with any regulations.

When this section does not apply

- (6) Subsection (1) does not apply in relation to a Proclamation that:
- (a) declares an area in the Kakadu region to be a Commonwealth reserve; or
 - (b) has the effect of changing the name of a Commonwealth reserve in the Kakadu region; or
 - (c) results in land, sea or seabed ceasing to be included in one Commonwealth reserve and being included in another Commonwealth reserve without changing the IUCN category to which the land, sea or seabed is assigned.

352 What happens to Director's usage rights when Commonwealth reserve is revoked

- (1) This section applies in relation to land or seabed that ceases to be included in a Commonwealth reserve because of a Proclamation made under section 350, except a Proclamation that causes the land or seabed:
- (a) to cease to be included in one Commonwealth reserve; and
 - (b) to be included in another Commonwealth reserve.
- (2) A usage right relating to the land or seabed that the Director held vests in the Commonwealth, by force of this subsection.
- (3) However, if the usage right is a lease of indigenous people's land, the usage right ceases to exist, by force of this subsection.
- (4) If the land is in a State or Territory:
- (a) the Director may give the officer of the State or Territory responsible for registering land titles a copy of the Proclamation, certified by the Director; and

Section 353

- (b) the officer may make an entry in his or her registers and do anything else needed to reflect the effect of this section.

Subdivision C—Activities in Commonwealth reserves**353 Simplified outline of this Subdivision**

The following is a simplified outline of this Subdivision:

Many works cannot be carried out in a Commonwealth reserve unless permitted by a management plan.

If there is not a management plan in force for a reserve, it must be managed in a way appropriate for the category it has been assigned to by a Proclamation or an earlier management plan.

Regulations can be made to control activities in reserves.

People who have rights relating to an area that is later included in a reserve can continue to exercise those rights in the reserve.

354 Activities that may be carried on only under management plan

- (1) A person must not do one of the following acts in a Commonwealth reserve except in accordance with a management plan in operation for the reserve:
- (a) kill, injure, take, trade, keep or move a member of a native species; or
 - (b) damage heritage; or
 - (c) carry on an excavation; or
 - (d) erect a building or other structure; or
 - (e) carry out works; or
 - (f) take an action for commercial purposes.

Civil penalty:

- (a) for an individual—500 penalty units;

Section 354

(b) for a body corporate—5,000 penalty units.

- (1A) Subsection (1) does not apply to an action taken in the course of carrying on mining operations.

Note: Mining operations are covered by sections 355, 355A and 387.

- (2) However, if a management plan is not in operation for a Commonwealth reserve, the Director may do an act described in subsection (1) for:

- (a) preserving or protecting the reserve; or
- (b) protecting or conserving biodiversity or heritage in the reserve; or
- (c) controlling authorised scientific research; or
- (d) protecting persons or property in the reserve; or
- (e) managing the effects of actions taken under a usage right described in section 359.

- (3) Subsection (2) does not apply in relation to so much of a Commonwealth reserve as is in the Kakadu region, the Uluru region or the Jervis Bay Territory.

Note: Section 385 sets out what the Director may do in a Commonwealth reserve in the Kakadu region, Uluru region or Jervis Bay Territory when there is not a management plan in operation for the reserve.

- (3A) Subsection (1) does not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:

- (a) a management plan is not in operation for the Commonwealth reserve; and
- (b) the action is, or is in the class of actions, specified in the approval; and
- (c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

- (4) This section has effect despite any other law of the Commonwealth, a State or a Territory, but:

- (a) subsections (1) and (2) are subject to:

Section 354A

- (i) section 359 (about interests and rights existing before a Commonwealth reserve); and
 - (ii) section 359A (about traditional use of an area in a reserve); and
 - (iii) the *Antarctic Treaty (Environment Protection) Act 1980*; and
- (b) subsection (1) is also subject to section 385 (about activities in Commonwealth reserves in the Kakadu region, Uluru region or Jervis Bay Territory without management plans).

354A Offences relating to activities that may only be carried on under management plan*Causing death etc to native species or damage to heritage*

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken in a Commonwealth reserve; and
 - (c) the action:
 - (i) results in the death, injury, taking, trade, keeping or moving of a member of a native species in the reserve; or
 - (ii) results in damage to heritage in the reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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.

- (2) Strict liability applies:
- (a) to paragraph (1)(b); and
 - (b) to the physical element of circumstance in paragraph (1)(c), that the member of the native species or the heritage is in the reserve.

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

Section 354A

Erection of buildings etc.

- (3) A person commits an offence if:
- (a) the person takes any of the following actions:
 - (i) erecting a building or structure;
 - (ii) carrying on an excavation;
 - (iii) carrying out works; and
 - (b) the action is taken in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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

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

Actions taken for commercial purposes

- (5) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the person takes the action for a commercial purpose; and
 - (c) the action is taken in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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.

- (6) Paragraph (5)(b) states the fault element for paragraph (5)(a).

- (7) Strict liability applies to paragraph (5)(c).

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

Section 354A

Exception for actions in accordance with a management plan

- (8) Subsections (1), (3) and (5) do not apply to an action if the action is in accordance with a management plan in operation for the Commonwealth reserve in which the action is taken.

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 exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for mining operations

- (9) Subsections (1), (3) and (5) do not apply to an action if the action is taken in the course of carrying on mining operations.

Note 1: Mining operations are covered by sections 355, 355A and 387.

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

Exception for certain actions taken by the Director—actions in places other than Kakadu, Uluru or Jervis Bay

- (10) Subsections (1), (3) and (5) do not apply to an action taken by the Director if:
- (a) a management plan is not in operation for the Commonwealth reserve in which the action is taken; and
 - (b) the action is not taken in the Kakadu region, the Uluru region or the Jervis Bay Territory; and
 - (c) the Director takes the action for the purpose of:
 - (i) preserving or protecting the reserve; or
 - (ii) protecting or conserving biodiversity or heritage in the reserve; or
 - (iii) controlling authorised scientific research; or
 - (iv) protecting persons or property in the reserve; or
 - (v) managing the effects of actions taken under a usage right described in section 359.

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*.

Section 354A

Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for certain actions taken by the Director—conduct in Kakadu, Uluru or Jervis Bay

- (11) Subsections (1), (3) and (5) do not apply to an action taken by the Director in accordance with section 385.

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 for prior usage rights

- (12) Subsections (1), (3) and (5) do not apply to an action that is covered by a usage right, or a right arising out of a usage right, to which section 359 applies.

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 exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for prior traditional use

- (13) Subsections (1), (3) and (5) do not apply to an action that is covered by section 359A.

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 for actions approved under section 359B

- (14) Subsections (1), (3) and (5) do not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:
- (a) a management plan is not in operation for the Commonwealth reserve; and
 - (b) the action is, or is in the class of actions, specified in the approval; and

Section 354A

- (c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

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

Actions in the Antarctic

- (15) Subsections (1), (3) and (5) do not apply to an action taken in the Antarctic if:

- (a) taking the action is an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980*; and
- (b) the person has a defence under that Act in relation to the offence.

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

- (16) The exceptions in subsections (8), (10) and (12) of this section do not apply in relation to an action taken in the Antarctic if taking the action is an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980*.

Note: Although the exception in subsection (9) can still apply, mining operations in the Antarctic are prohibited in any case under the *Antarctic Treaty (Environment Protection) Act 1980*. The exceptions in subsections (11) and (13) cannot apply to actions taken in the Antarctic.

Sentencing restriction for offences in the exclusive economic zone

- (17) A court must not impose a sentence of imprisonment on a person for an offence under subsection (1) or (5) if:

- (a) fishing (as defined in the *Fisheries Management Act 1991*) constituted a physical element of the offence; and
- (b) the fishing was done:
 - (i) in the exclusive economic zone; and
 - (ii) otherwise than from an Australian vessel (or a vessel declared to be an Australian boat under subsection 4(2) of the *Fisheries Management Act 1991*); and

Section 355

- (c) at the time of the fishing, the person was not an Australian citizen or a person who held a permanent visa under the *Migration Act 1958* and was domiciled in Australia or an external territory.

Section has effect despite other laws

- (18) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.

355 Limits on mining operations in Commonwealth reserves

- (1) A person must not carry on mining operations in a Commonwealth reserve except in accordance with a management plan in operation for the reserve.

Civil penalty:

- (a) for an individual—500 penalty units;
- (b) for a body corporate—5,000 penalty units.

- (1A) Subsection (1) does not apply in relation to the Kakadu National Park or the Antarctic.

Note: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the *Antarctic Treaty (Environment Protection) Act 1980* prohibit mining activities in the Antarctic.

