



Environment Protection and Biodiversity Conservation Act 1999

Act No. 91 of 1999 as amended

This compilation was prepared on 29 September 2003
incorporating amendments up to Act No. 88 of 2003

Volume 1 includes: Table of Contents
Sections 1 – 266A

Volume 2 includes: Sections 267 – 528
Notes

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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

Chapter 1—Preliminary

Part 1—Preliminary

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

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

3 Objects of Act

- (1) The objects of this Act are:
 - (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
 - (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
 - (c) to promote the conservation of biodiversity; and

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- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
 - (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
 - (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
 - (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.
- (2) In order to achieve its objects, the Act:
- (a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and
 - (b) strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements; and
 - (c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and
 - (d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and
 - (e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:
 - (i) protect native species (and in particular prevent the extinction, and promote the recovery, of threatened species) and ensure the conservation of migratory species; and
 - (ii) establish an Australian Whale Sanctuary to ensure the conservation of whales and other cetaceans; and
 - (iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities

- and the promotion of off-reserve conservation measures;
and
- (iv) identify processes that threaten all levels of biodiversity
and implement plans to address these processes; and
- (f) includes provisions to enhance the protection, conservation
and presentation of world heritage properties and the
conservation and wise use of Ramsar wetlands of
international importance; and
- (g) promotes a partnership approach to environmental protection
and biodiversity conservation through:
 - (i) bilateral agreements with States and Territories; and
 - (ii) conservation agreements with land-holders; and
 - (iii) recognising and promoting indigenous peoples' role in,
and knowledge of, the conservation and ecologically
sustainable use of biodiversity; and
 - (iv) the involvement of the community in management
planning.

3A Principles of ecologically sustainable development

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

- (a) decision-making processes should effectively integrate both
long-term and short-term economic, environmental, social
and equitable considerations;
- (b) if there are threats of serious or irreversible environmental
damage, lack of full scientific certainty should not be used as
a reason for postponing measures to prevent environmental
degradation;
- (c) the principle of inter-generational equity—that the present
generation should ensure that the health, diversity and
productivity of the environment is maintained or enhanced
for the benefit of future generations;
- (d) the conservation of biological diversity and ecological
integrity should be a fundamental consideration in
decision-making;

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- (e) improved valuation, pricing and incentive mechanisms should be promoted.

4 Act to bind Crown

This Act binds the Crown in each of its capacities.

5 Application of Act

Extension to external Territories

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

Limited extraterritorial application

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

Application limited to Australians outside exclusive economic zone

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

Application to everyone in Australia and exclusive economic zone

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

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

Definitions

- (5) In this Act:

Australian aircraft means:

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

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

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

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

Australian vessel means:

- (a) a vessel that is owned, possessed or controlled by:
 - (i) the Commonwealth or a Commonwealth agency; or

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

7 Application of the *Criminal Code*

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

8 Native title rights not affected

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

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

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

9 Relationship with other Acts

Aboriginal Land Rights (Northern Territory) Act 1976

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

Airports Act 1996 not affected

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

Antarctic Treaty (Environment Protection) Act 1980 not affected

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

Australian Heritage Commission Act 1975 does not apply

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

10 Relationship with State law

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

Chapter 2—Protecting the environment

Part 2—Simplified outline of this Chapter

11 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

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

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

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

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

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

Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

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

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

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

(4) In this Act:

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

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

13 What is a *declared World Heritage property*?

Properties on World Heritage List

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

Properties not yet on World Heritage List

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

14 Declaring a property to be a declared World Heritage property

Making declarations

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

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

(b) the Minister is satisfied that:

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

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

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

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

Consulting State or Territory before making declaration

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

Consultation not required if threat is imminent

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

Failure to comply with subsection (2)

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

When a declaration is in force

- (5) A declaration:
- (a) comes into force when it is published in the *Gazette*; and
 - (b) remains in force (whether amended under section 15 or not) until the earliest of the following events:
 - (i) the end of the period specified in the declaration as the period for which the declaration is in force;
 - (ii) the revocation of the declaration;

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

Specified period for which declaration is in force

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

Declarations because of threat in force for a year or less

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

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

Revoking declarations specifying nominated property

- (1) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that has been

submitted to the World Heritage Committee for inclusion in the World Heritage List if the Commonwealth decides to withdraw the submission of the property for inclusion in the List.

Amending declarations specifying nominated property

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

Revoking declarations specifying property not yet nominated

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

15A Offences relating to declared World Heritage properties

- (1) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action results or will result in a significant impact on the world heritage values of a declared World Heritage property.

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

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

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

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

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

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

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

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

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

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

Subdivision B—Wetlands of international importance

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

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

- (a) has or will have a significant impact on the ecological character of a declared Ramsar wetland; or
- (b) is likely to have a significant impact on the ecological character of a declared Ramsar wetland.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (3) In this Act:

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

17 What is a *declared Ramsar wetland*?

Areas designated for listing

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

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

Areas declared by the Minister

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

17A Making and revoking declarations of wetlands

Declaring threatened wetlands of international importance

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

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

Consulting State or Territory before making declaration

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

Consultation not required if threat is imminent

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

Failure to comply with subsection (2)

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

When a declaration is in force

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

Specifying period for which declaration is in force

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

Revocation of declaration of threatened wetland

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

17B Offences relating to declared Ramsar wetlands

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

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- (b) the action results or will result in a significant impact on the ecological character of a declared Ramsar wetland.

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

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

- (a) the person takes an action; and
- (b) the action is likely to have a significant impact on the ecological character of a declared Ramsar wetland and the person is reckless as to that fact.

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

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

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

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

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

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

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

Subdivision C—Listed threatened species and communities

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

Species that are extinct in the wild

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

Civil penalty:

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

Critically endangered species

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

Civil penalty:

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

Endangered species

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

Civil penalty:

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

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

Vulnerable species

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

Civil penalty:

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

Critically endangered communities

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

Civil penalty:

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

Endangered communities

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

Civil penalty:

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

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

18A Offences relating to threatened species etc.

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

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

- (2) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is likely to have a significant impact on:
 - (i) a listed threatened species; or
 - (ii) a listed threatened ecological community;and the person is reckless as to that fact.

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

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

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

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

- (4) Subsections (1) and (2) do not apply to an action if:
- (a) the listed threatened species subject to the significant impact (or likely to be subject to the significant impact) is:
 - (i) a species included in the extinct category of the list under section 178; or
 - (ii) a conservation dependent species; or
 - (b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant

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impact) is an ecological community included in the vulnerable category of the list under section 181.

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

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

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

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

Subdivision D—Listed migratory species

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

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

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

20A Offences relating to listed migratory species

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

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

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

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

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

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

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

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

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

Subdivision E—Protection of the environment from nuclear actions

21 Requirement for approval of nuclear actions

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

Civil penalty:

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

- (2) A person must not, for the purposes of trade or commerce:
- (a) between Australia and another country; or
 - (b) between 2 States; or
 - (c) between a State and a Territory; or
 - (d) between 2 Territories;

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

Civil penalty:

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

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

Civil penalty:

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

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

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

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- (b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or
- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

22 What is a *nuclear action*?

- (1) In this Act:

nuclear action means any of the following:

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

nuclear installation means any of the following:

- (a) a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and sub-critical assemblies);
- (b) a plant for preparing or storing fuel for use in a nuclear reactor as described in paragraph (a);

- (c) a nuclear waste storage or disposal facility with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section;
- (d) a facility for production of radioisotopes with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section.

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

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

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

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

(2) In this Act:

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

22A Offences relating to nuclear actions

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:
 - (a) the corporation or agency takes a nuclear action; and
 - (b) the nuclear action results or will result in a significant impact on the environment.

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

- (2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:
 - (a) the corporation or agency takes a nuclear action; and

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

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

- (3) A person is guilty of an offence if:
 - (a) the person takes a nuclear action; and
 - (b) the nuclear action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; and
 - (c) the nuclear action results or will result in a significant impact on the environment.

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

- (4) A person is guilty of an offence if:
 - (a) the person takes a nuclear action; and
 - (b) the nuclear action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; and
 - (c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

- (5) A person is guilty of an offence if:
 - (a) the person takes a nuclear action; and
 - (b) the nuclear action is taken in a Territory; and
 - (c) the nuclear action results or will result in a significant impact on the environment.

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

- (6) A person is guilty of an offence if:
- (a) the person takes a nuclear action; and
 - (b) the nuclear action is taken in a Territory; and
 - (c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

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

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

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

- (8) Subsections (1), (2), (3), (4), (5) and (6) do not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Subdivision F—Marine environment

23 Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the environment

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

Civil penalty:

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

Actions outside Commonwealth marine areas affecting those areas

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

Civil penalty:

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

Fishing in State or Territory waters managed by Commonwealth

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

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

- (b) that:
- (i) has or will have a significant impact on the environment in those coastal waters; or
 - (ii) is likely to have a significant impact on the environment in those coastal waters.

Civil penalty:

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

Exceptions to prohibitions

- (4) Subsection (1), (2) or (3) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the person taking the action is the Commonwealth or a Commonwealth agency; or
 - (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Exception—fishing in Commonwealth waters managed by State

- (5) Subsection (1) does not apply to an action if the action:
- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and

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

Exception—fishing outside Commonwealth marine areas

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

24 What is a *Commonwealth marine area*?

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

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

- (f) any airspace over waters covered by paragraph (d).

24A Offences relating to marine areas

Actions in Commonwealth marine areas affecting the environment

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

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

Actions in Commonwealth marine areas likely to affect the environment

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

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

Actions outside Commonwealth marine areas affecting those areas

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

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

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Actions likely to affect environment in Commonwealth marine areas

- (4) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
 - (c) the action is likely to have a significant impact on the environment in a Commonwealth marine area and the person is reckless as to that fact.

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

Fishing with impact in State or Territory waters managed by Commonwealth

- (5) A person is guilty of an offence if:
- (a) the person takes an action that:
 - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
 - (c) the action results or will result in a significant impact on the environment in those coastal waters.

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

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

- (6) A person is guilty of an offence if:
- (a) the person takes an action that:

- (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
- (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
- (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
- (c) the action is likely to have a significant impact on the environment in those coastal waters and the person is reckless as to that fact.

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

Penalties

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

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

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

Defences—general

- (8) Subsection (1), (2), (3), (4), (5) or (6) does not apply to an action if:
 - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in

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

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

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

Defence—fishing in Commonwealth waters managed by State

- (9) Subsections (1) and (2) do not apply to an action if the action:
 - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (c) is permitted under a law of the State or Territory.

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

Defence—fishing outside Commonwealth marine areas

- (10) Subsections (3) and (4) do not apply to an action that:
 - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is permitted under a law of a State or self-governing Territory.

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

Subdivision G—Additional matters of national environmental significance

25 Requirement for approval of prescribed actions

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

Civil penalty:

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

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

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

- (3A) To avoid doubt, regulations may be made for the purposes of this section even if no agreement is reached on the matters described in paragraph (3)(d).
- (4) The regulations may prescribe different things as matter protected by this section in relation to different actions prescribed for the purposes of subsection (1).
- (5) This section applies only to actions:
 - (a) taken in a Territory or a place acquired by the Commonwealth for public purposes (within the meaning of section 52 of the Constitution); or
 - (b) taken in a Commonwealth marine area; or
 - (c) taken for the purpose of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (d) taken by a constitutional corporation; or
 - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (6) Regulations prescribing an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.

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

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

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.
- (3) Regulations made for the purposes of subsection (1) may only specify actions:
 - (a) taken in a Territory; or
 - (b) taken in a Commonwealth marine area; or
 - (c) taken for the purpose of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (d) taken by a constitutional corporation; or
 - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (4) Regulations specifying an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.
- (5) In this section:

regulatory provision means:

 - (a) a civil penalty provision set out in this Division; or
 - (b) a provision of this Division that creates an offence.

Subdivision I—Evidentiary certificates

25B Evidentiary certificates

Contravention

- (1) The Minister may issue a written certificate:

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- (a) stating that a specified person has contravened, or is contravening, a specified civil penalty provision set out in this Division; and
 - (b) setting out particulars of that contravention.
- (2) The Minister may issue a certificate under subsection (1) relating to a particular contravention if the Minister has reason to believe that the person concerned has committed, or is committing, the contravention.
- (3) To avoid doubt, a certificate under subsection (1) may be issued even if any relevant proceedings under section 475 or 481 have been instituted.

Proposal

- (4) The Minister may issue a written certificate stating that, if a specified person were to carry out a proposal to engage in specified conduct, that conduct would contravene a specified civil penalty provision set out in this Division.
- (5) The Minister may issue a certificate under subsection (4) if the Minister has reason to believe that:
- (a) the person proposes to engage in the conduct concerned; and
 - (b) the conduct would contravene the civil penalty provision concerned.
- (6) To avoid doubt, a certificate under subsection (4) may be issued even if any relevant proceedings under section 475 have been instituted.

25C Certificate to be given to person

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

25D Evidentiary effect of certificate

- (1) In any proceedings under section 475 or 481, a certificate under subsection 25B(1) is prima facie evidence of the matters in the certificate.
- (2) In any proceedings under section 475, a certificate under subsection 25B(4) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection 25B(1) or (4) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.
- (4) The Minister may certify that a document is a copy of a certificate under subsection 25B(1) or (4).
- (5) This section applies to the certified copy as if it were the original.

25E Variation of certificate

- (1) The Minister may vary a certificate under subsection 25B(1) or (4) so long as the variation is of a minor nature.
- (2) If a certificate is varied, the Minister must give the person concerned a written notice setting out the terms of the variation.

25F Revocation of certificate

- (1) The Minister may revoke a certificate under subsection 25B(1) or (4).
- (2) If a certificate is revoked, the Minister must give the person concerned a written notice stating that the certificate has been revoked.

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

Subdivision A—Protection of environment from actions involving Commonwealth land

26 Requirement for approval of activities involving Commonwealth land

Actions on Commonwealth land

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

Civil penalty:

- (a) for an individual—1,000 penalty units;
(b) for a body corporate—10,000 penalty units.

Actions outside Commonwealth land affecting that land

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

Civil penalty:

- (a) for an individual—1,000 penalty units;
(b) for a body corporate—10,000 penalty units.

Exceptions to prohibitions

- (3) Subsection (1) or (2) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
- (d) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or
- (f) the person taking the action is the Commonwealth or a Commonwealth agency.

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

27 What is *Commonwealth land*?

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

27A Offences relating to Commonwealth land

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

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

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

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

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

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

- (4) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
 - (c) the action is likely to have a significant impact on the environment on Commonwealth land and the person is reckless as to that fact.

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

- (5) An offence against subsection (1), (2), (3) or (4) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

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

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

- (6) Subsection (1), (2), (3) or (4) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in

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

- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or
- (e) the person taking the action is a Commonwealth agency.

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

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

Subdivision B—Protection of the environment from Commonwealth actions

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

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

Civil penalty:

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

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

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

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- (c) the action is one declared by the Minister in writing to be an action to which this section does not apply; or
 - (d) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (3) The Minister may make a written declaration that actions are actions to which this section does not apply, but only if he or she is satisfied that it is necessary in the interests of:
- (a) Australia's defence or security; or
 - (b) preventing, mitigating or dealing with a national emergency.
- (4) The Minister may make a written declaration that all actions, or a specified class of actions, taken by a specified Commonwealth agency are actions to which this section does not apply.
- (5) The Minister may make a declaration under subsection (4) relating to a Commonwealth agency's actions only if he or she is satisfied that, in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory dealing with environmental protection.

Division 3—Review of extension of operation of this Part

28A Identifying extra matters to be protected by this Part

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

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 3 Review of extension of operation of this Part

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

Part 4—Cases in which environmental approvals are not needed

Division 1—Actions covered by bilateral agreements

29 Actions declared by agreement not to need approval

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:
- (a) the action is taken in a State or self-governing Territory; and
 - (b) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or Territory not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with a management plan that is a bilaterally accredited management plan for the purposes of the bilateral agreement); and
 - (c) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and
 - (d) the bilaterally accredited management plan is in force under a law of the State or Territory identified in or under the bilateral agreement; and
 - (e) the action is taken in accordance with the bilaterally accredited management plan.

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

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

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

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30 Extended operation in State and Northern Territory waters

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

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

31 Extended operation in non-self-governing Territories

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

- (a) the action is taken in a Territory (the *action Territory*) that is not a self-governing Territory; and
- (b) an Act providing for the government of the action Territory provides that some or all of the law of a State or self-governing Territory is in force in the action Territory as a law of the Territory; and
- (c) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or self-governing Territory not to require approval under Part 9 for the purposes of the provision of Part 3 (because the action is approved or taken in accordance with a bilaterally accredited management plan); and

- (d) the bilateral agreement specifies that the provision of the agreement making the declaration has effect in relation to actions in the action Territory; and
- (e) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and
- (f) the bilaterally accredited management plan is in force under a law of the State or self-governing Territory identified in or under the bilateral agreement; and
- (g) the action is taken in accordance with the bilaterally accredited management plan.

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

Division 2—Actions covered by Ministerial declarations

Subdivision A—Effect of declarations

32 Actions declared by Minister not to need approval

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

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

Subdivision B—Making declarations

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

Declaration of actions not needing approval

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

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

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

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

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

Accrediting management plan

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

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

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

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Tabling of management plan before accreditation

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

No accreditation before end of period for opposition

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

No accreditation after accreditation opposed

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

No accreditation if motion not defeated in time

- (7) The Minister must not accredit the management plan if at the end of 15 sitting days after notice of a motion to oppose accreditation of the management plan that was given in a House of the Parliament within 15 sitting days after the management plan was laid before the House under this section:
- (a) the notice has not been withdrawn and the motion has not been called on; or
 - (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of.