- (2) The following are *mining operations*:
 - (a) operations or activities connected with, or incidental to, the mining or recovery of minerals or the production of material from minerals, including:
 - (i) prospecting and exploration for minerals; and
 - (ii) milling, refining, treatment and processing of minerals; and
 - (iii) storage and disposal of minerals and materials produced from minerals;

Section 355A

- (b) the construction and use of towns, camps, dams, pipelines power lines or other structures for the purposes of operations or activities described in paragraph (a);
 - (c) the performance of any other work for the purposes of operations or activities described in paragraph (a).
- (3) A *mineral* is a naturally occurring substance or mixture of substances.
- (3A) Subsection (1) does not apply to mining operations that are covered by an approval in force under subsection 359B(2). For this purpose, mining operations are covered by such an approval if:
 - (a) a management plan is not in operation for the Commonwealth reserve; and
 - (b) the mining operations are, or are in the class of mining operations, specified in the approval; and
 - (c) the mining operations are carried on in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.
- (4) Subsection (1) does not prevent the doing of anything for the purposes of building or construction, or the supply of water, in a Commonwealth reserve unless the purposes are connected with, or incidental to, mining operations.
- (5) This section is subject to:
 - (a) section 359 (about interests and rights existing before a Commonwealth reserve); and
 - (b) section 359A (about traditional use of an area in a reserve);but has effect despite any other law of the Commonwealth, a State or a Territory.

355A Offence relating to mining operations*Offence of carrying on mining operations*

- (1) A person commits an offence if:
 - (a) the person carries on mining operations; and

Section 355A

- (b) the mining operations are carried on in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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.

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

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

- (3) To avoid doubt, subsection (1) does not prevent the doing of anything for the purposes of building or construction, or the supply of water, in a Commonwealth reserve unless the purposes are connected with, or incidental to, mining operations.

Exception for mining operations carried on in accordance with a management plan

- (4) Subsection (1) does not apply to the carrying on of mining operations in accordance with a management plan in operation for the Commonwealth reserve in which the operations are carried on.

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 in relation to Kakadu National Park and the Antarctic

- (5) Subsection (1) does not apply to the carrying on of mining operations in the Kakadu National Park or in the Antarctic.

Note 1: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the *Antarctic Treaty (Environment Protection) Act 1980* prohibit mining activities in the Antarctic.

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

Section 355A

Exception for prior usage rights

- (6) Subsection (1) does not apply to mining operations that are covered by a usage right, or a right arising out of a usage right, to which section 359 applies.

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 for prior traditional use

- (7) Subsection (1) does not apply to an action that is covered by section 359A.

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 for mining operations approved under section 359B

- (8) Subsection (1) does not apply to mining operations that are covered by an approval in force under subsection 359B(2). For this purpose, mining operations are covered by such an approval if:
- (a) a management plan is not in operation for the Commonwealth reserve; and
 - (b) the mining operations are, or are in the class of mining operations, specified in the approval; and
 - (c) the mining operations are carried on in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

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

Section has effect despite other laws

- (9) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.

Section 356

356 Regulations controlling activities relating to Commonwealth reserves

- (1) The regulations may:
- (a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:
 - (i) people, biodiversity or heritage in Commonwealth reserves; or
 - (ii) the natural features of Commonwealth reserves; and
 - (b) regulate or prohibit tourism in Commonwealth reserves; and
 - (c) provide for the protection and preservation of Commonwealth reserves and property and things in Commonwealth reserves; and
 - (d) provide for the protection and conservation of biodiversity in Commonwealth reserves; and
 - (e) regulate or prohibit access to all or part of a Commonwealth reserve by persons or classes of persons; and
 - (f) provide for the removal of trespassers from Commonwealth reserves; and
 - (g) regulate or prohibit camping in Commonwealth reserves; and
 - (h) provide for the safety of persons in Commonwealth reserves; and
 - (i) regulate or prohibit the use of fire in Commonwealth reserves; and
 - (j) regulate the conduct, or prohibit certain kinds of conduct, of persons in Commonwealth reserves; and
 - (k) regulate or prohibit the carrying on of any trade or commerce in a Commonwealth reserve; and
 - (l) regulate or prohibit the use of vehicles in Commonwealth reserves and provide for signs and road markings for those purposes; and
 - (m) provide for:
 - (i) the removal of vehicles, aircraft or vessels from places in Commonwealth reserves where they have been left in contravention of the regulations or have been abandoned; and

Section 356

- (ii) the impounding of such vehicles, aircraft or vessels; and
- (n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a Commonwealth reserve is, except as provided otherwise, taken to commit an offence against the provision; and
- (o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and
- (p) regulate or prohibit the use of vessels in, and the passage of vessels through, Commonwealth reserves; and
- (q) regulate or prohibit the landing and use of aircraft in, and the flying of aircraft over, Commonwealth reserves; and
- (r) provide for the giving of effect to management plans for Commonwealth reserves; and
- (s) regulate or prohibit the taking of animals or plants into or out of Commonwealth reserves; and
- (t) provide for the impounding, removal, destruction or disposal of animals found straying in Commonwealth reserves; and
- (u) regulate or prohibit the taking into Commonwealth reserves, and the use in Commonwealth reserves, of weapons, traps, nets, snares, fishing apparatus and other devices; and
- (v) regulate or prohibit the laying of baits and the use of explosives and poisons in Commonwealth reserves; and
- (w) provide for the collection of specimens and the pursuit of research in Commonwealth reserves for scientific purposes; and
- (x) provide for the issue of licences, permits and authorities relating to activities in Commonwealth reserves, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and

Section 356A

- (y) provide for any matter incidental to or connected with a matter described in another paragraph.
- (2) A provision of the regulations regulating or prohibiting the flying of aircraft over a Commonwealth reserve does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a provision is not inconsistent with such a law if it can be complied with without contravention of the law.
- (3) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

356A Charges for activities in Commonwealth reserves

Subject to the approval of the Minister, the Director may determine and impose charges for:

- (a) entering or using a Commonwealth reserve or part of a Commonwealth reserve; and
- (b) using services or facilities provided by the Director in or in connection with a Commonwealth reserve; and
- (c) the parking or stopping of vehicles in a Commonwealth reserve; and
- (d) the mooring or landing of vessels in a Commonwealth reserve; and
- (e) the landing of aircraft in a Commonwealth reserve; and
- (f) the use of vehicles and vessels in a Commonwealth reserve.

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

- (1) While a management plan is not in operation for a Commonwealth reserve, the Director must exercise the Director's powers and perform the Director's functions in relation to the reserve or to a zone of the reserve so as to manage the reserve in accordance with:

Section 357

- (a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
 - (i) a Proclamation made under Subdivision B; or
 - (ii) a management plan that was in operation for the reserve (but is no longer); and
 - (b) if the Director holds land or seabed included in the reserve under lease—the Director’s obligations under the lease.
- (2) While a management plan is not in operation for a Commonwealth reserve, the Commonwealth or a Commonwealth agency must not exercise its powers or perform its functions in relation to the reserve or a zone of the reserve inconsistently with either or both of the following:
 - (a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
 - (i) a Proclamation made under Subdivision B; or
 - (ii) a management plan that was in operation for the reserve (but is no longer);
 - (b) if the Director holds land or seabed included in the reserve under lease—the Director’s obligations under the lease.
- (3) If:
 - (a) a zone of a Commonwealth reserve is assigned to an IUCN category at or after the time the reserve was most recently assigned to an IUCN category; and
 - (b) the IUCN category for the zone is different from the IUCN category for the reserve;disregard the IUCN category to which the reserve has been assigned for the purposes of the application of this section in relation to the zone.

Section 358

358 Restriction on disposal of Director's interests in Commonwealth reserves

- (1) The Director must not sell or otherwise dispose of a usage right the Director holds in relation to land, sea or seabed in a Commonwealth reserve.
- (2) However, the Director may grant a lease or sub-lease of, or a licence relating to, land or seabed in a Commonwealth reserve, but only in accordance with a management plan in operation for the reserve.
- (3) Despite subsection (1), the Director may surrender a lease of land or seabed within a Commonwealth reserve in consideration of the grant to the Director of a new lease of land or seabed that includes that land or seabed.
- (4) The *Lands Acquisition Act 1989* does not apply to the grant or surrender of a lease or sub-lease under this section.
- (5) This section has effect despite any law of the Commonwealth or of a State or Territory.

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

- (1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth or the Director) in relation to land or seabed immediately before the land or seabed was included in a Commonwealth reserve:
 - (a) provisions of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);
 - (b) provisions of the regulations made for the purposes of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);
 - (c) provisions of a management plan for the reserve.

Section 359A

- (2) None of the provisions described in subsection (1) affect the application of a law of a State or Territory in relation to the usage right.
- (3) The usage right may be renewed or have its term extended only:
 - (a) with the Minister's written consent; and
 - (b) subject to any conditions determined by the Minister.This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.
- (4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a Commonwealth reserve as if the usage right were a usage right relating to the land or seabed.
- (5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.
- (6) This section does not apply in relation to:
 - (a) a usage right relating to minerals in Kakadu National Park; or
 - (b) a usage right so far as it relates to mining operations for those minerals.

359A Traditional use of Commonwealth reserves by indigenous persons

- (1) This Division and regulations made for the purposes of this Division do not prevent an indigenous person from continuing in accordance with law the traditional use of an area in a Commonwealth reserve for:
 - (a) hunting or food-gathering (except for purposes of sale); or
 - (b) ceremonial and religious purposes.
- (2) However, regulations made for the purposes of this Division do affect an indigenous person's traditional use of an area in a Commonwealth reserve if they:
 - (a) are made for the purpose of conserving biodiversity in the area; and

Section 359B

- (b) expressly affect the traditional use of the area by indigenous persons.

359B Director's approval of actions and mining operations when a management plan is not in operation

Approval of actions (other than mining operations)

- (1) The Director may, in writing, approve the taking of a specified action or a specified class of actions, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
 - (a) the Director is satisfied that:
 - (i) no management plan has yet come into operation for the reserve; and
 - (ii) immediately before the area became included in the reserve, the person, or the persons in the class of persons, held a usage right, or a right arising out of a usage right, that entitled the person or persons to take the action, or the actions in the class of actions, in the area; and
 - (iii) the usage right is not a right in relation to land or seabed to which section 359 applies; or
 - (b) the Director is satisfied that:
 - (i) a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation; and
 - (ii) immediately before the management plan ceased to be in operation, the person, or the persons in the class of persons, were taking the action, or the actions in the class of actions, in the area without contravening section 354 or 354A; and
 - (iii) the action or class of actions is not mining operations.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 354 or 354A, the action does not need approval under this subsection.

Section 359B*Approval of mining operations*

- (2) The Director may, in writing, approve the carrying on of specified mining operations, or a specified class of mining operations, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
- (a) the Director is satisfied that no management plan has yet come into operation for the reserve; or
 - (b) the Director is satisfied that a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 355 or 355A, the action does not need approval under this subsection.

Limits on approvals in relation to the Kakadu National Park and the Antarctic

- (3) The Director must not approve:
- (a) an action in the Antarctic that would be an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980* (whether or not a defence would be available under that Act); or
 - (b) mining operations in the Kakadu National Park or the Antarctic.

Approvals may be subject to conditions

- (4) An approval given under subsection (1) or (2) may be expressed to be subject to specified conditions.

When approvals come into force

- (5) An approval given under subsection (1) or (2) comes into force on the day the Director gives the approval, or on a later day specified in the approval.

Section 361

Variation and revocation of approvals

- (6) The Director may, in writing, vary or revoke an approval:
- (a) under subsection (1)—if the Director considers that the action, or an action in the class of actions, to which the approval relates is not being taken in accordance with the approval; or
 - (b) under subsection (2)—if the Director considers that the mining operations, or mining operations in the class of mining operations, to which the approval relates are not being carried on in accordance with the approval.
- (7) An approval given under subsection (1) or (2), or a variation or revocation of an approval, is not a legislative instrument.

Subdivision D—Complying with management plans for Commonwealth reserves

361 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Director must manage a Commonwealth reserve to give effect to a management plan for the reserve. If indigenous people think the Director is not doing this for a reserve including their land, they can take the matter up with the Minister.

Commonwealth agencies must act so as not to contravene a management plan.

362 Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve

- (1) The Director must exercise the Director's powers and perform the Director's functions to give effect to a management plan that is in operation for a Commonwealth reserve.

Section 363

- (2) The Commonwealth or a Commonwealth agency must not perform its functions or exercise its powers in relation to a Commonwealth reserve inconsistently with a management plan that is in operation for the reserve.
- (3) To avoid doubt, if a management plan for a Commonwealth reserve prohibits the exercise of a specified power, or the performance of a specified function, under an Act (including a power or function under an instrument made under an Act), the power or function must not be exercised in or in relation to the reserve while the plan is in operation.

363 Resolving disagreement between land council and Director over implementation of plan*Minister to resolve disagreement*

- (1) If the Chair or Chairperson of a land council for indigenous people's land in a jointly managed reserve and the Director disagree about whether the Director is exercising the Director's powers and performing the Director's functions consistently with a management plan in operation for the reserve:
 - (a) the Director must inform the Minister; and
 - (b) the Minister must appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
 - (c) the person appointed must inquire into the matter and give the Minister a report and recommendations; and
 - (d) the Minister must give the Director any directions the Minister thinks fit; and
 - (e) the Director must comply with any direction.

*What is a **land council**?*

- (2) The **land council** for indigenous people's land in a Commonwealth reserve is:

Section 363

- (a) if the land is in the area of an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*—that Aboriginal Land Council; and
- (b) if the land is in Jervis Bay Territory—the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land and Waters (Jervis Bay Territory) Act 1986*; and
- (c) if the land is elsewhere—a body corporate that:
 - (i) is established by or under an Act; and
 - (ii) has functions relating to the indigenous people’s land in the reserve; and
 - (iii) consists of indigenous persons who either live in an area to which one or more of the body’s functions relate or are registered as traditional owners of indigenous people’s land in an area to which one or more of the body’s functions relate.

What is indigenous people’s land?

- (3) Land is *indigenous people’s land* if:
 - (a) a body corporate holds an estate that allows the body to lease the land to the Commonwealth or the Director; and
 - (b) the body corporate was established by or under an Act for the purpose of holding for the benefit of indigenous persons title to land vested in it by or under that Act.

Who is an indigenous person?

- (4) A person is an *indigenous person* if he or she is:
 - (a) a member of the Aboriginal race of Australia; or
 - (b) a descendant of an indigenous inhabitant of the Torres Strait Islands.

What is a jointly managed reserve?

- (5) A Commonwealth reserve is a *jointly managed reserve* if:

Section 364

- (a) it includes indigenous people's land held under lease by the Director; and
- (b) a Board is established for the reserve under Subdivision F.

364 Resolving disagreement between Director and Board over implementation of plan

- (1) The Director must inform the Minister if the Director believes that:
 - (a) a decision of a Board for a Commonwealth reserve is likely to be substantially detrimental to the good management of the reserve; or
 - (b) a decision of a Board for a Commonwealth reserve is contrary to:
 - (i) a management plan in operation for the reserve; or
 - (ii) if a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation—the most recent management plan that was in operation for the reserve.
- (2) The Minister must take the steps he or she thinks fit to resolve the matter.
- (3) If the Minister cannot resolve the matter, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.
- (4) The person appointed must inquire into the matter and give the Minister a report and recommendations.
- (5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:
 - (a) the directions the Minister thinks appropriate; and
 - (b) a statement of reasons for giving the directions; and
 - (c) a copy of the report and recommendations.
- (6) The Director and the Board must comply with any directions given by the Minister.

Section 365

**Subdivision E—Approving management plans for
Commonwealth reserves**

365 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Minister may approve a management plan for a Commonwealth reserve prepared by the Director and any Board for the reserve. Before the Minister approves a plan, he or she may modify it.

Before the Director gives a plan to the Minister for approval, there are 2 opportunities for the public and others with an interest in the reserve to comment.

The Minister can resolve any disagreements between the Director and a Board for a reserve over preparation of a plan for the reserve.

366 Obligation to prepare management plans for Commonwealth reserves

Plans required for Commonwealth reserves without Boards

- (1) The Director must prepare management plans for each Commonwealth reserve for which there is not a Board to try to ensure that a management plan for the reserve is in operation:
 - (a) as soon as practicable after the reserve is declared; and
 - (b) at all times after the first plan for managing the reserve takes effect.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Amending or replacing plans for reserves without Boards

- (2) The Director may prepare a management plan for a Commonwealth reserve for which there is not a Board:

Section 367

- (a) to amend a management plan that is in operation for the reserve; or
- (b) to revoke and replace a management plan that is in operation for the reserve.

Plans required for Commonwealth reserves with Boards

- (3) A Board for a Commonwealth reserve must prepare management plans for the reserve in conjunction with the Director, to try to ensure that a management plan for the reserve is in operation:
 - (a) as soon as practicable after the Board is established; and
 - (b) at all times after a plan for managing the reserve first takes effect after the establishment of the Board.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Amending or replacing plans for reserves with Boards

- (4) The Board for a Commonwealth reserve may prepare a management plan for the reserve in conjunction with the Director:
 - (a) to amend a management plan that is in operation for the reserve; or
 - (b) to revoke and replace a management plan that is in operation for the reserve.