Extended time after dissolution or prorogation

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

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

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

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
1	section 12	the world heritage values of a declared World Heritage property
1A	section 15 A	the world heritage values of a declared World Heritage property
2	section 16	the ecological character of a declared Ramsar wetland
2A	section 17 B	the ecological character of a declared Ramsar wetland

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Matter protected by provisions of Part 3		
Item	Provision	Matter protected
3	subsection 18(1)	a listed threatened species in the extinct in the wild category
4	subsection 18(2)	a listed threatened species in the critically endangered category
5	subsection 18(3)	a listed threatened species in the endangered category
6	subsection 18(4)	a listed threatened species in the vulnerable category
7	subsection 18(5)	a listed threatened ecological community in the critically endangered category
8	subsection 18(6)	a listed threatened ecological community in the endangered category
8A	subsection 18A(1) or (2)	a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species) and a listed threatened ecological community (except an ecological community included in the vulnerable category of the list referred to in section 181)
9	section 20	a listed migratory species
9A	section 20 A	a listed migratory species
10	section 21	the environment
10A	section 22 A	the environment
11	subsection 23(1)	the environment
12	subsection 23(2)	the environment in a Commonwealth marine area
13	subsection 23(3)	the environment in the coastal waters (as defined in the <i>Fisheries Management Act 1991</i>) in which the action is taken of the State or Territory

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
13A	subsection 24A(1) or (2)	the environment
13B	subsection 24A(3) or (4)	the environment in a Commonwealth marine area
13C	subsection 24A(5) or (6)	the environment in the coastal waters (as defined in the <i>Fisheries Management Act 1991</i>) in which the action is taken of the State or Territory
14	section 25	a thing prescribed by the regulations for the purposes of this item in relation to an action to which section 25 applies
15	subsection 26(1)	the environment
16	subsection 26(2)	the environment on Commonwealth land
16A	subsection 27A(1) or (2)	the environment
16B	subsection 27A(3) or (4)	the environment on Commonwealth land
17	section 28	the environment

Subdivision C—Prerequisites for making declarations

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

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

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

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34B Declarations relating to declared World Heritage properties

- (1) The Minister may make a declaration under section 33 relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and
 - (c) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of a declaration relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the management plan is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the management plan will promote the management of the property in accordance with the Australian World Heritage management principles.

34C Declarations relating to declared Ramsar wetlands

- (1) The Minister may make a declaration under section 33 relating to a declared Ramsar wetland only if:
 - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and
 - (b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles; and
 - (c) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of a declaration relating to a declared Ramsar wetland only if:

- (a) the Minister is satisfied that the management plan is not inconsistent with Australia's obligations under the Ramsar Convention; and
- (b) the Minister is satisfied that the management plan will promote the management of the wetland in accordance with the Australian Ramsar management principles.

34D Declarations relating to listed threatened species and ecological communities

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

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of each species or community to which the declaration relates; and

- (c) the Minister is satisfied that the management plan is not inconsistent with any recovery plan for the species or community or a threat abatement plan.

34E Declarations relating to migratory species

- (1) The Minister may make a declaration under section 33 relating to a listed migratory species only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

- (i) the Bonn Convention;
- (ii) CAMBA;
- (iii) JAMBA;
- (iv) an international agreement approved under subsection 209(4); and

- (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates; and

- (c) the declaration meets the requirements (if any) prescribed by the regulations.

- (2) The Minister may accredit a management plan under section 33 for the purposes of a declaration relating to a listed migratory species only if:

- (a) the Minister is satisfied that the management plan is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

- (i) the Bonn Convention;
- (ii) CAMBA;
- (iii) JAMBA;
- (iv) an international agreement approved under subsection 209(4); and

- (b) the Minister is satisfied that the management plan will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

Subdivision D—Other rules about declarations

35 Revoking declarations

Revoking declarations

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

Revocation does not affect some actions

- (2) If:
 - (a) before the revocation of a declaration made under section 33, an action could be taken without approval under Part 9 because its taking had been approved by the Commonwealth or a Commonwealth agency in accordance with a management plan that was an accredited management plan for the purposes of the declaration; and
 - (b) the declaration is revoked;this Act continues to operate in relation to the action as if the declaration had not been revoked.

36 Other rules about declarations

Minister must not give preference

- (1) In making a declaration or accrediting a management plan under section 33, or revoking a declaration under section 35, relating to an action taken:
 - (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
 - (b) by a constitutional corporation;

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

Publishing declarations

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

Division 4—Forestry operations in certain regions

Subdivision A—Regions covered by regional forest agreements

38 Part 3 not to apply to certain RFA forestry operations

- (1) Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.
- (2) In this Division:

RFA or *regional forest agreement* has the same meaning as in the *Regional Forest Agreements Act 2002*.

RFA forestry operation has the same meaning as in the *Regional Forest Agreements Act 2002*.

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

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

39 Object of this Subdivision

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

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

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

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

Note 2: The process of making a regional forest agreement is subject to assessment under the *Environment Protection (Impact of Proposals) Act 1974*, as continued by the *Environmental Reform (Consequential Provisions) Act 1999*.

- (2) In this Division:

forestry operations means any of the following done for commercial purposes:

- (a) the planting of trees;
- (b) the managing of trees before they are harvested;
- (c) the harvesting of forest products;

and includes any related land clearing, land preparation and regeneration (including burning) and transport operations. For the purposes of paragraph (c), **forest products** means live or dead trees, ferns or shrubs, or parts thereof.

RFA region has the meaning given by section 41.

- (3) Subsection (1) does not operate in relation to an RFA region that is the subject of a declaration in force under this section.
- (4) The Minister may declare in writing that subsection (1) does not apply to an RFA region.
- (5) A declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) The Minister must not make a declaration that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:

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

41 What is an *RFA region*?

Regions that are RFA regions

- (1) Each of the following is an ***RFA region***:
 - (a) the area delineated as the Eden RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
 - (b) the area delineated as the Lower North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
 - (c) the area delineated as the Upper North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
 - (d) the area delineated as the South Region on the map of the Comprehensive Regional Assessment South CRA Region dated August 1997 and published by the State Forests GIS Branch of the organisation known as State Forests of New South Wales;
 - (e) the area delineated as the Gippsland Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
 - (f) the area delineated as the North East RFA Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
 - (g) the area delineated as the West Region in the map of that Region dated 3 March 1999 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
 - (h) the area delineated as the South East Queensland RFA Region on the map of that Region dated 21 August 1998 and published by the Bureau of Resource Sciences.

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Regulations may amend list of regions

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

Prerequisites for prescribing RFA regions

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

Subdivision C—Limits on application

42 This Division does not apply to some forestry operations

Subdivisions A and B of this Division, and subsection 6(4) of the *Regional Forest Agreements Act 2002*, do not apply to RFA forestry operations, or to forestry operations, that are:

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

Division 5—Actions in the Great Barrier Reef Marine Park

43 Actions taken in accordance with permission

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

- (a) the action is taken in the Great Barrier Reef Marine Park established by the *Great Barrier Reef Marine Park Act 1975*; and
- (b) the person is authorised to take the action in the place where he or she takes it, by any of the following instruments made or issued under that Act (including instruments made or issued under an instrument (including regulations) made or issued under that Act):
 - (i) a zoning plan;
 - (ii) a plan of management;
 - (iii) a permission;
 - (iv) an authority;
 - (v) an approval;
 - (vi) a permit.

Division 6—Actions with prior authorisation

43A Actions with prior authorisation

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:
 - (a) the action consists of a use of land, sea or seabed; and
 - (b) the action was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act; and
 - (c) immediately before the commencement of this Act, no further environmental authorisation was necessary to allow the action to be taken lawfully.
- (2) In this section:

environmental authorisation means an authorisation under a law of the Commonwealth, a State or a self-governing Territory that has either or both of the following objects (whether express or implied):

- (a) to protect the environment;
- (b) to promote the conservation and ecologically sustainable use of natural resources.

43B Actions which are lawful continuations of use of land etc.

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act. For this purpose, an enlargement, expansion or intensification of use is not a *continuation* of a use.
- (2) However, subsection (1) does not apply to an action that was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act.

Note: Section 43A applies to actions that were specifically authorised under a law before the commencement of this Act.

Chapter 3—Bilateral agreements

Part 5—Bilateral agreements

Division 1—Object of Part

44 Object of this Part

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

- (a) protect the environment; and
- (b) promote the conservation and ecologically sustainable use of natural resources; and
- (c) ensure an efficient, timely and effective process for environmental assessment and approval of actions; and
- (d) minimise duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (and vice versa).

Division 2—Making bilateral agreements

Subdivision A—Power to make bilateral agreements

45 Minister may make agreement

Making bilateral agreement

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

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

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

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

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

Publishing notice of intention to enter into agreement

- (3) As soon as practicable after starting the process of developing a draft bilateral agreement with a State or self-governing Territory, the Minister must publish, in accordance with the regulations (if

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any), notice of his or her intention to develop a draft bilateral agreement with the State or Territory.

Publishing bilateral agreements and related material

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

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

Declaration of actions not needing approval

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

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

- (2) A management plan is a **bilaterally accredited management plan** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if the management plan:
- (a) is in force under a law:
 - (i) of the State or Territory that is party to the agreement; and
 - (ii) identified in or under the agreement; and

- (b) has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

Accrediting management plan

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

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

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

Tabling of management plan before accreditation

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

No accreditation before end of period for disallowance

- (5) The Minister must not accredit a management plan for the purposes of subsection (2) under a bilateral agreement:

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- (a) before, or within 15 sitting days after, a copy of the plan is laid before each House of the Parliament; or
- (b) if, within those 15 sitting days of a House, notice of a motion to disallow the management plan is given in that House—within 15 sitting days of that House after the notice is given.

Disallowance motion passed

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

Disallowance motion not defeated in time

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

Extended time after dissolution or prorogation

- (8) If:
 - (a) notice of a motion to disallow the management plan is given in a House of the Parliament (the *disallowing House*); and
 - (b) before the end of 15 sitting days of the disallowing House after the notice is given:
 - (i) the House of Representatives is dissolved or expires; or
 - (ii) the Parliament is prorogued; and
 - (c) at the time of the dissolution, expiry or prorogation (as appropriate):
 - (i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of; the management plan is taken for the purposes of subsections (5), (6) and (7) to have been laid before the disallowing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

No preference

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

Requirements for bilateral agreement making declaration

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

47 Agreement may declare classes of actions do not need assessment

Declaration of actions that do not need further assessment

- (1) A bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have

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been assessed in a specified manner need not be assessed under Part 8.

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

Prerequisite to declaration

- (2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if he or she is satisfied that assessment of an action in the specified manner will include assessment of the impacts the action:

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

on each matter protected by a provision of Part 3.

Assessment approaches that may be accredited

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

This does not limit subsection (1).

Report on actions that do not need further assessment

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

under Part 9 (for the purposes of each controlling provision) the taking of the action.

48 Other provisions of bilateral agreements

- (1) A bilateral agreement may include:
 - (a) provisions for State accreditation of Commonwealth processes and decisions; and
 - (b) other provisions for achieving the object of this Part; and
 - (c) provisions for the provision of information by one party to the agreement to the other party; and
 - (d) provisions for the publication of information relating to the agreement; and
 - (e) provisions relating to the operation of the whole agreement or particular provisions of the agreement, such as:
 - (i) provisions for the commencement of all or part of the agreement; or
 - (ii) provisions for auditing, monitoring and reporting on the operation and effectiveness of all or part of the agreement; or
 - (iii) provisions for review of all or part of the agreement; or
 - (iv) provisions for rescission of all or part of the agreement; or
 - (v) provisions for expiry of the agreement; and
 - (f) provisions varying or revoking another bilateral agreement between the same parties; and
 - (g) a provision dealing with a matter that another section of this Act permits a bilateral agreement to deal with.

Consistency with Act and regulations

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

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Relationship with sections 46 and 47

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

48A Mandatory provisions

Application

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

Agreements including declarations about approvals

- (2) A bilateral agreement including a declaration described in section 46 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have on a thing that is not a matter protected by a provision of Part 3 for which the declaration has effect will be assessed to the greatest extent practicable:
- (a) actions taken in the State or Territory by a constitutional corporation;
 - (b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;
 - (c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;
 - (d) actions taken in the Territory (if applicable).

Agreements including declarations about assessment

- (3) A bilateral agreement including a declaration described in section 47 must include an undertaking by the State or Territory to

ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:

- (a) actions taken in the State or Territory by a constitutional corporation;
- (b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;
- (c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;
- (d) actions taken in the Territory (if applicable).

Auditing

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

49 Express provision needed to affect Commonwealth areas or actions

- (1) A provision of a bilateral agreement does not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency, unless the agreement expressly provides otherwise.
- (2) A provision of a bilateral agreement does not have any effect in relation to an action in Booderee National Park, Kakadu National Park or Uluru-Kata Tjuta National Park.
- (3) ***Booderee National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Booderee National Park was

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given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

Subdivision B—Prerequisites for making bilateral agreements

49A Consultation on draft agreement

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

- (a) has published in accordance with the regulations:
 - (i) a draft of the agreement; and
 - (ii) an invitation for any person to give the Minister comments on the draft within a specified period of at least 28 days after the latest day on which the draft or invitation was published; and
- (b) has taken into account the comments (if any) received in response to the invitation; and
- (c) has considered the role and interests of indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement, taking into account Australia's relevant obligations under the Biodiversity Convention.

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

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

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

51 Agreements relating to declared World Heritage properties

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the World Heritage Convention; and

- (b) the Minister is satisfied that the agreement will promote the management of the property in accordance with the Australian World Heritage management principles; and
 - (c) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared World Heritage property only if:
- (a) the Minister is satisfied that the plan is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the plan will promote the management of the property in accordance with the Australian World Heritage management principles.

52 Agreements relating to declared Ramsar wetlands

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:
- (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the Ramsar Convention; and
 - (b) the Minister is satisfied that the agreement will promote the management of the wetland in accordance with the Australian Ramsar management principles; and
 - (c) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:
- (a) the Minister is satisfied that the plan is not inconsistent with Australia's obligations under the Ramsar Convention; and
 - (b) the Minister is satisfied that the plan will promote the management of the wetland in accordance with the Australian Ramsar management principles.

53 Agreements relating to listed threatened species and ecological communities

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; and
 - (b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
 - (c) the Minister is satisfied that the provision is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
 - (d) the provision meets the requirements (if any) prescribed by the regulations.

- (2) The Minister may accredit a management plan under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:
 - (a) the Minister is satisfied that the plan is not inconsistent with Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; and
 - (b) the Minister is satisfied that the plan will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
 - (c) the Minister is satisfied that the plan is not inconsistent with any recovery plan for the species or community or a threat abatement plan.

54 Agreements relating to migratory species

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

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55 Agreements relating to nuclear actions

The Minister must not enter into a bilateral agreement, or accredit for the purposes of a bilateral agreement a management plan, containing a provision that:

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

56 Agreements relating to prescribed actions

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

- (a) relates to an action prescribed for the purposes of subsection 25(1); and
- (b) has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation.

Division 3—Suspending and ending the effect of bilateral agreements

Subdivision A—Suspension and cancellation of effect

57 Representations about suspension or cancellation

Representations

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

Minister must decide whether agreement has been contravened

- (2) The Minister must:
 - (a) decide whether or not the bilateral agreement has been contravened; and
 - (b) decide what action he or she should take in relation to any contravention.

Publication of decision and reasons

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

Minister need not decide on vexatious referrals

- (4) Despite subsection (2), the Minister need not make a decision under that subsection if he or she is satisfied that:
 - (a) the referral was vexatious, frivolous, or not supported by sufficient information to make a decision; or
 - (b) the matter referred is the same in substance as a matter that has been referred before; or
 - (c) if the alleged contravention of the bilateral agreement were a contravention of the Act, the person referring the matter would not be entitled to apply under section 475 for an injunction in relation to the contravention.

Section 58

58 Consultation before cancellation or suspension

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

59 Suspension or cancellation

Minister may give notice of suspension or cancellation

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

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

Example 1: The Minister could give notice if the agreement declared that certain actions affecting the world heritage values of a declared world heritage property did not require approval under Part 9 if approved by

the State, and the State approved an action that was not consistent with the protection, conservation and presentation of those values.

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

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

Notice of suspension

- (2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:
- (a) starting on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given; and
 - (b) ending on a specified later day or on the occurrence of a specified event.

Notice of cancellation

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

Effect suspended or cancelled in accordance with notice

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

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Reasons for giving notice

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

Publishing notice and reasons

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

60 Emergency suspension of effect of bilateral agreement

- (1) This section applies if the Minister is satisfied that:
- (a) the State or Territory that is party to a bilateral agreement is not complying with it, or will not comply with it; and
 - (b) as a result of the non-compliance, a significant impact is occurring or imminent on any matter protected by a provision of Part 3 that is relevant to an action in a class of actions to which the agreement relates.
- (2) The Minister may suspend the effect of the agreement or specified provisions of the agreement for the purposes of this Act or specified provisions of this Act, by notice:
- (a) given to the appropriate Minister of the State or Territory; and
 - (b) published in accordance with the regulations.
- (3) The suspension continues for the shorter of the following periods:
- (a) 3 months;
 - (b) the period that is specified in the notice (either by reference to time or by reference to the occurrence of an event).
- (4) Subsection (3) has effect subject to section 62.
- (5) As soon as practicable after the Minister (the *Environment Minister*) gives the appropriate Minister of the State or Territory

(the *State or Territory Minister*) notice of the suspension, the Environment Minister must consult the State or Territory Minister about the non-compliance.