367 Content of a management plan for a Commonwealth reserve*Mandatory content*

- (1) A management plan for a Commonwealth reserve must provide for the protection and conservation of the reserve. In particular, the plan must:
 - (a) assign the reserve to an IUCN category (whether or not a Proclamation has assigned the reserve or a zone of the reserve to that IUCN category); and
 - (b) state how the reserve, or each zone of the reserve, is to be managed; and

Section 367

- (c) state how the natural features of the reserve, or of each zone of the reserve, are to be protected and conserved; and
- (d) if the Director holds land or seabed included in the reserve under lease—be consistent with the Director’s obligations under the lease; and
- (e) specify any limitation or prohibition on the exercise of a power, or performance of a function, under an Act in or in relation to the reserve; and
- (f) specify any mining operation, major excavation or other work that may be carried on in the reserve, and the conditions under which it may be carried on; and
- (g) specify any other operation or activity that may be carried on in the reserve; and
- (h) indicate generally the activities that are to be prohibited or regulated in the reserve, and the means of prohibiting or regulating them; and
- (i) indicate how the plan takes account of Australia’s obligations under each agreement with one or more other countries that is relevant to the reserve (including the World Heritage Convention and the Ramsar Convention, if appropriate); and
- (j) if the reserve includes a National Heritage place:
 - (i) not be inconsistent with the National Heritage management principles; and
 - (ii) address the matters prescribed by regulations made for the purposes of paragraph 324S(4)(a); and
- (k) if the reserve includes a Commonwealth Heritage place:
 - (i) not be inconsistent with the Commonwealth Heritage management principles; and
 - (ii) address the matters prescribed by regulations made for the purposes of paragraph 341S(4)(a).

Plan may assign different zones to different IUCN categories

- (2) A management plan for a Commonwealth reserve may divide the reserve into zones and assign each zone to an IUCN category (whether or not a Proclamation has assigned the reserve or each

Section 368

zone of the reserve to that IUCN category). The category to which a zone is assigned may differ from the category to which the reserve is assigned.

Consistency with Australian IUCN reserve management principles

- (3) The provisions of a management plan for a Commonwealth reserve that relate to the reserve or a particular zone of the reserve must not be inconsistent with the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone is assigned by the plan.

If zone is in different category from reserve

- (4) If the management plan for a Commonwealth reserve assigns the reserve to one IUCN category and assigns a zone of the reserve to a different IUCN category, disregard the IUCN category to which the reserve is assigned for the purposes of the application of subsection (3) in relation to the zone.
- (5) A single management plan may be the management plan for more than one Commonwealth reserve.

Plans for proposed extension of reserve

- (6) A management plan for a Commonwealth reserve may include provisions relating to an area that is proposed to be included in the reserve, but they do not have effect until the area is included in the reserve.

368 Steps in preparing management plans for Commonwealth reserves

Overview of process

- (1) Before the Director gives the Minister a management plan for a Commonwealth reserve for approval:

Section 368

- (a) the Director must publish under subsection (2) an invitation to comment on the proposal to prepare a draft of the plan; and
- (b) the Director and the Board (if any) for the reserve must prepare a draft of the plan, taking into account any comments received in response to the invitation; and
- (c) the Director must publish under subsection (5) an invitation to comment on the draft; and
- (d) the Director must make publicly available copies of the draft free or for a reasonable fee determined by the Director; and
- (e) the Director and the Board (if any) must consider any comments received in response to the invitation to comment on the draft and may alter the draft.

Notice inviting comments on proposal to prepare draft

- (2) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):
 - (a) stating that the Director proposes to prepare a draft of a management plan for the Commonwealth reserve; and
 - (b) inviting comments on the proposal from:
 - (i) members of the public; and
 - (ii) the Chair or Chairperson of any land council for indigenous people's land in the reserve; and
 - (iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and
 - (iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and
 - (v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and

Section 368

- (c) specifying the address to which comments may be sent; and
- (d) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

Considerations in preparing a management plan

- (3) In preparing a management plan for a Commonwealth reserve, the Director and the Board (if any) for the reserve must take account of:
 - (a) any report considered by the Minister under section 351 before a Proclamation declaring the reserve was made; and
 - (b) the regulation of the use of the reserve for the purpose for which it was declared; and
 - (c) the interests of:
 - (i) any owner of any land or seabed in the reserve; and
 - (ii) the traditional owners of any indigenous people's land in the reserve; and
 - (iii) any other indigenous persons interested in the reserve; and
 - (iv) any person who has a usage right relating to land, sea or seabed in the reserve that existed (or is derived from a usage right that existed) immediately before the reserve was declared; and
 - (d) the protection of the special features of the reserve, including objects and sites of biological, historical, palaeontological, archaeological, geological and geographical interest; and
 - (e) the protection, conservation and management of biodiversity and heritage within the reserve; and
 - (f) the protection of the reserve against damage; and
 - (g) Australia's obligations under agreements between Australia and one or more other countries relevant to the protection and conservation of biodiversity and heritage.

Section 368

*Who are the **traditional owners** of indigenous people's land?*

- (4) The **traditional owners** of indigenous people's land are:
- (a) a local descent group of indigenous persons who:
 - (i) have common spiritual affiliations to a site on the land under a primary spiritual responsibility for that site and for the land; and
 - (ii) are entitled by indigenous tradition to forage as of right over the land; or
 - (b) if the land is in the Jervis Bay Territory—the members of the Wreck Bay Aboriginal Community Council.

Notice inviting comment on draft

- (5) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):
- (a) stating that the Director has prepared a draft of a management plan for the Commonwealth reserve; and
 - (b) stating how the draft can be obtained; and
 - (c) inviting comments on the draft from:
 - (i) members of the public; and
 - (ii) the Chair or Chairperson of any land council for any indigenous people's land in the reserve; and
 - (iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and
 - (iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and
 - (v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and
 - (d) specifying the address to which comments may be sent; and

- (e) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

369 Resolving disagreements between Director and Board in planning process

- (1) The Director and the Board for a Commonwealth reserve must inform the Minister if they cannot agree on:
 - (a) the content of a management plan they are preparing for the reserve; or
 - (b) any changes to be made following comment made in response to an invitation to comment on a draft management plan for the reserve; or
 - (c) whether the Director should give a management plan for the reserve to the Minister for approval (either initially or after the Minister has given the plan back to the Director with suggestions under paragraph 370(3)(b)).
- (2) If the Minister is advised by the Director and a Board of a disagreement, the Minister must take the steps the Minister thinks fit to resolve the disagreement.
- (3) If the Minister cannot resolve the disagreement, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.
- (4) The appointed arbitrator must inquire into the matter and give the Minister a report and recommendations.
- (5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:
 - (a) the directions the Minister thinks appropriate; and
 - (b) a statement of reasons for giving the directions; and
 - (c) a copy of the report and recommendations.
- (6) The Director and the Board must comply with any directions given by the Minister.

Section 370

370 Approval of management plans for Commonwealth reserves

Giving management plan to Minister for approval

- (1) The Director must give the Minister a management plan for a Commonwealth reserve for approval, but only if the Board (if any) for the reserve agrees. The Director must do so as soon as practicable after considering under paragraph 368(1)(e) the comments (if any) on a draft of the management plan.

Things to be given to Minister with management plan

- (2) When the Director gives the plan to the Minister, the Director must also give the Minister:
 - (a) any comments received in response to the invitation to comment on a draft of the plan; and
 - (b) the views of the Director and any Board for the reserve on the comments.

Minister's decision

- (3) Within 60 days of the Director giving the plan, the Minister:
 - (a) must consider the plan and any comments and views given to the Minister under subsection (2); and
 - (b) must either:
 - (i) approve the plan; or
 - (ii) give the plan back to the Director with suggestions for consideration by the Director and any Board for the reserve.

Note: There are some extra rules about giving back to the Director a management plan for a Commonwealth reserve in the Kakadu region, the Uluru region or Jervis Bay Territory. See section 390.

Procedure if Minister gives plan back

- (4) If the Minister gives the plan back to the Director with suggestions:
 - (a) the Director and any Board for the Commonwealth reserve to which the plan relates must consider the suggestions; and

Section 371

- (b) the Director must give the Minister an identical or altered version of the plan, but only if any Board for the reserve agrees; and
- (c) the Director must give the Minister, with the plan, the Director's views on the Minister's suggestions.

Minister's decision on re-submitted plan

- (5) As soon as practicable after the Director has given the Minister a version of the plan under subsection (4), the Minister:
 - (a) must consider it and the views given to the Minister under subsection (4); and
 - (b) must approve the plan with any modifications the Minister considers appropriate.

Considerations for Minister assigning reserve to IUCN category

- (6) When approving a management plan for a Commonwealth reserve to assign the reserve, or a zone of a reserve, to a particular IUCN category, the Minister must be satisfied of the matters specified in section 347 that he or she would have to be satisfied of before the Governor-General could make a Proclamation to assign the reserve or zone to that IUCN category.

371 Approved management plans are legislative instruments

- (1) A management plan for a Commonwealth reserve prepared by the Director, and the Board (if any) for the reserve, and approved by the Minister, is a legislative instrument made by the Minister on the day the plan is approved.
- (3) When the management plan is laid before each House of the Parliament, there must also be laid before the House copies of any comments, views, report or recommendations given to the Minister under this Division in relation to the plan that have not been given effect to in the plan.

Section 372

372 Amendment and revocation of management plans for Commonwealth reserves

A management plan for a Commonwealth reserve may amend or revoke and replace an earlier management plan for the reserve.

373 Expiry of management plans for Commonwealth reserves

A management plan for a Commonwealth reserve ceases to have effect 10 years after it took effect (unless it has already been revoked).

Subdivision F—Boards for Commonwealth reserves on indigenous people’s land

374 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Minister must establish a Board for a Commonwealth reserve that is wholly or partly on indigenous people’s land, if the land council for that land (or traditional owners) and the Minister agree that there should be a Board for the reserve.

The Board’s role is to make decisions and plans for management of the reserve, in conjunction with the Director.

A majority of Board members must be indigenous people nominated by traditional owners if the reserve is wholly or mostly on indigenous people’s land.

375 Application

This Subdivision provides for Boards for Commonwealth reserves that consist of, or include, indigenous people’s land held under lease by the Director.

376 Functions of a Board for a Commonwealth reserve

- (1) The functions of a Board established for a Commonwealth reserve are:
 - (a) to make decisions relating to the management of the reserve that are consistent with the management plan in operation for the reserve; and
 - (aa) if a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation—to make decisions relating to the management of the reserve that are consistent with the most recent management plan that was in operation for the reserve; and
 - (b) in conjunction with the Director, to:
 - (i) prepare management plans for the reserve; and
 - (ii) monitor the management of the reserve; and
 - (iii) advise the Minister on all aspects of the future development of the reserve.

Note: A Board must prepare management plans for a reserve in conjunction with the Director, to try to ensure that a plan for the reserve is in operation as soon as practicable after the Board is established, and at all times after a plan first takes effect after the Board's establishment. See subsection 366(3).

- (2) When performing its functions, a Board must comply with a direction given by the Minister to the Board under:
 - (a) section 364 (Resolving disagreement between Director and Board over implementation of plan); or
 - (b) section 369 (Resolving disagreements between Director and Board in planning process).

377 Minister must establish Board if land council or traditional owners agree

- (1) The Minister must establish a Board for a specified Commonwealth reserve by notice published in the *Gazette* and in the way (if any) prescribed by the regulations if he or she agrees on the matters set out in subsection (2) with:

Section 378

- (a) the land council for the indigenous people's land in the reserve that the Director holds under lease; or
 - (b) if there is not such a land council—the traditional owners of the indigenous people's land in the reserve that the Director holds under lease.
- (2) The matters to be agreed on are:
 - (a) that a Board should be established for the reserve; and
 - (b) the name of the Board; and
 - (c) the number of positions of member of the Board; and
 - (d) the qualifications for appointment to each position of member of the Board.
- (3) The notice must specify each of the matters described in paragraphs (2)(b), (c) and (d).

Note: The notice may specify different qualifications for different positions. See subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) If the reserve consists wholly or mostly of indigenous people's land held by the Director under lease, a majority of the members of the Board must be indigenous persons nominated by the traditional owners of the indigenous people's land.
- (5) If the reserve is in a State or self-governing Territory, at least one member of the Board must be a person nominated by the State or Territory.

Note: By agreement between the Minister and the land council or traditional owners, more than one member of a Board may be a person nominated by the State or Territory.

378 Altering the constitution of a Board or abolishing a Board

Revoking and amending notice establishing Board

- (1) The Minister may, by notice in the *Gazette*:
 - (a) revoke a notice under section 377 relating to the Board for the reserve; or

Section 378

- (b) amend a notice under section 377 relating to the Board for the reserve so as to:
- (i) change the specification of the name by which the Board is to be known; or
 - (ii) increase the number of members of the Board and specify the qualifications for appointment to each of the extra positions of member; or
 - (iii) decrease the number of positions of member of the Board and specify which positions are abolished; or
 - (iv) change the qualifications for appointment to a position of member of the Board.

Note: The Minister may exercise the power of amendment from time to time. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Limits on changing composition of Board

- (2) Paragraph (1)(b) has effect subject to subsections 377(4) and (5).

Note 1: Subsection 377(4) requires a majority of the members of the Board of a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease to be indigenous persons nominated by the traditional owners of the land.

Note 2: Subsection 377(5) requires at least one member of a Board for a reserve in a State or self-governing Territory to be a nominee of the State or Territory.

Prerequisite to revoking or amending notice

- (3) The Minister may revoke or amend a notice under section 377 relating to a Commonwealth reserve only if the Minister agrees on the revocation or amendment with:
- (a) the land council for indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the land council; or
 - (b) the traditional owners of indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the traditional owners.

Section 379

Board's identity not affected by name change

- (4) If the Minister amends a notice published under section 377 so as to alter a Board's name or constitution, section 25B of the *Acts Interpretation Act 1901* applies in relation to the alteration as if it had been made by an Act.

Note: This ensures that the Board's identity and functions are not affected by the alteration, and that certain references to the Board under its old name are treated as references to the Board under its new name.

379 Appointment of Board members

Appointment of persons

- (1) The Minister may, in writing, appoint a person on a part-time basis to a position of member of a Board if:
- (a) the person is qualified for appointment to the position; and
 - (b) the Minister is satisfied that the person is a fit and proper person to be a member of the Board (see section 379A).

Note: Subsection (1) is subject to section 390A, which deals with the appointment of a Northern Territory nominee as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.

Replacement appointments

- (2) As soon as practicable after a position of member of a Board becomes vacant, the Minister must appoint a person to the position under subsection (1).

Validity of appointments

- (3) A deficiency or irregularity relating to the nomination, selection or appointment of a member of a Board does not invalidate the member's appointment.

Section 379A

379A Fit and proper person

In determining for the purposes of this Subdivision whether a person is a fit and proper person to be a member of a Board, the Minister may have regard to the matters specified in regulations made for the purposes of this section. The Minister may also have regard to any other matter the Minister considers appropriate.

Note: The question whether a person is a fit and proper person is relevant to subsection 379(1) (which is about appointments to Boards), and subsection 382(1A) (which is about termination of appointments).

380 Terms and conditions*Term of office*

- (1) A member of a Board holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Section 382 sets out the circumstances in which a member's appointment may be (or must be) terminated.

Avoiding doubt—future terms of office

- (1A) To avoid doubt, subsection (1) does not prevent a person from being appointed as a member of a Board again. This subsection does not affect the operation of section 33AA of the *Acts Interpretation Act 1901* in relation to this Act.

Resignation

- (2) A member of a Board may resign his or her appointment by giving the Minister a written resignation.

Other terms and conditions

- (3) A member of a Board holds office on the terms and conditions (if any) that are determined by the Minister in relation to matters not covered by this Act or the regulations.

Section 381

381 Remuneration

- (1) A member of a Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member of a Board is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

382 Termination of appointments of Board members

Termination when person stops being qualified for appointment

- (1) The appointment of a person to a position of member of a Board is terminated when the person ceases to be qualified for appointment to the position.

Termination if person is not fit and proper

- (1A) The Minister must terminate the appointment of a member of a Board if the Minister is satisfied that the member is not a fit and proper person to be a member of the Board. For this purpose, in having regard to matters as mentioned in section 379A, the Minister may consider things that happened either before or after the member's appointment.

Termination for misbehaviour or incapacity

- (2) The Minister may terminate the appointment of a member of a Board for misbehaviour or physical or mental incapacity.

Termination for failure to attend Board meetings

- (3) The Minister may terminate the appointment of a member of a Board if the member is absent, except on leave of absence, from 3

Section 382

consecutive meetings of the Board of which the member has had notice.

Termination for engaging in conflicting work

- (4) The Minister may terminate the appointment of a member of a Board if the member engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of the member.

Termination for conduct inimical to Board

- (4A) The Minister may terminate the appointment of a member of a Board for a reserve if the Minister is satisfied that the person has acted in a way that is not in the interest of the Board as a whole. However, the Minister may not terminate under this subsection the appointment of a member nominated by traditional owners of indigenous people's land in the reserve.