- (6) To avoid doubt, this section has effect despite sections 58 and 59.

61 Cancellation during suspension

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

62 Revocation of notice of suspension or cancellation

- (1) This section applies if the Minister:
 - (a) has given a notice under section 59 or 60 to suspend or cancel the effect of a bilateral agreement (either generally or in relation to actions in a specified class); and
 - (b) is later satisfied that the State or Territory that is party to the agreement will comply with the agreement and give effect to it in a way that:
 - (i) accords with the objects of this Act and the objects of this Part; and
 - (ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement.
- (2) The Minister must revoke the notice of suspension or cancellation by another written notice:
 - (a) given to the appropriate Minister of the State or Territory; and
 - (b) published in accordance with the regulations.

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However, the Environment Minister must not revoke the notice of cancellation after cancellation of the effect of the agreement occurs.

- (3) Suspension or cancellation of the effect of the agreement does not occur if the notice of suspension or cancellation is revoked before the suspension or cancellation would otherwise occur.
- (4) Suspension of the effect of the agreement ends when the notice of suspension is revoked.

63 Cancellation or suspension at request of other party

Minister must give notice of cancellation or suspension

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

Notice of suspension

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

Notice of cancellation

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

Effect suspended or cancelled in accordance with notice

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

Publishing notice and reasons

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

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

Application

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

Actions approved in specified manner may be taken

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

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Subdivision B—Expiry of bilateral agreements

65 Expiry and review of bilateral agreements

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

- (a) 5 years after it is entered into; or
- (b) at an earlier time when the agreement provides for it to cease to have effect for the purposes of this Act.

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

- (2) The Minister must:

- (a) cause a review of the operation of a bilateral agreement to be carried out; and
- (b) give a report of the review to the appropriate Minister of the State or Territory that is party to the agreement;

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

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

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

65A Expiry of bilateral agreement does not affect certain actions

Application of subsection (2)

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

Actions already approved may be taken

- (2) This Act continues to operate in relation to the action as if the agreement had not ceased to have effect if the action was able to be taken without approval under Part 9 because its taking had already

been approved in accordance with a management plan that was a bilaterally accredited management plan for the purposes of the agreement.

Chapter 4—Environmental assessments and approvals

Part 6—Simplified outline of this Chapter

66 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

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

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

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

An assessment may be done using:

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

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

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

Part 7—Deciding whether approval of actions is needed

Division 1—Referral of proposals to take action

67 What is a *controlled action*?

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

68 Referral by person proposing to take action

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (3) In a referral under this section, the person must state whether or not the person thinks the action the person proposes to take is a controlled action.
- (4) If the person states that the person thinks the action is a controlled action, the person must identify in the statement each provision that the person thinks is a controlling provision.
- (5) Subsections (1) and (2) do not apply in relation to a person proposing to take an action if the person has been informed by the Minister under section 73 that the proposal has been referred to the Minister.

69 State or Territory may refer proposal to Minister

- (1) A State, self-governing Territory or agency of a State or self-governing Territory that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the State, Territory or agency has administrative responsibilities relating to the action.
- (2) This section does not apply in relation to a proposal by a State, self-governing Territory or agency of a State or self-governing Territory to take an action.

Note: Section 68 applies instead.

70 Minister may request referral of proposal

- (1) If the Minister believes a person proposes to take an action that the Minister thinks may be or is a controlled action, the Minister may request:
 - (a) the person; or
 - (b) a State, self-governing Territory or agency of a State or self-governing Territory that the Minister believes has administrative responsibilities relating to the action;to refer the proposal to the Minister within 15 business days or a longer period agreed by the Minister and the requested person, State, Territory or agency (as appropriate).

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

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

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

Deemed referral of proposal

- (3) If:
 - (a) the Minister has made a request under subsection (1); and

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- (b) the period for compliance with the request has ended; and
 - (c) the requested person has not referred the proposal to the Minister in accordance with the request;
- the Minister may, within 20 business days after the end of that period, determine in writing that this Act has effect as if:
- (d) if paragraph (1)(a) applies—the requested person had referred the proposal to the Minister under subsection 68(1) at the time the determination was made; or
 - (e) if paragraph (1)(b) applies—the requested person had referred the proposal to the Minister under subsection 69(1) at the time the determination was made.
- (4) A determination under subsection (3) has effect accordingly.
 - (5) A copy of a determination under subsection (3) is to be given to the requested person.
 - (6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.
 - (7) Despite subsection 74(4), section 74 applies to a referral covered by subsection (3) of this section.
 - (8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

71 Commonwealth agency may refer proposal to Minister

- (1) A Commonwealth agency (except the Minister) that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the agency has administrative responsibilities relating to the action.
- (2) This section does not apply in relation to a proposal by the Commonwealth or a Commonwealth agency to take an action.

Note: Section 68 applies instead.

72 Form and content of referrals

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

73 Informing person proposing to take action of referral

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

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

74 Inviting provision of information on referred proposal

Inviting other Commonwealth Ministers to provide information

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

Inviting comments from appropriate State or Territory Minister

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

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- (b) invite that Minister to give the Environment Minister comments within 10 business days on whether the proposed action is a controlled action;

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

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

Inviting public comment

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

Section does not apply if proponent says action is controlled action

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

74A Minister may request referral of a larger action

- (1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.
- (2) If the Minister decides to not accept a referral under subsection (1), the Minister:
 - (a) must give written notice of the decision to the person who referred the proposal to the Minister; and

- (b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and
 - (c) may, under section 70, request of the person proposing to take the action that was the subject of the referral, that they refer the proposal, to take the larger action, to the Minister.
- (3) To avoid doubt, sections 73 and 74 do not apply to a referral that has not been accepted in accordance with subsection (1).
- (4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:
- (a) give written notice of the decision to the person who referred the proposal to the Minister;
 - (b) publish in accordance with the regulations (if any), a copy or summary of the decision.

Division 2—Ministerial decision whether action needs approval

75 Does the proposed action need approval?

Is the action a controlled action?

- (1) The Minister must decide:
 - (a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
 - (b) which provisions of Part 3 (if any) are controlling provisions for the action.
- (1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

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

Considerations in decision

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

- (ii) is likely to have;
on the matter protected by each provision of Part 3.

Designating a proponent of the action

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

Consent to designation

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

Timing of decision and designation

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

Note: Section 156 sets out rules about time limits.

Time does not run while further information being sought

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

Running of time may be suspended by agreement

- (7) The Minister and the person proposing to take the action may agree in writing that days within a period worked out in accordance with

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

76 Minister may request more information for making decision

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

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

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

77 Notice and reasons for decision

Giving notice

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

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

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

Notice must identify any applicable controlling provisions

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

Reasons for decision

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

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

77A Action to be taken in a particular manner

- (1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the *component decision*) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner (whether or not in accordance with an accredited management plan for the purposes of a declaration under section 33 or a bilaterally accredited management plan for the purposes of a bilateral agreement), the notice, to be provided under section 77, must set out the component decision, identifying the provision and the manner.

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

- (2) A person must not take an action, that is the subject of a notice that includes a particular manner under subsection (1), in a way that is inconsistent with the manner specified in the notice.

Civil penalty:

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

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

78 Reconsideration of decision

Limited power to vary or substitute decisions

- (1) The Minister may revoke a decision (the *first decision*) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:
 - (a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:
 - (i) has or will have; or
 - (ii) is likely to have;on a matter protected by a provision of Part 3; or
 - (aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:
 - (i) has or will have; or
 - (ii) is likely to have;on a matter protected by a provision of Part 3; or
 - (b) if the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77—the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or
 - (c) if the first decision was that the action was not a controlled action because of a provision of a bilateral agreement or a declaration under section 33 and a management plan that is a bilaterally accredited management plan for the purposes of the agreement or an accredited management plan for the purposes of the declaration:
 - (i) the provision of the agreement or declaration no longer operates in relation to the action; or

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

Reversing decision that provision of Part 3 is not controlling provision

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

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

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

General effect of change of decision

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

Change of designation of proponent

- (5) If the Minister believes a person (the **first proponent**) designated under section 75 as proponent of an action is no longer an

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appropriate person to be the designated proponent of the action, the Minister may revoke the designation and designate another person (the *later proponent*) as proponent of the action.

Consent to designation

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

Effect of change of designated proponent

- (7) If the Minister revokes the designation of the first proponent and designates the later proponent:
- (a) the provisions of this Chapter that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent; and
 - (b) for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and
 - (c) for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

79 Reconsideration of decision on request by a State or Territory

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

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

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

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

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

- (3) Within 20 business days after receiving a request to reconsider a decision, the Environment Minister must:
- (a) reconsider the decision; and
 - (b) either confirm it or revoke it and substitute a new decision for it; and
 - (c) give written notice of the outcome of the reconsideration and reasons for the outcome to:
 - (i) the Minister who requested the reconsideration; and
 - (ii) the person proposing to take the action; and
 - (iii) the designated proponent of the action; and
 - (d) after giving notice as described in paragraph (c), publish notice of the outcome and the reasons for it in accordance with the regulations.

Note: Section 156 sets out rules about time limits.

Part 8—Assessing impacts of controlled actions

Division 1—Simplified outline of this Part

80 Simplified outline of this Part

The following is a simplified outline of this Part:

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

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

- (a) an accredited assessment process;
- (b) an assessment on preliminary documentation (see Division 4);
- (c) a public environment report (see Division 5);
- (d) an environmental impact statement (see Division 6);
- (e) a public inquiry (see Division 7).

Division 2—Application of this Part

81 Application

- (1) This Part applies to the assessment of the relevant impacts of an action that the Minister has decided under Division 2 of Part 7 is a controlled action.
- (2) This section has effect subject to sections 83 and 84.
- (3) This section does not limit section 82.

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

If the Minister has decided the action is a controlled action

- (1) If the Minister has decided under Division 2 of Part 7 that an action is a controlled action, the ***relevant impacts*** of the action are the impacts that the action:
 - (a) has or will have; or
 - (b) is likely to have;on the matter protected by each provision of Part 3 that the Minister has decided under that Division is a controlling provision for the action.

If the Minister has not decided whether the action is controlled

- (2) If an action is a controlled action or would be apart from Division 1 or 2 of Part 4 (which provide that approval under Part 9 is not needed for an action covered by a bilateral agreement or declaration)—the ***relevant impacts*** of the action are impacts that the action:
 - (a) has or will have; or
 - (b) is likely to have;on the matter protected by each provision of Part 3 that is a controlling provision for the action or would be apart from whichever of those Divisions is relevant.

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Relationship between subsections (1) and (2)

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

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

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

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

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

Note 2A: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the bilateral agreement.

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

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

84 This Part does not apply if action covered by declaration

When this Part does not apply

- (1) This Part does not apply in relation to an action if:
- (a) the Minister has declared in writing that actions in a class that includes the action need not be assessed under this Part; and

(b) the declaration is in operation.

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

Declaration

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

Prerequisites for making a declaration

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

Further requirements for making a declaration

- (3A) Sections 34A, 34B, 34C, 34D and 34E apply in relation to the making of a declaration under this section in the same way that they apply to the making of a declaration under section 33.

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Specified manner of assessment

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

Publishing declaration

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

Revoking declaration

- (6) The Minister may, by instrument in writing published in accordance with the regulations, revoke a declaration.

Minister must not give preference

- (7) In making or revoking a declaration relating to an action taken:
- (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
 - (b) by a constitutional corporation;
- the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Division 3—Decision on assessment approach

Subdivision A—Simplified outline of this Division

85 Simplified outline of this Division

The following is a simplified outline of this Division:

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

- (a) an accredited assessment process;
- (b) an assessment on preliminary documentation;
- (c) a public environment report;
- (d) an environmental impact statement;
- (e) a public inquiry.

Subdivision B—Deciding on approach for assessment

86 Designated proponent must provide preliminary information for assessment

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

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

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87 Minister must decide on approach for assessment

Minister must choose one assessment approach

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

Minister must consult before making decision

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

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

Considerations in making choice

- (3) In making the decision, the Minister must consider:
- (a) information relating to the action given to the Minister in the referral of the proposal to take the action or under section 86; and
 - (b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and

- (c) any relevant information received in response to an invitation under subsection (2); and
- (d) the matters (if any) prescribed by the regulations; and
- (e) the guidelines (if any) published under subsection (6).

Accredited assessment process

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

Assessment on preliminary documentation

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

Guidelines for choosing assessment approach

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

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88 Timing of decision on assessment approach

Initial decision

- (1) The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business days after whichever of the following days is later (or either of them if they are the same):
 - (a) the day the Minister decides under Division 2 of Part 7 that the action is a controlled action;
 - (b) the day the Minister is given information relating to the action as required by section 86.

Note: Section 156 sets out rules about time limits.

Extended time if difference of opinion with State or Territory

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

Subsection (2) does not require decision to be delayed

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

Time does not run while further information sought

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

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

Running of time may be suspended by agreement

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

89 Minister may request more information for making decision

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

90 Directing an inquiry after starting an assessment

Application

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

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Revoking and substituting decision

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

Effect of revocation and substitution

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

91 Notice of decision on assessment approach

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

Division 4—Assessment on preliminary documentation

92 Application

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

93 Public comment on information included in referral

- (1) Within 10 business days of the decision, the Minister must give the designated proponent a written direction:
 - (a) to publish within 10 business days in accordance with the regulations:
 - (i) specified information included in the referral to the Minister of the proposal to take the action; and
 - (ii) specified information that was given to the Minister under section 86; and
 - (iii) specified information relating to the action that was given to the Minister after the referral but before the Minister made the decision under section 87; and
 - (iv) an invitation for anyone to give the designated proponent comments relating to the information or the action within a period of the length specified in the direction; and
 - (b) to give to the Minister a copy and summary of any comments received within the period specified in the invitation.
- (2) The designated proponent must comply with the direction.

94 Revised documentation

- (1) After the period for comment, the designated proponent must give the Minister:
 - (a) a document that sets out the information provided to the Minister previously in relation to the action, with any

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

95 Assessment report

Preparation

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

Publication

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

Discretion not to publish

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

Commercial-in-confidence

- (4) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
- (a) release of the information in that part would cause competitive detriment to the person; and
 - (b) the information in that part is not in the public domain; and
 - (c) the information 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.

Division 5—Public environment reports

96 Application

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

97 Minister must prepare guidelines for draft public environment report

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

report includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

- (c) the action:
 - (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
 - (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

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

- (4) Division 2 does not limit:
 - (a) subsection (3); or
 - (b) section 98 so far as it relates to guidelines prepared in reliance on that subsection.
- (5) In preparing the guidelines, the Minister may:
 - (a) invite anyone to comment on a draft of the guidelines within a period specified by the Minister; and
 - (b) take account of the comments received (if any).

98 Designated proponent must invite comment on draft public environment report

Designated proponent's obligations

- (1) The designated proponent of the action must:
 - (a) prepare a draft report about the relevant impacts of the action (and any other impacts mentioned under subsection 97(3) in the guidelines for the content of the draft report); and
 - (b) obtain the Minister's approval for publication of the draft report; and
 - (c) publish in accordance with the regulations:
 - (i) the draft report; and

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- (ii) an invitation for anyone to give the designated proponent comments relating to the draft report or the action within the period specified in the invitation; and
- (d) give the Minister a copy and summary of the comments (if any) received within the period specified in the invitation.

Approval of publication of draft report

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

Period for comment

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

99 Finalising public environment report

Designated proponent must finalise report

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

Form of finalised report

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

Refusal to accept finalised report

- (3) The Minister may refuse to accept the finalised report if he or she is satisfied on reasonable grounds that the finalised report is inadequate for the purposes of making an informed decision on

approving under Part 9 (for the purposes of each controlling provision) the taking of the action.

Publication of finalised report

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

100 Assessment report

Preparation

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

Publication

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

Discretion not to publish

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

Commercial-in-confidence

- (4) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
- (a) release of the information in that part would cause competitive detriment to the person; and
 - (b) the information in that part is not in the public domain; and

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- (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.

Division 6—Environmental impact statements

101 Application

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

102 Minister must prepare guidelines for draft environmental impact statement

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

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statement includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

(c) the action:

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

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

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

(4) Division 2 does not limit:

(a) subsection (3); or

(b) section 103 so far as it relates to guidelines prepared in reliance on that subsection.

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

(a) invite anyone to comment on a draft of the guidelines within a period specified by the Minister; and

(b) take account of the comments (if any) received.

103 Designated proponent must invite comment on draft environmental impact statement

Designated proponent's obligations

(1) The designated proponent of the action must:

(a) prepare a draft statement about the relevant impacts of the action (and any other impacts mentioned under subsection 102(3) in the guidelines for the content of the draft statement); and

(b) obtain the Minister's approval for publication of the draft statement; and

(c) publish in accordance with the regulations:

- (i) the draft statement; and
- (ii) an invitation for anyone to give the designated proponent comments relating to the draft statement or the action within the period specified in the invitation; and
- (d) give the Minister a copy and summary of the comments (if any) received within the period specified in the invitation.

Approval of publication of draft statement

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

Period for comment

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

104 Finalising draft environmental impact statement

Designated proponent must finalise statement

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

Form of finalised statement

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

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Refusal to accept finalised statement

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

Publication of finalised statement

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

105 Assessment report

Preparation

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

Publication

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

Discretion not to publish

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

Commercial-in-confidence

- (4) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
- (a) release of the information in that part would cause competitive detriment to the person; and
 - (b) the information in that part is not in the public domain; and
 - (c) the information 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.

Division 7—Inquiries

Subdivision A—Preliminary

106 Simplified outline

The following is a simplified outline of this Division:

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

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

Commissioners must report to the Minister and publish their reports.

Subdivision B—Establishment of inquiries

107 Appointing commissioners and setting terms of reference

- (1) If the Minister decides that the relevant impacts of an action must be assessed by inquiry under this Division, the Minister must:
 - (a) appoint in writing one or more persons (the *commissioners*) as a commission to conduct the inquiry and report to the Minister in relation to the action; and
 - (b) specify in writing (the *terms of reference*):
 - (i) the matters relating to the action that are to be the subject of the inquiry and report; and
 - (ii) the period within which the commission must report to the Minister.

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

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

- (2) If the Minister appoints 2 or more commissioners for an inquiry, the Minister must appoint one of them to preside at the inquiry.
 - (3) In specifying in the terms of reference the matters relating to the action that are to be the subject of the inquiry and report, the Minister:
 - (a) must specify the relevant impacts of the action; and
 - (b) may specify other certain or likely impacts of the action.
 - (4) However, the Minister may specify other certain or likely impacts of the action only if:
 - (a) the action is to be taken in a State or self-governing Territory; and
 - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the inquiry reports on those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and
 - (c) the action:
 - (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
 - (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.
- (5) The Minister may also specify in the terms of reference the manner in which the commission is to carry out the inquiry.

108 Publicising inquiry

- (1) As soon as practicable, the commission must publish in accordance with the regulations and in any other way it thinks fit:
 - (a) the terms of reference; and

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- (b) the information relating to the action given to the Minister under this Chapter before the Minister made the decision under Division 3 to use an inquiry to assess the relevant impacts of the action.
- (2) The commission need not publish the information described in paragraph (1)(b) if, before the Minister appointed the commission, the designated proponent of the action published:
 - (a) a draft report under section 98 (which deals with draft public environment reports); or
 - (b) a draft statement under section 103 (which deals with draft environmental impact statements).

However, in this case the commission must publish as described in subsection (1) notice of the fact that the draft report or draft statement has already been published.

Subdivision C—Conduct of inquiries

109 Procedure of inquiries

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

110 Inquiry to be public

- (1) A hearing held as part of an inquiry must be conducted in public, except so far as the commission directs otherwise.
- (2) The commission must make publicly available (in any way the commission thinks fit) the content of any submission or evidence given to the commission in writing, except so far as the commission directs otherwise.

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

111 Calling witnesses

Summoning witnesses

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

Failure of witness to attend

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

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

Offence

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

Allowances for witnesses

- (4) A person summoned by a commission to appear as a witness at an inquiry is entitled to be paid by the Commonwealth such

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allowances for travelling and other expenses as are prescribed by the regulations.

112 Dealing with witnesses

Power to administer oath or affirmation

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

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

Refusal to be sworn or to answer questions

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

Offence

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

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

No privilege against self-incrimination

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

Answers and documents cannot be used in criminal proceedings

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

Sworn witnesses may also give written evidence on oath

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

113 Dealing with documents given to commission

Inspecting and copying documents produced or given at inquiry

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

Keeping documents produced or given at inquiry

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

114 Inspections of land, buildings and places

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

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- (a) inspect the land, building or place; and
 - (b) inspect any material on the land, or on or in the building or place.
- (2) However, the commissioner or authorised person may not make the inspection if:
- (a) the person occupying or in charge of the land, building or place asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
 - (b) the commissioner or person does not produce it.
- (3) A person (the *offender*) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months if:
- (a) the offender obstructs or hinders another person; and
 - (b) the offender knows the other person is a commissioner, or a person authorised by a commissioner, acting under subsection (1) or a warrant issued under section 116.

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

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

115 Entering premises by consent

- (1) A commissioner, or a person authorised by a commissioner, may enter land, a building or a place at any reasonable time for any reasonable purpose of an inquiry, if the person (the *occupant*) occupying or in charge of the land, building or place consents.
- (2) Before obtaining the consent, the commissioner or authorised person must inform the occupant that the occupant may refuse to give consent.
- (3) The commissioner or authorised person may not enter the land, building or place if:

- (a) the occupant asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
 - (b) the commissioner or authorised person does not produce it.
- (4) An entry by a commissioner or authorised person with the occupant's consent is not lawful if the occupant's consent was not voluntary.

116 Entering premises under warrant

- (1) A commissioner may apply to a magistrate for a warrant authorising the commissioner or a person authorised by the commissioner to enter any land, building or place if the commissioner has reason to believe that it is necessary or desirable for the purposes of an inquiry for the commissioner or person to enter the land, building or place for the purposes of the inquiry.

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

- (2) If the magistrate is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of the inquiry, he or she may grant a warrant authorising the person named in the warrant to enter the land, building or place for the purposes specified in the warrant.
- (3) The magistrate must specify in the warrant the date after which the warrant ceases to have effect.
- (4) The person named in a warrant may not enter the land, building or place if:
- (a) the person occupying or in charge of the land, building or place asks the person named in the warrant to produce his or her identity card or other written evidence of his or her identity; and
 - (b) the person named in the warrant does not produce it.

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117 Warrants by telephone or other electronic means

Application

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

Voice communication

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

Information

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

Issue of warrant

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

Notification

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

Form of warrant

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

Completed form of warrant to be given to magistrate

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

Attachment

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

Presumption

- (9) If:
- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
 - (b) the form of warrant signed by the magistrate is not produced in evidence;
- the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

118 Identity cards

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

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- (2) As soon as practicable after the commission to which the commissioner was appointed has reported to the Minister on its inquiry, the commissioner or authorised person must return his or her identity card to the Minister.
- (3) A person must not contravene subsection (2).

Penalty: 1 penalty unit.

119 Contempt

- (1) A person is guilty of an offence punishable on conviction by a fine of not more than 30 penalty units if:
 - (a) the person insults, disturbs or uses insulting language towards another person; and
 - (b) the person knows the other person is a commissioner exercising the powers or performing the functions or duties of a commissioner.
- (2) A person is guilty of an offence punishable on conviction by a fine of not more than 30 penalty units if:
 - (a) the person creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place; and
 - (b) the person knows the place is a place where a commission is holding an inquiry.
- (3) A person must not:
 - (a) interrupt an inquiry by a commission; or
 - (b) do any other act or thing that would, if a commission were a court of record, constitute a contempt of that court.

Penalty: 30 penalty units.

120 Protection of commissioners and witnesses

Protection of commissioners

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

Rights and obligations of witnesses

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

Interfering with witness is an offence

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

Interference with a witness' employment

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

Interference with employee who proposes to give evidence

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

Offences

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

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

Burden of proof in proceedings relating to witness

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

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

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

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

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

Subdivision D—Inquiry reports

121 Timing of report

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

122 Publication of report

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

Subdivision E—Commissioners’ terms and conditions

123 Basis of appointment

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

124 Remuneration

- (1) A commissioner who is not appointed or engaged under the *Public Service Act 1999* is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the commissioner is to be paid the remuneration that is prescribed.
- (2) A commissioner is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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125 Leave of absence

- (1) A commissioner appointed on a full-time basis has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a commissioner appointed on a full-time basis leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The commissioner (the *presiding commissioner*) appointed to preside at an inquiry may grant leave of absence to any other commissioner for the inquiry on the terms and conditions that the presiding commissioner determines, if the other commissioner has been appointed on a part-time basis.

126 Resignation

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

127 Termination of appointment

- (1) The Minister may terminate a commissioner's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a commissioner if:
 - (a) the commissioner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the commissioner fails, without reasonable excuse, to comply with section 128 (about disclosure of interests); or
 - (c) the Minister becomes aware that the commissioner has a pecuniary or other interest in the subject-matter of the inquiry

and the Minister considers that the commissioner should not continue to participate in the conduct of the inquiry.

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

128 Disclosure of interests

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

129 Other terms and conditions

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

Part 9—Approval of actions

Division 1—Decisions on approval and conditions

Subdivision A—General

130 Timing of decision on approval

Basic rule

- (1) Within whichever of the following periods is relevant, the Minister must decide for the purposes of each controlling provision whether or not to approve the taking of a controlled action:
 - (a) 30 business days, or such longer period as the Minister specifies in writing, if the action is the subject of an assessment report;
 - (b) 40 business days, or such longer period as the Minister specifies in writing, if a commission has conducted an inquiry relating to the action.

Start of period—basic rule

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

Start of period—certain actions in States and Territories

- (1B) However, if the action is to be taken in a State or self-governing Territory and is covered by subsection (1C), the relevant period starts on the later of the following days:
 - (a) the day worked out under subsection (1A);
 - (b) the first business day after the day the Minister receives from the State or self-governing Territory a notice:
 - (i) stating that the certain and likely impacts of the action on things other than matters protected by the controlling

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

(ii) explaining how they have been assessed.

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

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

Actions to which subsection (1B) applies

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

- (a) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
- (b) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Start of period—actions in 2 or more jurisdictions

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

Exception for certain actions

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

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

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What is an assessment report?

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

Time may be extended only to consider other Ministers' comments

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

Notice of extension of time

- (4) If the Minister specifies a longer period for the purposes of paragraph (1)(a) or (b), he or she must:
- (a) give a copy of the specification to the person proposing to take the action; and
 - (b) publish the specification in accordance with the regulations.

Time does not run while further information is sought

- (5) If, under section 132, the Minister has requested more information for the purposes of making a decision whether or not to approve

the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1) if it is:

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

131 Inviting comments from other Ministers before decision

- (1) Before the Minister (the *Environment Minister*) decides whether or not to approve the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
 - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action of the decision the Environment Minister proposes to make; and
 - (b) invite the other Minister to give the Environment Minister comments on the proposed decision within 10 business days.
- (2) A Minister invited to comment may make comments that:
 - (a) relate to economic and social matters relating to the action; and
 - (b) may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

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

132 Requesting further information for approval decision

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

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

Section 133

133 Grant of approval

Approval

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

Content of approval

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

Notice of approval

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

Limit on publication of approval

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

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

Circumstances in which approval must not be granted

- (5) The Minister must not approve for the purposes of a provision of Part 3 the taking in a State or self-governing Territory of an action that is covered by subsection (6) before the Minister receives from the State or Territory a notice described in paragraph 130(1B)(b). This does not apply if:
- (a) the action:
 - (i) is a nuclear action; or
 - (ii) is to be taken in a Commonwealth marine area; or
 - (iii) is to be taken on Commonwealth land; or
 - (iv) is to be taken by the Commonwealth or a Commonwealth agency; and
 - (b) the relevant impacts of the action have been assessed under Part 8.

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

Actions to which subsection (5) applies

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

Notice of refusal of approval

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

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

134 Attaching conditions to approval

Generally

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

Conditions to protect matters from the approved action

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

This subsection does not limit subsection (1).

Other conditions that may be attached to approval

- (3) The conditions that may be attached to an approval include:
- (a) conditions relating to any security to be given by the person by bond, guarantee or cash deposit:
 - (i) to comply with this Act and the regulations; and
 - (ii) not to contravene a condition attached to the approval; and

- (iii) to meet any liability of the person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and
- (b) conditions requiring the person to insure against any specified liability of the person to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
- (c) conditions requiring the person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and
- (d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from the person whose taking of the action is approved; and
- (e) conditions requiring the preparation, submission for approval by the Minister, and implementation of a plan for managing the impacts of the approved action on a matter protected by a provision of Part 3 for which the approval has effect such as a plan for conserving habitat of a species or ecological community; and
- (f) conditions requiring specified environmental monitoring or testing to be carried out; and
- (g) conditions requiring compliance with a specified industry standard or code of practice.

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

Considerations in deciding on condition

- (4) In deciding whether to attach a condition to an approval, the Minister must consider:

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- (a) any relevant conditions that have been imposed under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action; and
- (aa) information provided by the person proposing to take the action or by the designated proponent of the action; and
- (b) the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and the person taking the action to achieve the object of the condition.

Validity of decision

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

135 Certain approvals and conditions must not give preference

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

Subdivision B—Considerations for approvals and conditions**136 General considerations***Mandatory considerations*

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

Factors to be taken into account

- (2) In considering those matters, the Minister must take into account:
 - (a) the principles of ecologically sustainable development; and
 - (b) the assessment report relating to the action; and
 - (c) if the action was assessed under Division 5 or 6 of Part 8 (which deal with public environment reports and environmental impact statements)—the report or statement about the action finalised by the designated proponent; and
 - (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action—the report of the commissioners; and
 - (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
 - (f) any relevant comments given to the Minister by another Minister in accordance with an invitation under section 131.

Section 137

Person's environmental history

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

Minister not to consider other matters

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

137 Requirements for decisions about World Heritage

In deciding whether or not to approve, for the purposes of section 12 or 15A, the taking of an action and what conditions to attach to such an approval, the Minister must not act inconsistently with:

- (a) Australia's obligations under the World Heritage Convention; or
- (b) the Australian World Heritage management principles; or
- (c) a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321.

138 Requirements for decisions about Ramsar wetlands

In deciding whether or not to approve for the purposes of section 16 or 17B the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

139 Requirements for decisions about threatened species and endangered communities

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

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

140 Requirements for decisions about migratory species

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

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

140A No approval for certain nuclear installations

The Minister must not approve an action consisting of or involving the construction or operation of any of the following nuclear installations:

- (a) a nuclear fuel fabrication plant;
- (b) a nuclear power plant;
- (c) an enrichment plant;
- (d) a reprocessing facility.

Division 2—Requirement to comply with conditions

142 Compliance with conditions on approval

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

Civil penalty:

- (a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
 - (b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.
- (2) A contravention of a condition attached to an approval under this Part does not invalidate the approval.

142A Offence of breaching conditions on approval

- (1) A person whose taking of an action has been approved under this Part is guilty of an offence if:
 - (a) the person takes an action or omits to take an action; and
 - (b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and
 - (c) the action or omission results or will result in a significant impact on a matter protected by a provision of Part 3.

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

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) A person whose taking of an action has been approved under this Part is guilty of an offence if:
 - (a) the person takes an action or omits to take an action; and
 - (b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and

- (c) the action or omission is likely to have a significant impact on a matter protected by a provision of Part 3 and the person is reckless as to that fact.

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

- (4) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

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

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

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

143 Variation of conditions attached to approval

- (1) The Minister may, by written instrument, revoke, vary or add to any conditions attached to an approval under this Part of an action if:
 - (a) any condition attached to the approval has been contravened;
or
 - (b) both of the following conditions are satisfied:
 - (i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
 - (ii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact;
 - (c) the person whose taking of the action was approved agrees to the proposed revocation, variation or addition and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:
 - (i) protecting a matter protected by any provision of Part 3 for which the approval has effect; or
 - (ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).
- (2) The Minister may, by written instrument, revoke any condition attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of Part 3 for which the approval has effect.

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

Note: If the person is not satisfied with changed conditions attached to the approval of the person's action, he or she can ask the Minister to reverse the change by making another change to the conditions under this section.

- (6) However, the Minister must not publish so much of the instrument as:
 - (a) is an exempt document under the *Freedom of Information Act 1982* on the grounds of commercial confidence; or
 - (b) the Minister believes it is in the national interest not to publish.

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

144 Suspension of approval

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

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

145 Revocation of approval

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

- (2A) The Minister may, by written instrument, revoke an approval under this Part of an action for the purposes of a specified provision of Part 3 if he or she believes that:
- (a) the impacts that the action has had, will have or is likely to have were not accurately identified in information available to the Minister when the approval was given; and
 - (b) the information did not accurately identify those impacts because of negligence or a deliberate act or omission by the person proposing to take the action or the designated proponent of the action.
- (3) In deciding whether or not to revoke an approval of the taking of an action by a person, the Minister may have regard to the person's history in relation to environmental matters.
- (4) The revocation takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.
- (5) As soon as possible after making the instrument, the Minister must:
- (a) give a copy of it to the person to whose action the approval related; and
 - (b) publish the instrument in accordance with the regulations.

145A Reinstating suspended or revoked approval

Application

- (1) This section applies if the Minister has, by written instrument:
- (a) suspended an approval under this Part of the taking of an action by a person; or
 - (b) revoked an approval under this Part of the taking of an action by a person.

Requesting reinstatement of approval

- (2) Within 2 months after receiving a copy of the instrument under this Division, the person may request the Minister to reinstate the approval.

Section 145A

Deciding whether to reinstate approval

- (3) Within 20 business days of receiving the request, the Minister must decide whether or not to reinstate the approval.

Considerations for decision

- (4) Subdivision B of Division 1 applies to the decision whether or not to reinstate the approval in the same way as it applies to a decision whether or not to approve the taking of an action.