Termination for failure to disclose interests

- (5) The Minister must terminate the appointment of a member of a Board if:
- (a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the member has in a matter being considered or about to be considered by the Board; and
 - (b) the member does not have a reasonable excuse for not complying.

Termination on request by nominator

- (6) The Minister must terminate the appointment of a member of a Board if:
- (a) the member was appointed on the nomination of a particular person, body or group of persons; and
 - (b) the person, body or group gives the Minister a written request to terminate the appointment.

Section 383

Termination for bankruptcy or insolvency

- (7) The Minister may terminate the appointment of a member of the Board if the member:
- (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

383 Procedure of a Board

- (1) The regulations may provide for:
- (a) matters relating to the operation of a Board, including:
 - (i) procedures for convening meetings of the Board; and
 - (ii) procedures for determining who is to preside at a meeting of the Board; and
 - (iii) determining who may attend a meeting of the Board; and
 - (iv) the constitution of a quorum for a meeting of the Board; and
 - (v) procedures relating to a member's interest in matters being dealt with by the Board; and
 - (vi) the way in which matters are to be resolved by the Board; and
 - (b) the appointment and rights of a deputy of a member of a Board.
- (2) The regulations may allow a Board to determine a matter relating to the operation of the Board for which the regulations may provide.
- (3) If there are no regulations in force, a Board may operate in the way it determines.

Section 384

- (4) A meeting of a Board for a Commonwealth reserve consisting wholly of indigenous people's land:
- (a) must not start; and
 - (b) must not continue;
- unless the majority of the members of the Board present are persons nominated by the traditional owners of the indigenous people's land for appointment as members.
- (5) Subsection (4) has effect despite subsections (1), (2) and (3).

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

384 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

Special rules apply to Commonwealth reserves in the Kakadu region, Uluru region and Jervis Bay Territory, affecting the activities that can be carried on in those reserves.

Special procedures apply to planning for management of reserves in the Kakadu region, Uluru region and Jervis Bay Territory. These provide for extra involvement of indigenous people in the planning process.

385 Activities in Commonwealth reserve without management plan

When a management plan is not in operation for a particular Commonwealth reserve wholly or partly in the Kakadu region, Uluru region or Jervis Bay Territory, the Director may perform the Director's functions and exercise the Director's powers in and in relation to a part of the reserve in the region, subject to any directions of the Minister.

Section 386

386 What are the *Kakadu region* and the *Uluru region*?

- (1) The ***Kakadu region*** is the part of the Alligator Rivers Region (as defined in the *Environment Protection (Alligator Rivers Region) Act 1978*) that excludes:
 - (a) the area shown as the Arnhem Land Aboriginal Reserve on the map mentioned in that definition; and
 - (b) the areas that are pastoral leases and are described on that map as Mount Bunday and Eva Valley.
- (2) The ***Uluru region*** is the area of land described under the heading “Uluru” in Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Act 1976*.

387 No mining operations in Kakadu National Park

- (1) A person must not carry out mining operations in Kakadu National Park.
- (2) Subsection (1) does not prevent:
 - (a) the use, development or reconstruction of the township known as Jabiru; or
 - (b) the transportation of anything in Kakadu National Park along routes (including air routes) prescribed by the regulations for the purposes of this paragraph; or
 - (c) the construction and use of pipelines and power lines in Kakadu National Park along routes prescribed by the regulations for the purposes of this paragraph; or
 - (d) the doing of anything for the purposes of building or construction, or the supply of water, in Kakadu National Park as long as the purposes are not connected with, or incidental to, mining operations; and
 - (e) prescribed activities carried on in Kakadu National Park in connection with, or incidental to, mining operations carried on outside Kakadu National Park.
- (3) ***Kakadu National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Kakadu National Park was

Section 388

given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

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

- (1) A person may use or develop a township in a part of a Commonwealth reserve, but only if:
 - (a) the part is in the Kakadu region or the Uluru region; and
 - (b) the person does so in accordance with:
 - (i) subsection (2); and
 - (ii) the management plan for the reserve; and
 - (iii) a town plan prepared and approved in accordance with the regulations.
- (2) A person (other than the Director) may use or develop a township only on land that the person holds under lease or sub-lease from:
 - (a) the Commonwealth; or
 - (b) the Director; or
 - (c) the Kakadu Aboriginal Land Trust (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
 - (d) the Northern Territory; or
 - (e) an approved entity (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*).

389 Planning for townships

Management plan provisions

- (1) The provisions of a management plan for a Commonwealth reserve that relate to a township must include provisions for and in relation to the use and development of the township.

Town plan provisions

- (2) A town plan must make detailed provision in relation to the use and development of the township, including, in particular, the

Section 390

provision (if any) to be made for any matters that are specified for the purposes of this subsection by:

- (a) the management plan for the Commonwealth reserve containing the township; or
- (b) the regulations.

Town plans may adopt, apply or incorporate other instruments

- (3) For the purposes of subsection (2), a town plan may apply, adopt or incorporate, with or without modification:
 - (a) the provisions of any law of the Northern Territory (or a part of the Territory), as in force at a specified time or as in force from time to time; or
 - (b) any matter contained in any instrument or writing as in force or existing at a specified time.

Revocation and variation of town plans

- (5) A town plan may be revoked or amended in the manner provided by the regulations.

Note: Town plans are to be prepared and approved in accordance with the regulations. See subparagraph 388(1)(b)(iii).

390 Special rules to protect Aboriginal interests in planning process

- (1) This section sets out some extra rules about the process of preparing management plans for a Commonwealth reserve wholly or partly within the Kakadu region, the Uluru region or Jervis Bay Territory.
- (2) The Minister must give a management plan for a Commonwealth reserve back to the Director with suggestions under paragraph 370(3)(b) if the Minister is satisfied that there is a substantial difference of opinion between:
 - (a) the Chair or Chairperson of a land council for indigenous people's land in the reserve, on the one hand; and
 - (b) the Director, or the Director and the Board for the reserve (if it is a jointly managed reserve), on the other hand.

Section 390

- (3) If the Minister gives the plan back to the Director with suggestions under paragraph 370(3)(b) (whether because of subsection (2) or not), the Minister must:
- (a) give a copy of the suggestions to:
 - (i) the Chair or Chairperson of each land council for indigenous people's land in the reserve; and
 - (ii) the Parks and Wildlife Commission of the Northern Territory, if the plan is for a Commonwealth reserve wholly or partly in the Territory; and
 - (b) invite each person to whom the Minister gave a copy of the suggestions to give the Director comments on the suggestions within 14 days.
- (4) When considering the Minister's suggestions as required by paragraph 370(4)(a), the Director and any Board for the reserve must also consider any comments made in response to the Minister's invitation.
- (5) When the Director gives the Minister an identical or altered version of the plan under paragraph 370(4)(b), the Director must also:
- (a) give the Minister a copy of the comments (if any) made in response to the Minister's invitation, and the Director's views on those comments; and
 - (b) give the Chair or Chairperson of each land council for indigenous people's land in the reserve a copy of the version of the plan given to the Minister and of the comments and views (if any) being given to the Minister under paragraph (a).
- (6) The Chair or Chairperson of a land council for indigenous people's land in the reserve may make comments to the Minister relating to the version of the plan within 14 days of receiving the copy of it.
- (7) If the Minister receives comments from the Chair or Chairperson of a land council for indigenous people's land in the reserve and the Minister is satisfied that there is a substantial difference of opinion between the Chair or Chairperson and the Director over the plan:
-

Section 390A

- (a) the Minister may appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
 - (b) the person appointed must inquire into the matter and give the Minister a report and recommendations.
- (8) The Minister:
 - (a) must also consider:
 - (i) the comments (if any) made to the Minister by the Chair or Chairperson under subsection (6); and
 - (ii) the report and recommendations (if any) given to the Minister under subsection (7);
 - when considering under subsection 370(5) the version of the plan given to the Minister under paragraph 370(4)(b); and
 - (b) must not approve the plan before the end of the period described in subsection (6).

390A Appointment of Northern Territory nominee to Board

- (1) This section makes special provision for the appointment of a person nominated by the Northern Territory as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.
- (2) Despite subsection 379(1), the Minister must not appoint the person unless:
 - (a) the members of the Board nominated by the traditional owners of the land consent to the appointment; or
 - (b) the appointment has been recommended under subsection (5).
- (3) The Northern Territory may inform the Minister if it believes that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment.

Section 390A

- (4) If the Northern Territory informs the Minister, he or she must refer the matter to the person (the ***Ombudsman***) holding the office of Commonwealth Ombudsman under the *Ombudsman Act 1976*.
- (5) If the Ombudsman is satisfied that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment, the Ombudsman must recommend to the Minister that the Minister make the appointment.