Extra time for decision

- (5) A day is not to be counted for the purposes of subsection (3) if:
- (a) the Minister and the person agree in writing that it should not be counted; or
 - (b) the Minister has requested the person to provide information under subsection (6) and the day is on or before the day on which the Minister receives the last of the information requested.

Requesting information for decision

- (6) If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to reinstate the approval, the Minister may request the person to provide specified information relevant to making the decision.

Reversal of decision to suspend or revoke approval

- (7) If the Minister decides to reinstate the approval, it and any conditions attached to it immediately before the suspension or revocation have effect on and after the day of the decision (subject to any future suspension or revocation under this Division).

Notice of decision about reversal

- (8) The Minister must:
- (a) give the person written notice of the Minister's decision; and

- (b) publish notice of the decision in accordance with the regulations.

Division 4—Transfer of approvals

145B Transfer with Minister's consent

Transfer by written agreement

- (1) A person (the *transferor*) whose taking of an action has been approved under this Part for the purposes of a provision of Part 3 may transfer the approval to another person (the *transferee*) by written agreement, subject to the Minister's consent.

Transfer ineffective until Minister consents

- (2) The transfer does not have effect for the purposes of this Act until the Minister consents in writing to the transfer. To avoid doubt, the Minister's consent to a transfer cannot take effect before the Minister gives the consent.

Effect of consent

- (3) If the Minister consents to the transfer:
 - (a) this Act (except Division 3) operates in relation to the transferor as if the Minister had revoked the approval when the Minister's consent took effect; and
 - (b) this Act operates in relation to the transferee as if, when the Minister's consent to the transfer took effect, he or she:
 - (i) had approved under this Part for the purposes of the provision of Part 3 the taking of the action by the transferee; and
 - (ii) had attached to the approval the conditions that were attached to the approval of the taking of the action by the transferor.

Considerations in deciding whether to consent

- (4) In deciding whether or not to consent to the transfer, the Minister may consider:

Section 145B

- (a) whether the transferee would be a suitable person to be granted the approval, having regard to the transferee's history in relation to environmental matters; and
- (b) whether the transferee can comply with the conditions attached to the approval.

Giving copies of consents to transferor and transferee

- (5) The Minister must give the transferor and the transferee a copy of the consent each.

Part 10—Strategic assessments

Division 1—Strategic assessments generally

146 Minister may agree on strategic assessment

- (1) The Minister may agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3.
- (1A) The agreement may also provide for the assessment of other certain and likely impacts of actions under the policy, plan or program if:
 - (a) the actions are to be taken in a State or self-governing Territory; and
 - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the assessment deal with those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the actions; and
 - (c) the actions:
 - (i) are to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
 - (ii) are actions whose regulation is appropriate and adapted to give effect to Australia's obligation under an agreement with one or more other countries.

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

- (2) The agreement must provide for:
 - (aa) the preparation of draft terms of reference for a report on the impacts to which the agreement relates; and

- (ab) the publication of the draft terms of reference for public comment for a period of at least 28 days that is specified by the Minister; and
- (ac) 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; and
- (a) the preparation of a draft of a report on the impacts to which the agreement relates; and
- (b) the publication of the draft report for public comment for a period of at least 28 days that is specified by the Minister; and
- (c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and
- (d) the provision of the report to the Minister; and
- (e) the making of recommendations by the Minister to the person about the policy, plan or program (including recommendations for modification of the policy, plan or program); and
- (f) the endorsement of the policy, plan or program by the Minister if he or she is satisfied that:
 - (i) the report adequately addresses the impacts to which the agreement relates; and
 - (ii) either the recommended modifications of the policy, plan or program (if any) have been made or any modifications having the same effect have been made; and
- (g) any other matter prescribed by the regulations.

Note 1: If the impacts of actions under a policy, plan or program are assessed under an agreement under this Part, the Minister may decide on a less onerous approach for an assessment relating to an individual action under the policy, plan or program. See section 87.

Note 2: If the Minister endorses a policy, plan or program embodied in a management plan in force under a law, he or she may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the management plan do not need approval for the purposes of a specified provision of Part 3.

Chapter 4 Environmental assessments and approvals

Part 10 Strategic assessments

Division 1 Strategic assessments generally

Section 146

- (3) If the agreement relates to actions to be taken in a State or self-governing Territory, the Minister must tell the appropriate Minister of the State or Territory:
 - (a) that the agreement has been made; and
 - (b) what those actions are (in general terms).

Division 2—Assessment of Commonwealth-managed fisheries

147 Simplified outline of this Division

The following is a simplified outline of this Division:

The Australian Fisheries Management Authority must make agreements under Division 1 for the assessment of actions in fisheries managed under the *Fisheries Management Act 1991*. An agreement must be made whenever it is proposed to make a management plan or a determination not to have a plan. An agreement must be made within 5 years of the commencement of this Act for all fisheries that did not have plans at that commencement.

The Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under Division 1 for the assessment of actions permitted by policies or plans for managing fishing in Torres Strait. All policies or plans must be covered by an agreement within 5 years after the commencement of this Act.

A further agreement for assessment must be made if the impact of the actions is significantly greater than assessed under an earlier agreement.

If the Minister endorses a policy or plan assessed under an agreement under Division 1, the Minister must make a declaration that actions under the policy or plan do not need approval under Part 9 for the purposes of section 23 or 24A (which protect the marine environment).

148 Assessment before management plan is determined

Plans under the Fisheries Management Act 1991

- (1) Before the Australian Fisheries Management Authority determines a plan of management for a fishery under section 17 of the *Fisheries Management Act 1991*, the Authority must:
 - (a) make an agreement with the Minister under section 146 for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and
 - (b) consider any recommendations made by the Minister under the agreement.

Plans under the Torres Strait Fisheries Act 1984

- (2) Before the Minister administering the *Torres Strait Fisheries Act 1984* determines a plan of management for a fishery under section 15A of that Act, he or she must:
 - (a) make an agreement under section 146 with the Minister (the ***Environment Minister***) administering this section for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and
 - (b) consider any recommendations made by the Environment Minister under the agreement.

149 Assessment before determination that no plan required

Before the Australian Fisheries Management Authority determines under subsection 17(1A) of the *Fisheries Management Act 1991* that a plan of management is not warranted for a fishery, the Authority must:

- (a) make an agreement with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions permitted under the Authority's policy for managing the fishery; and
- (b) consider any recommendations made by the Minister under the agreement.

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

Fisheries managed under the Fisheries Management Act 1991

- (1) This section applies to fisheries (as defined in the *Fisheries Management Act 1991*):
- (a) that are managed under that Act (whether as a result of arrangements under section 71 or 72 of that Act or not); and
 - (b) for which there were not plans of management in force under that Act when this Act commenced.

Two-thirds of fisheries to be covered by agreements in 3 years

- (2) Before the day that is the third anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing at least $\frac{2}{3}$ of the fisheries.

All fisheries to be covered by agreements in 5 years

- (3) Before the day that is the fifth anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing the fisheries.

Agreement not needed if fishery already subject to agreement

- (4) However, subsection (3) does not require another agreement to be made in relation to a fishery if an agreement relating to the fishery has been made, before the day mentioned in that subsection, by the Authority and the Minister under section 146 because of subsection 148(1) or section 149.

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151 Assessment of all Torres Strait fisheries to be started within 5 years

Fisheries managed under the Torres Strait Fisheries Act 1984

- (1) This section applies to actions that:
- (a) are involved in fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act); and
 - (b) were not covered by a plan of management in force under section 15A of that Act when this Act commenced.

Policies for all actions to be covered by agreements in 5 years

- (2) Before the day that is the fifth anniversary of this Act commencing, the Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under section 146 with the Minister administering this section for assessment of the impacts of the actions on each matter protected by a provision of Part 3, being actions that are permitted by policies under that Act.

Agreement not needed if fishery already subject to agreement

- (3) However, subsection (2) does not require another agreement to be made in relation to actions if an agreement covering them has been made under section 146, before the day mentioned in that subsection, by the Ministers mentioned in that subsection because of subsection 148(2).

152 Further assessment if impacts greater than previously assessed

Application

- (1) This section applies if the Minister (the *Environment Minister*) and the Minister administering the *Fisheries Management Act 1991* agree that the impacts that actions:
- (a) included in a fishery managed under that Act; or

(b) permitted under a policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act);
have, will have or are likely to have on a matter protected by a provision of Part 3 are significantly greater than the impacts identified in the most recent report provided to the Environment Minister under an agreement made under section 146 relating to the fishery, policy or plan.

Further assessment for management arrangements under the Fisheries Management Act 1991

- (2) The Australian Fisheries Management Authority must make another agreement with the Minister under section 146 in relation to the Authority's policy for managing the fishery, unless there is a plan of management in force for the fishery under the *Fisheries Management Act 1991*.

Further assessment for policy or plan for Torres Strait fishing

- (3) The Minister administering the *Torres Strait Fisheries Act 1984* must make another agreement under section 146 in relation to the policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act).

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

- (1) This section applies if the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:
- (a) a plan of management under the *Fisheries Management Act 1991* for a fishery; or
 - (b) policies of the Australian Fisheries Management Authority for managing a fishery for which there is not a plan of management under the *Fisheries Management Act 1991*; or
 - (c) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or

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- (d) policies for managing fishing under the *Torres Strait Fisheries Act 1984*.
- (2) The Minister must:
 - (a) make a declaration under section 33 that actions approved in accordance with the accredited management plan consisting of the endorsed plan or policies do not require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6); and
 - (b) accredit under section 33 the endorsed plan or policies as an accredited management plan for the purposes of the declaration.

Note: The declaration and accreditation will allow actions that would otherwise be prohibited by sections 23 and 24A to be taken without approval if they are taken in accordance with the accredited management plan. See section 32.

154 This Division does not limit Division 1

This Division does not limit Division 1.

Part 11—Miscellaneous rules about assessments and approvals

Division 1—Rules about timing

155 This Chapter ceases to apply to lapsed proposals

- (1) If:
 - (a) a person who proposes to take a controlled action or is the designated proponent of an action is required or requested under this Chapter to do something; and
 - (b) the person does not do the thing within a period that the Minister believes is a reasonable period;the Minister may give the person a written notice inviting the person to satisfy the Minister within a specified reasonable period that assessment of the action should continue or that the Minister should make a decision about approving the action.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how documents may be served and when they are taken to be served.
- (2) If, by the end of the specified period, the person fails to satisfy the Minister that assessment of the action should continue or that the Minister should make a decision about approving the action, the Minister may declare in writing that this Chapter no longer applies to the action.
- (3) This Chapter (apart from this section) ceases to apply in relation to the action on the date specified in the declaration. The Minister must not specify a date earlier than the date of making of the declaration.
- (4) The Minister must:
 - (a) give a copy of the declaration to the person and to the Secretary; and
 - (b) publish the declaration in accordance with the regulations.

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156 General rules about time limits

- (1) If this Chapter specifies a time limit in business days in relation to a controlled action (or an action that the Minister believes may be or is a controlled action), the limit is to be worked out by reference to what is a business day in the place where the action is to be taken.
- (2) A day is not to be counted as a business day for the purposes of subsection (1) if it is not a business day in all the places in which the action is to be taken.
- (3) Failure to comply with a time limit set in this Chapter does not affect the validity of:
 - (a) a decision under this Chapter; or
 - (b) an assessment or approval under this Chapter.

Note: The Minister must make a statement to Parliament about some failures to comply with time limits. See section 518.

Division 2—Actions in area offshore from a State or the Northern Territory

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

- (1) A provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a State also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the State by section 4 of the *Coastal Waters (State Title) Act 1980*.
- (2) So far as a provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a self-governing Territory relates to the Northern Territory, the provision also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*.

Division 3—Exemptions

158 Exemptions from Part 3 and this Chapter

- (1) A person proposing to take a controlled action, or the designated proponent of an action, may apply in writing to the Minister for an exemption from a specified provision of Part 3 or of this Chapter.
- (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
- (3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of Part 3 or of this Chapter in relation to a specified action.
- (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
- (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.
- (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.
- (7) Within 10 business days after making the notice, the Minister must:
 - (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations;
and
 - (b) give a copy of the notice to the person specified in the notice.

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

Subdivision A—Minister’s advice on authorising actions

159 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

A Commonwealth agency or employee must consider advice from the Minister before authorising one of the following actions with a significant impact on the environment:

- (a) providing foreign aid;
- (b) managing aircraft operations in airspace;
- (c) adopting or implementing a major development plan for an airport;
- (d) an action prescribed by the regulations.

The agency or employee must inform the Minister of the proposal to authorise the action.

The environmental impacts of the action must be assessed in accordance with a declaration made by the Minister accrediting a Commonwealth assessment process, or by one of the following methods chosen by the Minister:

- (a) a specially accredited process;
- (b) an assessment on preliminary documentation under Division 4 of Part 8;
- (c) a public environment report under Division 5 of Part 8;

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(d) an environmental impact statement under Division 6 of Part 8;

(e) an inquiry under Division 7 of Part 8.

The Minister must give the agency or employee advice on protecting the environment from the action, within 30 days of receiving the report of the assessment.

160 Requirement to take account of Minister's advice

Requirement

- (1) Before a Commonwealth agency or employee of the Commonwealth gives an authorisation (however described) of an action described in subsection (2), the agency or employee must obtain and consider advice from the Minister in accordance with this Subdivision.

Note: The giving of an authorisation for an action may be constituted by the renewal of an authorisation of the action or the variation of an authorisation for a different action.

Relevant actions

- (2) Subsection (1) applies in relation to:
- (a) the entry by the Commonwealth, under Australia's foreign aid program, into a contract, agreement or arrangement for the implementation of a project that has, will have or is likely to have a significant impact on the environment anywhere in the world; and
 - (b) the adoption or implementation of a plan for aviation airspace management involving aircraft operations that have, will have or are likely to have a significant impact on the environment; and
 - (c) the adoption or implementation of a major development plan (as defined in the *Airports Act 1996*); and
 - (d) any other action prescribed by the regulations for the purposes of this paragraph.

- (2A) Regulations may prescribe an action for the purposes of paragraph (2)(d):
- (a) partly by reference to the action's having, or being likely to have, a significant impact on the environment; or
 - (b) partly by reference to a specified person believing that the action has, will have or is likely to have a significant impact on the environment; or
 - (c) wholly or partly by reference to legislation under which the authorisation of the action is to be granted.

This does not limit the ways in which regulations may prescribe an action.

This section does not apply to actions like those already assessed

- (3) Subsection (1) does not apply in relation to a particular authorisation (the **later authorisation**) if the agency or employee has complied with, or is complying with, this Subdivision in relation to another authorisation or proposed authorisation and is satisfied of one or both of the matters in subsection (4).

Which actions are like actions?

- (4) For the purposes of subsection (3), the agency or employee must be satisfied that:
- (a) the Minister's advice relating to the other authorisation deals or will deal with all the impacts that the action to which the later authorisation relates has, will have or is likely to have on the environment; or
 - (b) the impacts that the action to which the later authorisation relates has, will have or is likely to have on the environment:
 - (i) are an extension of the corresponding impacts of the action to which the other authorisation relates; and
 - (ii) are not significantly different in nature from those corresponding impacts; and
 - (iii) do not significantly add to those corresponding impacts.

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State law excluded in relation to aviation

- (5) A law of a State or Territory does not apply in relation to the assessment of the certain or likely environmental impacts of an action described in paragraph (2)(b) if subsection (1) applies in relation to authorisation of the action, or would apply apart from subsection (3).

161 Seeking the Minister's advice

Requirement for referral

- (1) If a Commonwealth agency or employee of the Commonwealth proposing to give an authorisation (however described) of an action thinks the agency or employee is required by section 160 to obtain and consider the Minister's advice before giving the authorisation, the agency or employee must:
- (a) refer the proposal to the Minister; and
 - (b) nominate a person to act as designated proponent of the action.

Minister may request referral

- (2) The Minister may request a Commonwealth agency or employee of the Commonwealth to:
- (a) refer to the Minister a proposal to give an authorisation (however described) of an action; and
 - (b) nominate a person to act as designated proponent of the action;
- if the Minister thinks the agency or employee is required by section 160 to obtain and consider the Minister's advice before giving the authorisation.

Complying with Minister's request

- (3) The Commonwealth agency or employee must comply with the Minister's request.

Content of referral

- (4) A referral must include the information prescribed by the regulations.

162 Assessment of the action

Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) apply in relation to the action proposed to be authorised as if:

- (a) the referral of the proposal to give the authorisation were a referral of a proposal to take the action; and
- (b) the Minister had decided under Division 2 of Part 7 that the action was a controlled action when the proposal to give the authorisation was referred to the Minister; and
- (c) the person nominated to act as the designated proponent had been designated as the proponent of the action by the Minister under section 75; and
- (d) a reference in Part 8 or those provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and
- (e) a reference in Part 8 or those provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to giving informed advice about the proposal to give an authorisation of the action.

163 Providing advice

- (1) The Minister must give advice on the following matters to the Commonwealth agency or employee of the Commonwealth who referred the proposal to give an authorisation of the action:
- (a) whether the agency or employee should give the authorisation;
 - (b) what conditions (if any) should be attached to the authorisation (if possible) to protect the environment;

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- (c) any other matter relating to protection of the environment from the action.
- (2) The Minister must give the advice within 30 days of receiving:
 - (a) a report mentioned in subsection 84(3) or section 95, 100 or 105 (as applied by section 162); or
 - (b) a report of an inquiry under Division 7 of Part 8 (as applied by section 162) relating to the action.

164 Reporting on response to advice

As soon as practicable after considering the Minister's advice, the Commonwealth agency or employee of the Commonwealth must give the Minister a report stating:

- (a) what action has been taken in relation to the Minister's advice; and
- (b) if the agency or employee did not give effect to some or all of the Minister's advice—why the agency or employee did not do so.

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

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

Overview

- (1) This section provides for the assessment of an action for which a person is applying for a permit under Division 3 of Part 13 (about whales and other cetaceans).

Application of Part 8

- (2) Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) apply in relation to the action proposed to be authorised by the permit as if:
 - (a) the application for the permit were a referral of a proposal to take the action; and

- (b) the Minister had decided under Division 2 of Part 7 that the action was a controlled action when the application was made; and
- (c) the person applying for the permit had been designated as the proponent of the action by the Minister under section 75; and
- (d) a reference in Part 8 or those provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on cetaceans; and
- (e) a reference in Part 8 or those provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to making an informed decision about whether or not to issue the permit.

Assessment report must be considered in decision on permit

- (5) The Minister must consider the assessment report relating to the action when deciding whether to grant the permit for the action.

Subdivision C—Assessment under agreement with State or Territory

166 This Subdivision applies if Ministers agree it should

- (1) This Subdivision applies if the Minister and a Minister of a State or self-governing Territory agree that it should apply in relation to an action that:
 - (a) is to be taken in the State or Territory by a constitutional corporation; or
 - (b) if the agreement is with a Minister of a Territory—is to be taken in the Territory; or
 - (c) is to be taken in the State or Territory by a person for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or

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- (d) is to be taken in the State or Territory and is an action whose assessment under this Subdivision is an appropriate means of giving effect to Australia's obligations under an agreement with one or more other countries.
- (2) This section applies to the adoption or implementation of a policy, plan or program in the same way as it applies to any other action.
- (3) Despite subsection (1), this Subdivision does not apply in relation to an action to be taken in 2 or more States or self-governing Territories unless there is an agreement between the Minister and a Minister of each of those States and Territories that this Subdivision should apply in relation to the action.

167 Making an agreement

Power to make agreement

- (1) The Minister may make a written agreement with a Minister of a State or self-governing Territory to apply this Subdivision in relation to an action to be taken in the State or Territory.

Prerequisites for making agreement

- (2) The Minister may agree only if he or she is satisfied that the action is not a controlled action.

Minister must not make an agreement that gives preference

- (3) The Minister must not enter into an agreement that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:
 - (a) by a constitutional corporation; or
 - (b) by a person for the purposes of trade or commerce between Australia and another country or between 2 States.

168 Content of an agreement

Generally

- (1) An agreement to apply this Subdivision in relation to an action must:
 - (a) either specify that one of Divisions 4, 5, 6 and 7 of Part 8 is to apply in relation to the action or specify that Division 1 of Part 10 is to apply in relation to the action; and
 - (b) if it specifies that one of Divisions 4, 5 and 6 of Part 8 is to apply—specify the person who is taken to be the designated proponent of the action for the purposes of that Division.

Agreement applying Division 4 of Part 8

- (2) An agreement that specifies that Division 4 of Part 8 (about assessment on preliminary documentation) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 94 to refuse to accept a document.

Agreement applying Division 5 of Part 8

- (3) An agreement that specifies that Division 5 of Part 8 (about public environment reports) is to apply in relation to an action may deal with how the Minister will exercise his or her power:
 - (a) under section 97 to prepare guidelines for the content of a draft report; or
 - (b) under section 98 to approve publication of a draft report or specify a period for comment; or
 - (c) under section 99 to refuse a finalised report.

Agreement applying Division 6 of Part 8

- (4) An agreement that specifies that Division 6 of Part 8 (about environmental impact statements) is to apply in relation to an action may deal with how the Minister will exercise his or her power:
 - (a) under section 102 to prepare guidelines for the content of a draft statement; or

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- (b) under section 103 to approve publication of a draft statement or specify a period for comment; or
- (c) under section 104 to refuse a finalised statement.

Agreement applying Division 7 of Part 8

- (5) An agreement that specifies that Division 7 of Part 8 (about inquiries) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 107:
 - (a) to appoint one or more persons as commissioners, and to appoint a person to preside; or
 - (b) to specify the matters relating to the action that are to be the subject of the inquiry and report; or
 - (c) to specify the time within which the commission must report to the Minister; or
 - (d) to specify the manner in which the commission is to carry out the inquiry.

Agreement applying Part 10

- (6) An agreement that specifies that Division 1 of Part 10 is to apply may:
 - (a) be in the same document as an agreement mentioned in that Division; or
 - (b) specify the manner in which an agreement the Minister makes under that Division is to provide for matters that that Division requires that agreement to provide for.

169 Application of a Division of Part 8

Provisions that apply

- (1) If the agreement states that a particular Division of Part 8 is to apply in relation to the assessment of an action, the following provisions of this Act (the *applied provisions*) apply in relation to the action as set out in subsection (2):
 - (a) that Division;
 - (b) the other provisions of this Act (except Part 9), so far as they relate to that Division.

Modification of applied provisions

- (2) The applied provisions apply in relation to the action as if:
- (a) the Minister had decided under Division 2 of Part 7 that the action was a controlled action; and
 - (b) the Minister had decided that the relevant impacts of the action must be assessed under the Division specified in the agreement applying the Division; and
 - (c) the person specified in the agreement as the person who is taken to be the designated proponent of the action for the purposes of that Division had been designated as the proponent of the action by the Minister under section 75; and
 - (d) a reference in the applied provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and
 - (e) a reference in the applied provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to making an informed report and recommendations relating to the action.

Modification of section 93

- (3) Also, if the agreement states that Division 4 of Part 8 is to apply in relation to the assessment of an action, that Division applies in relation to the action as if subparagraphs 93(1)(a)(i), (ii) and (iii) merely referred to specified information relating to the action.

Minister must give copy of report to State or Territory Minister

- (4) The Minister must give a copy of the report he or she receives from the Secretary or commission of inquiry under the applied provisions in relation to the action to each Minister of a State or Territory who is party to the agreement.

170 Application of Division 1 of Part 10

If an agreement to apply this Subdivision states that Division 1 of Part 10 is to apply:

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Part 11 Miscellaneous rules about assessments and approvals

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

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- (a) that Division applies as if:
 - (i) the reference in subsection 146(1) to relevant impacts of actions were a reference to the impacts the actions have, will have or are likely to have on the environment; and
 - (ii) paragraph 146(2)(f) were omitted; and
- (b) the Minister must give a copy of the report provided to the Minister under the agreement made under section 146, and of any recommendations made by the Minister under the agreement, to each Minister of a State or Territory who is party to the agreement to apply this Subdivision.

Division 5—Publication of information relating to assessments

170A Publication of information relating to assessments

The Secretary must publish on the Internet every week notice of the following:

- (a) the publication in the immediately preceding week by the Minister under section 45 of a notice of the Minister's intention to develop a draft bilateral agreement;
- (b) each referral (if any) of an action received by the Minister under Division 1 of Part 7 in the immediately preceding week;
- (c) each decision (if any) in the immediately preceding week under Division 2 of Part 7 that an action is a controlled action;
- (d) each decision (if any) in the immediately preceding week under Division 3 of Part 8 about which approach is to be used for assessment of the relevant impacts of an action;
- (e) the information and invitations (if any) published in the immediately preceding week under Division 4 of Part 8 (about assessment on preliminary documentation);
- (f) each set of guidelines (if any) prepared in the immediately preceding week by the Minister under Division 5 or 6 of Part 8 for a report or statement;
- (g) each public invitation (if any) issued in the immediately preceding week by the Minister to comment on a draft of guidelines under Division 5 or 6 of Part 8 for a report or statement;
- (h) each draft or finalised report or statement published in the immediately preceding week under Division 5 or 6 of Part 8 by a designated proponent;
- (i) the availability of each assessment report given to the Minister under Division 4, 5 or 6 of Part 8 in the immediately preceding week;
- (j) any other matter prescribed by the regulations.

Chapter 5—Conservation of biodiversity

Part 12—Identifying and monitoring biodiversity and making bioregional plans

Division 1—Identifying and monitoring biodiversity

171 Identifying and monitoring biodiversity

- (1) The Minister may, on behalf of the Commonwealth, co-operate with, and give financial or other assistance to, any person for the purpose of identifying and monitoring components of biodiversity.
- (2) Without limiting subsection (1), the co-operation and assistance may include co-operation and assistance in relation to all or any of the following:
 - (a) identifying and monitoring components of biodiversity that are important for its conservation and ecologically sustainable use;
 - (b) identifying components of biodiversity that are inadequately understood;
 - (c) collecting and analysing information about the conservation status of components of biodiversity;
 - (d) collecting and analysing information about processes or activities that are likely to have a significant impact on the conservation and ecologically sustainable use of biodiversity;
 - (e) assessing strategies and techniques for the conservation and ecologically sustainable use of biodiversity;
 - (f) systematically determining biodiversity conservation needs and priorities.

- (3) In this Act:

components of biodiversity includes species, habitats, ecological communities, genes, ecosystems and ecological processes.

- (4) For the purposes of this section, the components of biological diversity that are important for its conservation and ecologically sustainable use are to be identified having regard to the matters set out in Annex I to the Biodiversity Convention.
- (5) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

172 Inventories of listed threatened species etc. on Commonwealth land

- (1) The Minister must prepare inventories that identify, and state the abundance of, the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species on Commonwealth land.
- (2) Commonwealth land must be covered by an inventory:
 - (a) within 5 years after the commencement of this Act; or
 - (b) within 5 years after the land became Commonwealth land;whichever is later.
- (3) A Commonwealth agency that has an interest in Commonwealth land must provide all reasonable assistance in connection with the preparation under this section of an inventory that is to cover the land.

173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas

- (1) The Minister must prepare surveys that identify, and state the extent of the range of:
 - (a) cetaceans present in Commonwealth marine areas; and
 - (b) the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species in Commonwealth marine areas.
- (2) A Commonwealth marine area must be covered by a survey:
 - (a) within 10 years after the commencement of this Act; or

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- (b) within 10 years after the area became a Commonwealth marine area;
whichever is later.
- (3) A Commonwealth agency that has an interest in a Commonwealth marine area is to provide all reasonable assistance in connection with the preparation under this section of a survey that is to cover the area.

174 Inventories and surveys to be updated

The Minister must take reasonable steps to ensure that the inventories and surveys prepared under this Division are maintained in an up-to-date form.

175 Obligations under this Act unaffected by lack of inventories or surveys

Obligations imposed by this Act are not affected, in their application in relation to Commonwealth land or Commonwealth marine areas, by any lack of inventories or surveys for such land or areas.

Division 2—Bioregional plans

176 Bioregional plans

- (1) The Minister may prepare a bioregional plan for a bioregion that is within a Commonwealth area. In preparing the plan, the Minister must carry out public consultation on a draft of the plan in accordance with the regulations.
- (2) The Minister may, on behalf of the Commonwealth, co-operate with a State or a self-governing Territory, an agency of a State or of a self-governing Territory, or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within a Commonwealth area.
- (3) The co-operation may include giving financial or other assistance.
- (4) A bioregional plan may include provisions about all or any of the following:
 - (a) the components of biodiversity, their distribution and conservation status;
 - (b) important economic and social values;
 - (c) objectives relating to biodiversity and other values;
 - (d) priorities, strategies and actions to achieve the objectives;
 - (e) mechanisms for community involvement in implementing the plan;
 - (f) measures for monitoring and reviewing the plan.
- (5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

177 Obligations under this Act unaffected by lack of bioregional plans

Obligations imposed by this Act are not affected, in their application in relation to Commonwealth areas, by a lack of bioregional plans for those areas.

Part 13—Species and communities

Division 1—Listed threatened species and ecological communities

Subdivision A—Listing

178 Listing of threatened species

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of threatened species divided into the following categories:
 - (a) extinct;
 - (b) extinct in the wild;
 - (c) critically endangered;
 - (d) endangered;
 - (e) vulnerable;
 - (f) conservation dependent.
- (2) The list, as first established, must contain only the species contained in Schedule 1 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.
- (3) The Minister must include:
 - (a) in the extinct category of the list, as first established, only the species mentioned in subsection (2) that were listed as presumed extinct; and
 - (b) in the endangered category of the list, as first established, only the native species mentioned in subsection (2) that were listed as endangered; and
 - (c) in the vulnerable category of the list, as first established, only the species mentioned in subsection (2) that were listed as vulnerable.

- (4) If the Minister is satisfied that a species included in the list, as first established, in:
- (a) the extinct category; or
 - (b) the endangered category; or
 - (c) the vulnerable category;
- is not eligible to be included in that or any other category, or is eligible to be, or under subsection 186(3), (4) or (5) can be, included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

179 Categories of threatened species

- (1) A native species is eligible to be included in the *extinct* category at a particular time if, at that time, there is no reasonable doubt that the last member of the species has died.
- (2) A native species is eligible to be included in the *extinct in the wild* category at a particular time if, at that time:
- (a) it is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; or
 - (b) it has not been recorded in its known and/or expected habitat, at appropriate seasons, anywhere in its past range, despite exhaustive surveys over a time frame appropriate to its life cycle and form.
- (3) A native species is eligible to be included in the *critically endangered* category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.
- (4) A native species is eligible to be included in the *endangered* category at a particular time if, at that time:
- (a) it is not critically endangered; and
 - (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

Section 180

- (5) A native species is eligible to be included in the *vulnerable* category at a particular time if, at that time:
 - (a) it is not critically endangered or endangered; and
 - (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.
- (6) A native species is eligible to be included in the *conservation dependent* category at a particular time if, at that time, the species is the focus of a specific conservation program, the cessation of which would result in the species becoming vulnerable, endangered or critically endangered within a period of 5 years.

180 Native species of marine fish

- (1) A native species of marine fish is eligible to be included in a category mentioned in a paragraph of subsection 178(1) at a particular time if, at that time, the species meets the prescribed criteria for that category.
- (2) A subsection of section 179 referring to a category (the *relevant category*) does not apply to a native species of marine fish if regulations are in force for the purposes of subsection (1) of this section prescribing criteria for the relevant category.

181 Listing of threatened ecological communities

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of threatened ecological communities divided into the following categories:
 - (a) critically endangered;
 - (b) endangered;
 - (c) vulnerable.
- (2) Subject to subsection (3), the Minister must not include an ecological community in a particular category of the list, as first established, unless satisfied that the ecological community is eligible to be included in that category when the list is first published.

- (3) The list, as first established, must contain only the ecological communities listed in Schedule 2 to the *Endangered Species Protection Act 1992* immediately before the commencement of this Act, and they must be listed in the endangered category.
- (4) If the Minister is satisfied that an ecological community included in the endangered category of the list, as first established under subsection (3), is not eligible to be included in that or any other category, or is eligible to be included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.
- (5) An instrument (other than an instrument establishing the list mentioned in subsection (3)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

182 Critically endangered, endangered and vulnerable communities

- (1) An ecological community is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.
- (2) An ecological community is eligible to be included in the ***endangered*** category at a particular time if, at that time:
 - (a) it is not critically endangered; and
 - (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.
- (3) An ecological community is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:
 - (a) it is not critically endangered nor endangered; and
 - (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

Section 183

183 Listing of key threatening processes

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of threatening processes that are key threatening processes.
- (2) The list, as first established, must contain only the key threatening processes contained in Schedule 3 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

184 Minister may amend lists

- (1) Subject to this Subdivision, the Minister may, by instrument published in the *Gazette*, amend a list referred to in section 178, 181 or 183 by:
 - (a) including items in the list; or
 - (b) deleting items from the list; or
 - (c) in the case of the list referred to in section 178 or 181—transferring items from one category in the list to another category in the list; or
 - (d) correcting an inaccuracy or updating the name of a listed threatened species or listed threatened ecological community.
- (2) An instrument (other than an instrument mentioned in paragraph (1)(d)) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies in relation to an instrument because of section 46A of that Act, amendments of the kind mentioned in paragraphs (1)(b) and (c) take effect on the first day on which they are no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of that Act as it so applies.
- (4) When an instrument is laid before each House of the Parliament in accordance with section 48 of the *Acts Interpretation Act 1901*, the Minister must cause a statement to be laid before each House with the instrument explaining:

- (a) in the case of an item that has been included in a list by the instrument—why the item was so included; or
 - (b) in the case of an item that has been deleted from a list by the instrument—why the item was so deleted; or
 - (c) in the case of an item that has been transferred by the instrument from one category in the list referred to in section 178 or 181 to another category in that list—why the item has been so transferred.
- (5) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

185 Maintaining the lists in up-to-date condition

- (1) The Minister must take all reasonably practical steps to amend as necessary:
- (a) the list referred to in section 178 so that it contains in each category all native species that are eligible to be, or under subsection 186(3), (4) or (5) can be, included in that category; and
 - (b) the list referred to in section 181 so that it contains in each category all ecological communities that are eligible to be included in that category.
- (2) The Minister must decide whether to amend the list referred to in section 181 to include an ecological community that is described as critically endangered, endangered or vulnerable in a list that is:
- (a) kept by:
 - (i) a State; or
 - (ii) a self-governing Territory; or
 - (iii) the body known as the Australian and New Zealand Environment and Conservation Council; and
 - (b) identified by the Minister by a notice published in the *Gazette*.