Section 390B

Division 5—Conservation zones

390B Simplified outline of this Division

The following is a simplified outline of this Division:

The Governor-General can proclaim a Commonwealth area to be a conservation zone, to protect biodiversity in the area while it is being assessed for inclusion in a Commonwealth reserve.

Regulations can be made to regulate a wide range of activities in a conservation zone.

People who have rights relating to an area that is later included in a conservation zone can continue to exercise those rights in the zone.

A conservation zone can be revoked if the Minister is satisfied the area concerned should not be included in a Commonwealth reserve. It is revoked automatically if it is included in a Commonwealth reserve.

390C Object of this Division

The object of this Division is to provide for the protection of biodiversity, other natural features and heritage in Commonwealth areas while they are being assessed for inclusion in a Commonwealth reserve.

390D Proclamation of conservation zones

- (1) The Governor-General may, by Proclamation, declare a Commonwealth area outside a Commonwealth reserve to be a conservation zone.
- (2) Before the Governor-General makes a Proclamation declaring a Commonwealth area to be a conservation zone, the Minister must be satisfied that the area should be assessed to determine whether

Section 390E

the biodiversity, other natural features and heritage in the area should be protected by including the area in a Commonwealth reserve.

390E Regulating activities generally

- (1) The regulations may:
 - (a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:
 - (i) people, biodiversity or heritage in conservation zones; or
 - (ii) the natural features of conservation zones; and
 - (b) regulate tourism in conservation zones; and
 - (c) provide for the protection and preservation of conservation zones and property and things in conservation zones; and
 - (d) provide for the protection and conservation of biodiversity in conservation zones; and
 - (e) regulate or prohibit access to all or part of a conservation zone by persons or classes of persons; and
 - (f) provide for the removal of trespassers from conservation zones; and
 - (g) regulate camping in conservation zones; and
 - (h) provide for the safety of persons in conservation zones; and
 - (i) regulate the use of fire in conservation zones; and
 - (j) regulate the conduct of persons in conservation zones; and
 - (k) regulate the carrying on of any trade or commerce in a conservation zone; and
 - (l) regulate the use of vehicles in conservation zones and provide for signs and road markings for those purposes; and
 - (m) provide for:
 - (i) the removal of vehicles, aircraft or vessels from places in conservation zones where they have been left in contravention of the regulations or have been abandoned; and
 - (ii) the impounding of such vehicles, aircraft or vessels; and

Section 390E

- (n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a conservation zone is, except as provided otherwise, taken to commit an offence against the provision; and
 - (o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and
 - (p) regulate the use of vessels in, and the passage of vessels through, conservation zones; and
 - (q) regulate the landing and use of aircraft in, and the flying of aircraft over, conservation zones; and
 - (r) regulate or prohibit the taking of animals or plants into or out of conservation zones; and
 - (s) provide for the impounding, removal, destruction or disposal of animals found straying in conservation zones; and
 - (t) regulate or prohibit the taking into conservation zones, and the use in conservation zones, of weapons, traps, nets, snares, fishing apparatus and other devices; and
 - (u) regulate or prohibit the laying of baits and the use of explosives and poisons in conservation zones; and
 - (v) provide for the collection of specimens and the pursuit of research in conservation zones for scientific purposes; and
 - (w) provide for the issue of licences, permits and authorities relating to activities in conservation zones, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and
 - (x) provide for any matter incidental to or connected with a matter described in another paragraph.
- (2) Regulations relating to conservation zones may also:

Section 390F

- (a) regulate the carrying on of mining operations, fishing, pastoral or agricultural activities for commercial purposes; and
 - (b) regulate the construction or alteration of buildings and structures; and
 - (c) regulate the construction or establishment of bridges, railways, roads, tracks, port facilities and air-strips and the carrying out of any other works; and
 - (d) regulate the felling or taking of timber; and
 - (e) provide for and in relation to the powers to be exercised, and the functions and duties to be performed, in and in relation to conservation zones by wardens, by rangers and by other persons included in specified classes of persons; and
 - (f) provide for and in relation to the giving of securities for compliance with regulations made for the purposes of this section by persons doing, or proposing to do, anything to which those regulations relate.
- (3) Regulations made for the purposes of this section have no effect to the extent that they are inconsistent with the terms and conditions of a right (however described) to explore for minerals, or to mine for or recover minerals, granted under section 124 of the *Lands Acquisition Act 1989*.

390F Charges for activities in conservation zones

Subject to the approval of the Minister, the Director may determine and impose charges for using services or facilities provided by the Director in or in connection with a conservation zone.

390G Other laws and regulations made for this Division

Regulations regulating aircraft subject to other Commonwealth laws

- (1) A provision of the regulations regulating the flying of aircraft over a conservation zone does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a

Section 390H

provision is not inconsistent with such a law if it can be complied with without contravention of the law.

Territory laws subject to regulations

- (2) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations made for the purposes of this Division and having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

390H Prior usage rights relating to conservation zones continue to have effect

- (1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth) in relation to land or seabed immediately before the land or seabed was included in a conservation zone:
- (a) provisions of this Division that relate to the zone (whether or not they also relate to another conservation zone);
 - (b) provisions of the regulations made for the purposes of this Division that relate to the zone (whether or not they also relate to another conservation zone).
- (2) None of the provisions covered by subsection (1) affect the application of a law of a State or Territory in relation to the usage right.
- (3) The usage right may be renewed or have its term extended only:
- (a) with the Minister's written consent; and
 - (b) subject to any conditions determined by the Minister.
- This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.
- (4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a conservation zone as if the usage right were a usage right relating to the land or seabed.

Section 390J

- (5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.

390J Revoking and altering conservation zones*Proclamations to revoke or amend declaring Proclamation*

- (1) The Governor-General may, by Proclamation, revoke or amend a Proclamation made under section 390D (declaring a Commonwealth area to be a conservation zone).

Limit on making Proclamations

- (2) Before the Governor-General makes a Proclamation under subsection (1) causing a Commonwealth area to cease to be within a conservation zone, the Minister must be satisfied that the area should not be included in a Commonwealth reserve.

Declaration of Commonwealth reserve revokes conservation zone

- (3) A Commonwealth area ceases to be a conservation zone by force of this subsection if the area becomes or is included in a Commonwealth reserve.

Conservation zone ends if it ceases to be in Commonwealth area

- (4) If land, waters, seabed or airspace in a conservation zone cease to be a Commonwealth area, the land, waters, seabed or airspace cease to be (or be in) a conservation zone by force of this subsection.

Proclamation to reflect cessation of conservation zone

- (5) If land, waters, seabed or airspace cease to be a conservation zone by force of subsection (3) or (4), the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land, waters, seabed or airspace in a conservation zone, to reflect the fact that the land, waters, seabed or airspace are no longer part of the conservation zone.

Section 390K

Chapter 5A—The List of Overseas Places of Historic Significance to Australia

Part 15A—The List of Overseas Places of Historic Significance to Australia

390K The List of Overseas Places of Historic Significance to Australia

- (1) The Minister must keep a written record of places in accordance with this Part. The record is called the *List of Overseas Places of Historic Significance to Australia*.
- (2) The List of Overseas Places of Historic Significance to Australia is not a legislative instrument.

390L Inclusion of places in the List of Overseas Places of Historic Significance to Australia

- (1) The Minister may, by notice published in the *Gazette*, include a place, and a statement of its historic significance to Australia, in the List of Overseas Places of Historic Significance to Australia if, and only if:
 - (a) the place is outside the Australian jurisdiction; and
 - (b) the Minister is satisfied that the place is of outstanding historic significance to Australia.
- (2) The regulations may specify matters the Minister is to have regard to in considering whether he or she is satisfied as mentioned in paragraph (1)(b).

Section 390M

390M Removal of places from the List of Overseas Places of Historic Significance to Australia or variation of statement of historic significance

- (1) The Minister may, by notice published in the *Gazette*, do either of the following in relation to a place that is included in the List of Overseas Places of Historic Significance to Australia:
 - (a) remove the place, and the statement of its historic significance to Australia, from the List;
 - (b) vary the statement of the place's historic significance to Australia.
- (2) The regulations may specify matters the Minister is to have regard to in considering whether to take action under subsection (1).

390N Inviting comments from other Ministers before taking action

- (1) Before taking action in relation to a place under section 390L or 390M, the Minister (the *Environment Minister*) must:
 - (a) inform the following other Ministers of the action the Environment Minister proposes to take:
 - (i) the Minister for Foreign Affairs;
 - (ii) any other Minister whom the Environment Minister believes should be informed; and
 - (b) invite those other Ministers to give the Environment Minister comments on the proposed action; and
 - (c) take any comments from those other Ministers into account.
- (2) In this section:

Minister for Foreign Affairs means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

390P Minister may ask Australian Heritage Council for advice etc.