186 Amending list of threatened native species

- (1) Subject to subsections (3), (4) and (5), the Minister must not:
 - (a) include (whether as a result of a transfer or otherwise) a native species in a particular category; or
 - (b) delete (whether as a result of a transfer or otherwise) a native species from a particular category;unless satisfied that the native species is eligible, or is no longer eligible, as the case requires, to be included in that category.
- (2) In deciding whether to include a native species in, or delete a native species from, a particular category (whether as a result of a transfer or otherwise), the Minister must not consider any matter that does not relate to the survival of the native species concerned.
- (3) The Minister may include a native species in the critically endangered category if satisfied that:
 - (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(3)) that it is difficult to differentiate between the 2 species; and
 - (b) this difficulty poses an additional threat to the last-mentioned species; and
 - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as critically endangered.
- (4) The Minister may include a native species in the endangered category if satisfied that:
 - (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(4)) that it is difficult to differentiate between the 2 species; and
 - (b) this difficulty poses an additional threat to the last-mentioned species; and
 - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as endangered.

- (5) The Minister may include a native species in the vulnerable category if satisfied that:
- (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(5)) that it is difficult to differentiate between the 2 species; and
 - (b) this difficulty poses an additional threat to the last-mentioned species; and
 - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as vulnerable.

187 Amending list of ecological communities

- (1) The Minister must not:
- (a) include (whether as a result of a transfer or otherwise) an ecological community in a particular category of the list; or
 - (b) delete (whether as a result of a transfer or otherwise) an ecological community from a particular category;
- unless satisfied that the ecological community is eligible, or is no longer eligible, as the case requires, to be included in that category.
- (2) In deciding whether to include an ecological community in, or delete an ecological community from, a particular category (whether as a result of a transfer or otherwise), the Minister must not consider any matter that does not relate to the survival of the ecological community concerned.

188 Amending list of key threatening processes

- (1) The Minister must not add a threatening process to the list unless satisfied that it is eligible to be treated as a key threatening process.
- (2) The Minister must not delete a threatening process from the list unless satisfied that it is no longer eligible to be treated as a key threatening process.
- (3) A process is a *threatening process* if it threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community.

Section 189

- (4) A threatening process is eligible to be treated as a key threatening process if:
 - (a) it could cause a native species or an ecological community to become eligible for listing in any category, other than conservation dependent; or
 - (b) it could cause a listed threatened species or a listed threatened ecological community to become eligible to be listed in another category representing a higher degree of endangerment; or
 - (c) it adversely affects 2 or more listed threatened species (other than conservation dependent species) or 2 or more listed threatened ecological communities.

189 Minister must consider advice from Scientific Committee

- (1) Subject to section 192, in deciding whether to amend:
 - (a) the list referred to in section 178 or 181; or
 - (b) the list referred to in section 183;the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.
- (2) In preparing advice under subsection (1), the Scientific Committee may obtain advice from a person with expertise relevant to the subject matter of the proposed amendment.
- (3) In preparing advice for a proposed amendment of a list referred to in paragraph (1)(a), the Scientific Committee must not consider any matter that does not relate to the survival of the native species or ecological community concerned.
- (4) If a native species, ecological community or threatening process has been nominated under section 191 to be listed, the Scientific Committee must give its advice to the Minister within 12 months, or such longer period as the Minister specifies, after the Scientific Committee receives the nomination from the Minister under that section.

- (5) The Minister must:
 - (a) decide whether to amend the list; and
 - (b) if the Minister decides to amend the list—cause the necessary instrument to be published in the *Gazette*;
within 90 days after receiving the Scientific Committee’s advice on the amendment.
- (6) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:
 - (a) is for the official purposes of the Scientific Committee; or
 - (b) if an instrument is published in the *Gazette* relating to an amendment of a list to which the advice relates—occurred after the publication.

190 Scientific Committee may provide advice about species or communities becoming threatened

- (1) If the Scientific Committee is of the opinion that a native species or ecological community is not eligible to be included in any category of the list mentioned in section 178 or 181, the Committee may give advice to the Minister concerning any action that is necessary to prevent the species or community becoming threatened.
- (2) The Minister is to have regard to any advice given under subsection (1) in performing any function, or exercising any power, under this Act relevant to the species or community.

191 Nomination of threatened species etc.

- (1) A person may, in accordance with the regulations (if any), nominate to the Minister:
 - (a) a native species to be included in a particular category of the list referred to in section 178; or
 - (b) an ecological community to be included in a particular category of the list referred to in section 181; or

Section 192

- (c) a threatening process to be included in the list referred to in section 183.
- (2) The Minister must forward a nomination to the Scientific Committee within 10 business days of receiving the nomination. However, the Minister need not forward a nomination that the Minister rejects under subsection (6).
- (3) If the Minister decides that a nominated native species or ecological community is not eligible to be included in the nominated category, the Minister must, in accordance with the regulations (if any):
 - (a) advise the person who made the nomination of the Minister's decision; and
 - (b) give to that person a statement of reasons why the native species or ecological community is not eligible to be included in the nominated category.
- (4) If the Minister decides that a threatening process is not eligible to be listed, the Minister must, in accordance with the regulations (if any):
 - (a) advise the person who made the nomination of the Minister's decision; and
 - (b) give to that person a statement of reasons why the threatening process is not eligible to be listed.
- (5) The Minister may, at any time, request a person who has made a nomination to provide additional information about the subject of the nomination within such period as the Minister specifies.
- (6) The Minister may reject a nomination if satisfied that it is vexatious, frivolous or not made in good faith.

192 Rediscovery of threatened species that were extinct

- (1) If the Minister is satisfied that a native species that is listed in the extinct category has been definitely located in nature since it was last listed as extinct, the Minister may, under section 184, transfer the species from the extinct category to another category without considering advice from the Scientific Committee.

- (2) Subsection (1) does not prevent the Minister from making such an amendment after having considered advice from the Scientific Committee.

193 Species posing a serious threat to human health

- (1) If the Minister is satisfied that a native species poses a serious threat to human health, the Minister may, by instrument published in the *Gazette*, determine that the species is not appropriate for inclusion in any of the categories of the list referred to in section 178.
- (2) While the determination is in force, the species is not to be added to that list.
- (3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

194 Minister to make lists available to the public

The Minister must, in accordance with the regulations (if any), make copies of up-to-date lists available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

Subdivision B—Permit system

195 Subdivision does not apply to cetaceans

This Subdivision does not apply to a member of a listed threatened species that is a cetacean.

196 Recklessly killing or injuring member of listed threatened species or community

- (1) A person is guilty of an offence if:

Section 196A

- (a) the person takes an action; and
- (b) the action results in the death or injury of a member of a native species or a member of an ecological community; and
- (c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
- (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(d).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

196A Strict liability for killing or injuring member of listed threatened species or community

- (1) A person is guilty of an offence if:
 - (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a native species or a member of an ecological community; and
 - (c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
 - (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

196B Recklessly taking etc. member of listed threatened species or community

- (1) A person is guilty of an offence if:
- (a) the person takes, trades, keeps or moves a member of a native species or a member of an ecological community; and
 - (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
 - (c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

196C Strict liability for taking etc. member of listed threatened species or community

- (1) A person is guilty of an offence if:
- (a) the person takes, trades, keeps or moves a member of a native species or a member of an ecological community; and
 - (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
 - (c) the member is in or on a Commonwealth area.

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

Section 196D

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

196D Trading etc. member of listed threatened species or community taken in Commonwealth area

- (1) A person is guilty of an offence if:
- (a) the person trades, keeps or moves a member of a native species or a member of an ecological community; and
 - (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
 - (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

196E Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area

- (1) A person is guilty of an offence if:
- (a) the person trades, keeps or moves a member of a native species or a member of an ecological community; and

- (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
- (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

197 Certain actions are not offences

Sections 196, 196A, 196B, 196C, 196D, 196E and 207B do not apply to:

- (a) an action authorised by a permit that was issued under section 201 and is in force; or
- (b) an action provided for by, and done in accordance with, a recovery plan in force under Division 5; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of a subsection of section 18 or of section 18A; or
- (d) an action that:
 - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of section 18 or 18A; and
 - (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed threatened species or listed threatened ecological community; or

Section 198

- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A.

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

198 Operation of sections 18 and 18A not affected

To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E and 197 do not affect the operation of section 18 or 18A.

199 Failing to notify taking of listed threatened species or listed ecological community

- (1) This section applies to an action taken by a person if all of the following conditions are met:
 - (a) the person's action either:
 - (i) results in the death or injury of a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area; or
 - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed threatened species (except a conservation dependent species), or a member of a

listed threatened ecological community, that is in or on a Commonwealth area;

- (b) the person's action does not constitute an offence against section 196, 196A, 196B, 196C, 196D or 196E;
- (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 197 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 196, 196A, 196B, 196C, 196D or 196E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 204 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
 - (a) that the action was taken; and
 - (b) of other particulars (if any) about the action that are prescribed by the regulations.
- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
- (5) A person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
 - (a) fails to do an act; and
 - (b) the failing to do the act results in a contravention of subsection (2).

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

Section 200

200 Application for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 201.
- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
 - (a) state that an application for a permit has been made; and
 - (b) set out details of the application; and
 - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
 - (d) specify:
 - (i) an address for lodgment of submissions; and
 - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

201 Minister may issue permits

- (1) Subject to subsection (3), the Minister may, on application by a person under section 200, issue a permit to the person.
- (2) A permit authorises its holder to take an action specified in the permit without breaching section 196, 196A, 196B, 196C, 196D, 196E or 207B.
- (3) The Minister must not issue the permit unless satisfied that:
 - (a) the specified action will contribute significantly to the conservation of the listed threatened species or listed threatened ecological community concerned; or
 - (b) the impact of the specified action on a member of the listed threatened species or listed threatened ecological community

concerned is incidental to, and not the purpose of, the taking of the action and:

- (i) the taking of the action will not adversely affect the survival or recovery in nature of that species or ecological community; and
 - (ii) the taking of the action is not inconsistent with a recovery plan that is in force for that species or ecological community; and
 - (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species or ecological community; or
- (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species or listed threatened ecological community concerned; or
- (d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed threatened species or listed threatened ecological community concerned.
- (4) In this Act:
- indigenous tradition* means the body of traditions, observances, customs and beliefs of indigenous persons generally or of a particular group of indigenous persons.
- (5) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 200.

202 Conditions of permits

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
 - (a) vary or revoke a condition of a permit; or

Section 203

- (b) impose further conditions of a permit.
- (3) Without limiting subsections (1) and (2), conditions of a permit may include conditions stating the period within which the action specified in the permit may be taken.

203 Contravening conditions of a permit

The holder of a permit is guilty of an offence punishable on conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

204 Authorities under permits

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.

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

205 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

206 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

206A Review of decisions about permits

An application may be made to the Administrative Appeals 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.

207 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

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Subdivision BA—Protecting critical habitat

207A Register of critical habitat

- (1) The Minister must cause to be kept in accordance with the regulations (if any) a register in which the Minister may list habitat identified by the Minister in accordance with the regulations as being critical to the survival of a listed threatened species or listed threatened ecological community.
- (2) The regulations must require the Minister to consider scientific advice in identifying the habitat.
- (3) The register must be made available for public inspection in accordance with the regulations (if any).
- (4) Habitat listed in the register in relation to a species or ecological community is *critical habitat* for the species or ecological community.

207B Offence of knowingly damaging critical habitat

- (1) A person is guilty of an offence if:
 - (a) the person takes an action; and
 - (b) the person knows that the action significantly damages or will significantly damage critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
 - (c) the habitat is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.
- (4) To avoid doubt, this section does not affect the operation of Division 2, 3 or 4.

207C Sale or lease of Commonwealth land containing critical habitat

- (1) This section applies to a Commonwealth agency that executes a contract for the sale or lease to someone else of Commonwealth land that includes critical habitat for a listed threatened species or listed threatened ecological community. It does not matter whether the Commonwealth agency executes the contract for the Commonwealth or on its own behalf.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the critical habitat.
- (3) The Commonwealth agency must take reasonable steps to ensure as far as practicable that the covenant binds the successors in title of the buyer or lessee (as appropriate).

Subdivision C—Miscellaneous

208A Minister may accredit plans or regimes

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (c) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of

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management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that members of listed threatened species are not killed or injured as a result of the fishing; and
- (e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

208 Regulations

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed threatened species or listed threatened ecological communities killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed threatened species or listed threatened ecological communities may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed threatened species or listed threatened ecological communities; and
- (d) provide for the protection and conservation of listed threatened species or listed threatened ecological communities; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 2—Migratory species

Subdivision A—Listing

209 Listed migratory species

- (1) The Minister must, by instrument published in the *Gazette*:
 - (a) establish a list of migratory species for the purposes of this Act; and
 - (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3).
- (2) The Minister must establish the list within 30 days after the commencement of this Act.
- (3) The list must include:
 - (a) all species from time to time included in appendices to the Bonn Convention and for which Australia is a Range State under the Convention; and
 - (b) all species from time to time included in lists established under JAMBA and CAMBA; and
 - (c) all native species from time to time identified in a list established under, or an instrument made under, an international agreement approved by the Minister under subsection (4).The list must not include any other species.
- (4) The Minister may, by instrument published in the *Gazette*, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of migratory species.
- (5) An instrument mentioned in subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) The Minister may, by instrument published in the *Gazette*, correct an inaccuracy or update the name of a migratory species.

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Subdivision B—Permit system

210 Subdivision does not apply to members of listed threatened species or cetaceans

This Subdivision does not apply to a member of a listed migratory species that is a member of a listed threatened species or a cetacean.

211 Recklessly killing or injuring member of listed migratory species

- (1) A person is guilty of an offence if:
 - (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a migratory species; and
 - (c) the member is a member of a listed migratory species; and
 - (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(d).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

211A Strict liability for killing or injuring member of listed migratory species

- (1) A person is guilty of an offence if:
 - (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a migratory species; and

- (c) the member is a member of a listed migratory species; and
- (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

211B Recklessly taking etc. member of listed migratory species

- (1) A person is guilty of an offence if:
 - (a) the person takes, trades, keeps or moves a member of a migratory species; and
 - (b) the member is a member of a listed migratory species; and
 - (c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

211C Strict liability for taking etc. member of listed migratory species

- (1) A person is guilty of an offence if:
 - (a) the person takes, trades, keeps or moves a member of a migratory species; and

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- (b) the member is a member of a listed migratory species; and
- (c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

211D Trading etc. member of listed migratory species taken in Commonwealth area

- (1) A person is guilty of an offence if:

- (a) the person trades, keeps or moves a member of a migratory species; and
- (b) the member is a member of a listed migratory species; and
- (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area

- (1) A person is guilty of an offence if:

- (a) the person trades, keeps or moves a member of a migratory species; and
- (b) the member is a member of a listed migratory species; and
- (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

212 Certain actions are not offences

Sections 211, 211A, 211B, 211C, 211D and 211E do not apply to:

- (a) an action authorised by a permit that was issued under section 216 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made or adopted under Division 5 and in force; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 20(1) or section 20A; or
- (d) an action that:
 - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of section 20 or 20A; and
 - (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed migratory species; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or

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- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A.

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

213 Operation of sections 20 and 20A not affected

To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E and 212 do not affect the operation of section 20 or 20A.

214 Failing to notify taking etc. of listed migratory species

- (1) This section applies to an action taken by a person if all of the following conditions are met:
 - (a) the person's action either:
 - (i) results in the death or injury of a member of a listed migratory species that is in or on a Commonwealth area; or
 - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed migratory species that is in or on a Commonwealth area;
 - (b) the person's action does not constitute an offence against section 211, 211A, 211B, 211C, 211D or 211E;
 - (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 212 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 211, 211A, 211B, 211C, 211D or 211E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 219 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
 - (a) that the action was taken; and
 - (b) of other particulars (if any) about the action that are prescribed by the regulations.
- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
- (5) A person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
 - (a) fails to do an act; and
 - (b) the failing to do the act results in a contravention of subsection (2).

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

215 Application for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 216.
- (2) The application must be accompanied by the fee prescribed by the regulations (if any).

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- (3) As soon as practicable after receiving the application, the Minister must cause notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
 - (a) state that an application for a permit has been made; and
 - (b) set out details of the application; and
 - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
 - (d) specify:
 - (i) an address for lodgment of submissions; and
 - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

216 Minister may issue permits

- (1) Subject to subsection (3), the Minister may, on application by a person under section 215, issue a permit to the person.
- (2) A permit authorises its holder to take an action specified in the permit without breaching section 211, 211A, 211B, 211C, 211D or 211E.
- (3) The Minister must not issue the permit unless satisfied that:
 - (a) the specified action will contribute significantly to the conservation of the listed migratory species concerned or other listed migratory species; or
 - (b) the impact of the specified action on a member of the listed migratory species concerned is incidental to, and not the purpose of, the taking of the action and:
 - (i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and
 - (ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and

- (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or
 - (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed migratory species concerned, or a population of that species; or
 - (d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed migratory species concerned.
- (4) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 215.

217 Conditions of permits

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
 - (a) vary or revoke a condition of a permit; or
 - (b) impose further conditions of a permit.