- (1) The Minister may ask the Australian Heritage Council for advice relating to action that the Minister is considering taking under section 390L or 390M in relation to a place, and may take that

Section 390Q

advice into account in deciding what action (if any) to take under that section in relation to the place.

- (2) The Minister may also seek, and have regard to, information or advice from any other source.

390Q List of Overseas Places of Historic Significance to Australia to be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the List of Overseas Places of Historic Significance to Australia are available for free to the public on request; and
- (b) an up-to-date copy of the List is available on the internet.

390R Disclosure of Australian Heritage Council's assessments and advice

- (1) A member of the Australian Heritage Council has a duty not to disclose advice under section 390P to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council.
- (2) However, the duty not to disclose the advice does not exist after the Minister has decided whether to take the action to which the advice relates.

Chapter 5B—Declared commercial fishing activities

Part 15B—Declared commercial fishing activities

Division 1—Prohibition

390SA Civil penalty—declared commercial fishing activities

A person must not engage in a declared commercial fishing activity in a Commonwealth marine area.

Civil penalty:

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

Note: If a body corporate is found to have contravened this section, an executive officer of the body may be found to have contravened section 494.

390SB Offence—declared commercial fishing activities

- (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 is a declared commercial fishing activity.

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

Note 1: If a body corporate is found to have committed an offence against this section, an executive officer of the body may be found to have committed an offence against section 495.

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.

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

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

Division 2—Declaring a commercial fishing activity

Subdivision A—What is a declared commercial fishing activity?

390SC What is a *declared commercial fishing activity*?

- (1) A *declared commercial fishing activity* is a commercial fishing activity that is specified in:
 - (a) an interim declaration that is in force under section 390SD;
or
 - (b) a final declaration that is in force under section 390SF.
- (1A) A *commercial fishing activity* is a fishing activity that is engaged in for a commercial purpose, and, to avoid doubt, does not include an activity that constitutes recreational fishing (within the meaning of subsection 212(2)).

Note: Under subsection 212(2), recreational fishing includes fishing from a charter boat and fishing in a fishing competition.
- (2) A *fishing activity* means an activity that constitutes fishing.

Subdivision B—Interim declaration

390SD Interim declaration

Making an interim declaration

- (1) The Minister may, by legislative instrument, make a declaration (an *interim declaration*) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of an interim declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For revocation of an interim declaration, see section 390SG.
- (2) When making an interim declaration, the Minister may identify a commercial fishing activity by reference to all or any of the following:

Section 390SD

- (a) a method of fishing;
- (b) a type of vessel used for fishing;
- (c) a method of processing, carrying or transshipping of fish that have been taken;
- (d) an area of waters or of seabed.

Note: Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (2A) When making an interim declaration, the Minister may only specify a commercial fishing activity that had not been engaged in before 11 September 2012 in a Commonwealth marine area.
- (3) The Minister must not make an interim declaration unless the Minister and the Fisheries Minister agree that:
 - (a) there is uncertainty about the environmental impacts of the commercial fishing activity; and
 - (b) it is appropriate that the commercial fishing activity be prohibited in a Commonwealth marine area while consultation occurs under section 390SE about whether to make a final declaration in relation to the commercial fishing activity under section 390SF.

When an interim declaration is in force

- (4) An interim declaration:
 - (a) comes into force at the end of the day on which it is registered in the Federal Register of Legislation; and
 - (b) remains in force until the earlier of the following times:
 - (i) the end of the period specified in the declaration as the period for which the declaration is in force;
 - (ii) if the declaration is revoked—when the revocation comes into force.

Specified period for which interim declaration is in force

- (5) The Minister must specify in an interim declaration the period for which it is to be in force. The period must not be longer than 60 days.

Section 390SE

390SE Consultation

- (1) As soon as is practicable after making an interim declaration under section 390SD declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must publish a notice on the Department's website in accordance with subsection (2).
- (2) The notice must:
 - (a) invite each declaration affected person (see subsection (3)) to make a written submission about the impact on the person's rights or interests in relation to fishing if a final declaration under section 390SF were made in relation to the commercial fishing activity; and
 - (b) specify that written submissions must be lodged during the period specified in the notice; and
 - (c) specify the manner in which written submissions are to be lodged.
- (3) A ***declaration affected person***, in relation to a commercial fishing activity, means a person who:
 - (a) holds a fishing concession or is prescribed by the regulations; and
 - (b) considers that the person would be detrimentally affected by the making of a final declaration under section 390SF in relation to the commercial fishing activity.
- (4) For the purposes of paragraph (2)(b), the period specified in the notice must be at least 11 business days after the day the notice is published.

Section 390SF**Subdivision C—Final declaration****390SF Final declaration***Making a final declaration*

- (1) The Minister may, by legislative instrument, make a declaration (a ***final declaration***) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of a final declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For revocation of a final declaration, see section 390SG.

- (2) The Minister must not make a final declaration unless:
- (a) the commercial fishing activity is the same as a commercial fishing activity that is, or was, specified in an interim declaration under section 390SD; and
 - (b) consultation under section 390SE has occurred in relation to the commercial fishing activity; and
 - (c) the Minister has considered any written submission that:
 - (i) was made under section 390SE by a declaration affected person; and
 - (ii) was lodged during the period referred to in paragraph 390SE(2)(b); and
 - (d) the Minister and the Fisheries Minister agree that there is uncertainty about the environmental impacts of the commercial fishing activity; and
 - (e) the Minister and the Fisheries Minister agree that it is appropriate that:
 - (i) an expert panel be established under section 390SH to conduct an assessment of the commercial fishing activity and report on the matter; and
 - (ii) the commercial fishing activity be prohibited in a Commonwealth marine area while the expert panel conducts the assessment.

Section 390SG

When a final declaration is in force

- (3) A final declaration:
- (a) comes into force at the end of the day on which it is registered in the Federal Register of Legislation; and
 - (b) remains in force until the earliest of the following times:
 - (i) the end of the day on which the report of the expert panel is published on the Department's website under paragraph 390SL(a);
 - (ii) the end of the period specified in the declaration as the period for which the declaration is in force;
 - (iii) if the declaration is revoked—when the revocation comes into force.

Specified period for which final declaration is in force

- (4) The Minister must specify in a final declaration the period for which it is to be in force. The period must not be longer than 24 months.

Subdivision D—Revoking declarations

390SG Revoking an interim or final declaration

- (1) The Minister may, by legislative instrument, revoke:
- (a) an interim declaration under section 390SD; or
 - (b) a final declaration under section 390SF.
- (2) A revocation under subsection (1) comes into force at the end of the day on which it is registered in the Federal Register of Legislation.

Division 3—Expert panel assessment of declared commercial fishing activity

390SH Establishment of expert panel

- (1) As soon as is practicable after making a final declaration under section 390SF declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must:
 - (a) appoint, in writing, one or more persons (the *members*) as an expert panel to conduct an assessment and report to the Minister about the commercial fishing activity; and
 - (b) with the agreement of the Fisheries Minister, specify in writing (the *terms of reference*):
 - (i) the matters relating to the commercial fishing activity that are to be the subject of the assessment and report; and
 - (ii) the date by which the panel must report to the Minister.
- Note: The Minister may revoke an appointment: see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) The Minister may specify in the terms of reference the manner in which the expert panel is to carry out the assessment.
 - (3) The Minister may, in writing, vary or revoke the terms of reference with the agreement of the Fisheries Minister.
 - (4) The Minister must:
 - (a) publish a copy of the terms of reference on the Department's website as soon as is practicable after the Minister specifies or varies them; and
 - (b) cause a copy of the terms of reference to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister specifies or varies them.

Section 390SI

390SI Terms and conditions

The Minister must determine, in writing, the terms and conditions applicable to members of the expert panel, including terms and conditions relating to:

- (a) term of office; and
- (b) remuneration; and
- (c) allowances; and
- (d) disclosure of interests.

390SJ Procedure for assessment

- (1) The expert panel must comply with the terms of reference in conducting the assessment.
- (2) Subject to subsection (1), the expert panel may determine the procedure to be followed in its assessment.

390SK Timing of the report

The expert panel must give the Minister the report on the assessment on the date specified by the Minister in the terms of reference.

390SL Publication of the report

The Minister must:

- (a) publish a copy of the report on the Department's website within 20 business days after the day the Minister receives the report; and
- (b) cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister receives the report; and
- (c) comply with any other publication requirements prescribed by the regulations.

Division 4—Sunsetting of this Part

390SM Sunsetting of this Part

New declarations under this Part may not be made 12 months after the day the *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012* commences.