218 Contravening conditions of a permit

The holder of a permit is guilty of an offence punishable on conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

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219 Authorities under permits

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

220 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

221 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

221A Review of decisions about permits

An application may be made to the Administrative Appeals 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.

222 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

222A Minister may accredit plans or regimes

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (c) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that

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members of listed migratory species are not killed or injured as a result of the fishing; and

- (e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

223 Regulations

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed migratory species killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed migratory species may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed migratory species; and
- (d) provide for the protection and conservation of listed migratory species; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 3—Whales and other cetaceans

Subdivision A—Application of Division

224 Application of Division

- (1) This Division extends to acts, omissions, matters and things outside Australia (whether in a foreign country or not), except so far as the contrary intention appears.
- (2) A provision of this Division (other than an export/import provision) that has effect in relation to a place outside the outer limits of the Australian Whale Sanctuary applies only in relation to:
 - (a) Australian citizens; and
 - (b) persons who:
 - (i) are not Australian citizens; and
 - (ii) hold permanent visas under the *Migration Act 1958*; and
 - (iii) are domiciled in Australia or an external Territory; and
 - (c) corporations incorporated in Australia or an external Territory; and
 - (d) the Commonwealth; and
 - (e) Commonwealth agencies; and
 - (f) Australian aircraft; and
 - (g) Australian vessels; and
 - (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).
- (3) This Division applies to a vessel as if it were an Australian vessel if:
 - (a) the vessel is a boat within the meaning of the *Fisheries Management Act 1991*; and
 - (b) a declaration, under subsection 4(2) of that Act, that the vessel is taken to be an Australian boat is in force.

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(4) In this section:

export/import provision means:

- (a) section 232A; or
- (b) section 232B; or
- (c) any other provision of this Division, in so far as that provision relates to section 232A or 232B.

Subdivision B—Australian Whale Sanctuary

225 Australian Whale Sanctuary

- (1) The Australian Whale Sanctuary is established in order to give formal recognition of the high level of protection and management afforded to cetaceans in Commonwealth marine areas and prescribed waters.
- (2) The Australian Whale Sanctuary comprises:
 - (a) the waters of the exclusive economic zone (other than the coastal waters of a State or the Northern Territory); and
 - (b) so much of the coastal waters of a State or the Northern Territory as are prescribed waters; and
 - (c) any marine or tidal waters that are inside the baseline of the territorial sea adjacent to an external Territory, whether or not within the limits of an external Territory.

Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.

226 Prescribed waters

- (1) The regulations may declare the whole, or a specified part, of the coastal waters of a State or the Northern Territory to be prescribed waters.
- (2) Before the Governor-General makes a regulation under subsection (1), the Minister must obtain the agreement of the relevant Minister of the State or the Northern Territory.

227 Coastal waters

- (1) Section 15B of the *Acts Interpretation Act 1901* does not apply in relation to this Division.
 - (2) The *coastal waters* of a State or the Northern Territory are:
 - (a) the part or parts of the territorial sea that are:
 - (i) within 3 nautical miles of the baseline of the territorial sea; and
 - (ii) adjacent to that State or Territory; and
 - (b) any marine or tidal waters that are inside that baseline and are adjacent to that State or Territory but are not within the limits of a State or that Territory.
- Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.
- (3) Any part of the territorial sea that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (2), taken to be adjacent to New South Wales.

228 Minister may make declaration for coastal waters

- (1) If the Minister is satisfied that a law of a State or the Northern Territory adequately protects cetaceans in the coastal waters, or a part of the coastal waters, of the State or Territory, the Minister may make a declaration accordingly, whether or not those coastal waters or that part are prescribed waters.
- (2) A declaration must be in writing.

Subdivision C—Offences

229 Recklessly killing or injuring a cetacean

- (1) A person is guilty of an offence if:
 - (a) the person takes an action; and
 - (b) the action results in the death or injury of a cetacean; and
 - (c) the cetacean is in:

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- (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
- (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

229A Strict liability for killing or injuring a cetacean

- (1) A person is guilty of an offence if:
 - (a) the person takes an action; and
 - (b) the action results in the death or injury of a cetacean; and
 - (c) the cetacean is in:
 - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
 - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229B Intentionally taking etc. a cetacean

- (1) A person is guilty of an offence if:
- (a) the person takes, trades, keeps, moves or interferes with a cetacean; and
 - (b) the cetacean is in:
 - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
 - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

- (4) In this Act:

interfere with a cetacean includes harass, chase, herd, tag, mark or brand the cetacean.

229C Strict liability for taking etc. a cetacean

- (1) A person is guilty of an offence if:
- (a) the person takes, trades, keeps, moves or interferes with a cetacean; and
 - (b) the cetacean is in:
 - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the

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Northern Territory for which a declaration under section 228 is in force); or

- (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a) and (b).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229D Treating an illegally killed or taken cetacean

- (1) A person is guilty of an offence if:

(a) the person treats a cetacean; and

(b) the cetacean has been:

(i) killed in contravention of section 229 or 229A; or

(ii) taken in contravention of section 229B or 229C.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

- (3) In this Act:

treat a cetacean means divide or cut up, or extract any product from, the cetacean.

230 Possession of cetaceans

- (1) Subject to section 231, a person is guilty of an offence if:
- (a) the person has in his or her possession:
 - (i) a cetacean; or
 - (ii) a part of a cetacean; or
 - (iii) a product derived from a cetacean; and
 - (b) the cetacean has been:
 - (i) killed in contravention of section 229 or 229A; or
 - (ii) taken in contravention of section 229B or 229C.

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

- (2) An offence against this section is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

231 Certain actions are not offences

Sections 229, 229A, 229B, 229C, 229D and 230 do not apply to:

- (a) an action authorised by a permit that was issued under section 238 and is in force; or
- (b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and in force; or
- (c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean; or
- (d) an action that is reasonably necessary to prevent a risk to human health; or
- (e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

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- (g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245.

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

232 Action to be taken on killing etc. cetaceans

- (1) This section applies to an action taken by a person if all of the following conditions are met:
 - (a) the person's action:
 - (i) results in the injury or death of a cetacean, or consists of taking a cetacean, in the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters of a State or the Northern Territory for which a declaration under section 228 is in force) or in waters beyond the outer limits of the Australian Whale Sanctuary; or
 - (ii) consists of treating a cetacean killed, injured or taken in contravention of section 229, 229A, 229B or 229C;
 - (b) the person's action does not constitute an offence against section 229, 229A, 229B, 229C or 229D;
 - (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 231 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 229, 229A, 229B, 229C or 229D.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 241 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
 - (a) that the action was taken; and

- (b) of other particulars (if any) about the action that are prescribed by the regulations.
- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
- (5) A person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
 - (a) fails to do an act; and
 - (b) the failing to do the act results in a contravention of subsection (2).

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

Subdivision D—Offences relating to exports and imports

232A Export of cetaceans

- (1) Subject to section 235, a person is guilty of an offence if the person exports:
 - (a) a cetacean; or
 - (b) a part of a cetacean; or
 - (c) a product derived from a cetacean.
- (2) An offence against this section is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding 1,000 penalty units, or both.

232B Import of cetaceans

- (1) Subject to section 235, a person is guilty of an offence if the person imports:
 - (a) a cetacean; or
 - (b) a part of a cetacean; or

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(c) a product derived from a cetacean.

- (2) An offence against this section is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding 1,000 penalty units, or both.

233 Possession of unlawfully imported cetaceans

- (1) Subject to section 235, a person is guilty of an offence if:
- (a) the person has in his or her possession:
 - (i) a cetacean; or
 - (ii) a part of a cetacean; or
 - (iii) a product derived from a cetacean; and
 - (b) the cetacean, part or product, as the case may be, has been unlawfully imported.

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

- (2) An offence against this section is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

234 Treating unlawfully imported cetaceans

- (1) Subject to section 235, a person is guilty of an offence if:
- (a) the person treats a cetacean; and
 - (b) the cetacean has been unlawfully imported.

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

- (2) An offence against this section is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1000 penalty units, or both.

235 Sections 232A, 232B, 233 and 234 do not apply to certain actions

Sections 232A, 232B, 233 and 234 do not apply to:

- (a) an action authorised by a permit that was issued under section 238 and is in force; or

- (b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and that is in force; or
- (c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a cetacean; or
- (d) an action that is reasonably necessary to prevent a risk to human health; or
- (e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour.

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

Subdivision E—Miscellaneous offences

236 Offences relating to foreign whaling vessels

- (1) The master of a foreign whaling vessel is guilty of an offence if the vessel is brought into a port in Australia or an external Territory and the master has not obtained the written permission of the Minister for the vessel to be brought into the port.

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

- (2) Subsection (1) is an offence of strict liability.

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

- (3) An offence against subsection (1) is punishable on conviction by a fine not exceeding 500 penalty units.
- (4) Subsection (1) does not apply if:

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- (a) the vessel is brought into the port in accordance with a prescribed agreement between Australia and any other country or countries; or
- (b) the vessel is brought into the port under the direction of a person exercising powers under a law of the Commonwealth or of a State; or
- (c) an unforeseen emergency renders it necessary to bring the vessel into the port in order to secure the safety of the vessel or human life.

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

(5) In this Act:

foreign whaling vessel means a vessel, other than an Australian vessel, designed, equipped or used for:

- (a) killing, taking, treating or carrying whales; or
- (b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying whales.

master, in relation to a foreign whaling vessel, means the person (other than a ship's pilot) in charge or command of the vessel.

Subdivision F—Permit system

237 Application for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 238.

Note: The action to be covered by the permit will undergo assessment under Part 8 as it applies because of section 165.

- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).

- (4) The notice must:
- (a) state that an application for a permit has been made; and
 - (b) set out details of the application; and
 - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
 - (d) specify:
 - (i) an address for lodgment of submissions; and
 - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

238 Minister may issue permits

- (1) Subject to subsections (3) and (4), the Minister may, on application by a person under section 237, issue a permit to the person.
- (2) A permit authorises its holder to take an action specified in the permit without breaching sections 229, 229A, 229B, 229C, 229D, 230, 232A, 232B, 233 and 234.
- (3) The Minister must not issue the permit unless satisfied that:
- (a) the specified action will contribute significantly to the conservation of cetaceans; or
 - (b) if the specified action will interfere with cetaceans, the interference is incidental to, and not the purpose of, the taking of the action and:
 - (i) the taking of the action will not adversely affect the conservation status of a species of cetacean or a population of that species; and
 - (ii) the taking of the action is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean; and
 - (iii) the holder of the permit will take all reasonable steps to minimise the interference with cetaceans; or
 - (c) the specified action is whale watching and is carried out in accordance with the regulations (if any) made for the purposes of this section; or

Section 239

- (d) all of the following subparagraphs apply:
 - (i) the specified action is the export of a part of a cetacean;
 - (ii) the export of the part is an export that, under the regulations, is taken to be an export of a personal item;
 - (iii) the export of the part will not be detrimental to the conservation of cetaceans;
 - (iv) the export of the part is not for commercial purposes; or
- (e) all of the following subparagraphs apply:
 - (i) the specified action is the import of a part of a cetacean;
 - (ii) the import of the part is an import that, under the regulations, is taken to be an import of a personal item;
 - (iii) the import of the part will not be detrimental to the conservation of cetaceans;
 - (iv) the import of the part is not for commercial purposes.

Note: In deciding whether to issue the permit, the Minister must consider the assessment report that relates to the action to be covered by the permit and was prepared as a result of Part 8 applying because of section 165.

(3A) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 237.

(4) The Minister must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.

(5) In this Act:

whale watching means any activity conducted for the purpose of observing a whale, including but not limited to being in the water for the purposes of observing or swimming with a whale, or otherwise interacting with a whale.

239 Conditions of permits

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:

- (a) vary or revoke a condition of a permit; or
- (b) impose further conditions of a permit.

240 Contravening conditions of a permit

The holder of a permit is guilty of an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

241 Authorities under permits

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

Section 242

242 Transfer of permits

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.

243 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

243A Review of decisions about permits

An application may be made to the Administrative Appeals 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.

244 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

Subdivision G—Miscellaneous

245 Minister may accredit plans or regimes

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (ba) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (c) the plan requires persons engaged in fishing under the plan to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and
- (d) the fishery to which the plan relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.

246 Vesting of whales in Commonwealth

(1) If:

(a) a cetacean is:

- (i) in the Australian Whale Sanctuary, other than the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force; or
- (ii) in waters beyond the outer limits of the Australian Whale Sanctuary; and

(a) a person kills, injures or takes the cetacean, whether or not in contravention of this Division;

the cetacean vests, by force of this section, in the Commonwealth.

(2) The Commonwealth is not liable in any action, suit or proceedings in respect of any matter relating to a cetacean at any time before the taking of possession of the cetacean by the Commonwealth.

Section 247

247 Regulations

The regulations may:

- (a) provide for the transportation, treatment and disposal of cetaceans killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which cetaceans may be killed, taken or interfered with otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to cetaceans; and
- (d) provide for the protection and conservation of cetaceans; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 4—Listed marine species

Subdivision A—Listing

248 Listed marine species

- (1) The Minister must, by instrument published in the *Gazette*, establish a list of marine species for the purposes of this Part.
- (2) The list, as first established, must contain only the following:
 - (a) all species in the Family Hydrophiidae (sea-snakes);
 - (b) all species in the Family Laticaudidae (sea-snakes);
 - (c) all species in the Family Otariidae (eared seals);
 - (d) all species in the Family Phocidae (“true” seals);
 - (e) all species in the Genus *Crocodylus* (crocodiles);
 - (f) all species in the Genus *Dugong* (dugong);
 - (g) all species in the Family Cheloniidae (marine turtles);
 - (h) the species *Dermochelys coriacea* (leatherback turtles);
 - (i) all species in the Family Syngnathidae (seahorses, sea-dragons and pipefish);
 - (j) all species in the Family Solenostomidae (ghost pipefish);
 - (k) all species in the Class Aves (birds) that occur naturally in Commonwealth marine areas.
- (3) The Minister must establish the list within 30 days after the commencement of this Act.
- (4) The Minister must cause a notice summarising the information contained in the instrument to be published in accordance with the regulations (if any).

249 Minister may amend list

- (1) Subject to this Subdivision, the Minister may, by instrument published in the *Gazette*, amend the list:
 - (a) by including items in the list; or

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- (b) by deleting items from the list; or
 - (c) by correcting an inaccuracy or updating the name of a marine species.
- (2) An instrument mentioned in paragraph (1)(a) or (b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) Despite section 48 of the *Acts Interpretation Act 1901* as it applies in relation to an instrument because of section 46A of that Act, amendments of a list that delete items from the list take effect on the first day on which they are no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of that Act as it so applies.
- (4) When an instrument is laid before each House of the Parliament in accordance with section 48 of the *Acts Interpretation Act 1901*, the Minister must cause a statement to be laid before each House with the instrument explaining:
 - (a) in the case of an item that has been included in the list by the instrument—why the item was so included; or
 - (b) in the case of an item that has been deleted from the list by the instrument—why the item was so deleted.
- (5) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

250 Adding marine species to the list

- (1) The Minister must not add a marine species to the list unless:
 - (a) the Minister is satisfied that it is necessary to include the species in the list in order to ensure the long-term conservation of the species; and
 - (b) the species occurs naturally in a Commonwealth marine area.
- (2) Before adding a marine species to the list, the Minister must consult with each Minister who has an interest in a Commonwealth marine area where the species occurs naturally.

251 Minister must consider advice from Scientific Committee

- (1) In deciding whether to add an item to, or delete an item from, the list, the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the scientific aspects of the addition or deletion of the item concerned.
- (2) The Minister must:
 - (a) decide whether to add an item to, or delete an item from, the list; and
 - (b) if the Minister decides to add or delete the item—cause the necessary instrument to be published in the *Gazette*;
within 90 days after receiving the Scientific Committee’s advice on the addition or deletion of the item.
- (3) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:
 - (a) is for the official purposes of the Scientific Committee; or
 - (b) if an instrument is published in the *Gazette* relating to an addition or deletion to which the advice relates—occurred after the publication.

252 Minister to make lists available to the public

The Minister must, in accordance with the regulations (if any), make copies of up-to-date lists available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

Subdivision B—Permit system

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

This Subdivision does not apply to a member of a listed marine species that is a member of a listed migratory species, a member of a listed threatened species or a cetacean.

Section 254

254 Recklessly killing or injuring member of listed marine species

- (1) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a marine species; and
 - (c) the member is a member of a listed marine species; and
 - (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(d).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

254A Strict liability for killing or injuring member of listed marine species

- (1) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a marine species; and
 - (c) the member is a member of a listed marine species; and
 - (d) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

254B Recklessly taking etc. member of listed marine species

- (1) A person is guilty of an offence if:
- (a) the person takes, trades, keeps or moves a member of a marine species; and
 - (b) the member is a member of a listed marine species; and
 - (c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

254C Strict liability for taking etc. member of listed marine species

- (1) A person is guilty of an offence if:
- (a) the person takes, trades, keeps or moves a member of a marine species; and
 - (b) the member is a member of a listed marine species; and
 - (c) the member is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

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- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

254D Trading etc. member of listed marine species taken in Commonwealth area

- (1) A person is guilty of an offence if:
- (a) the person trades, keeps or moves a member of a marine species; and
 - (b) the member is a member of a listed marine species; and
 - (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraph (1)(c).

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area

- (1) A person is guilty of an offence if:
- (a) the person trades, keeps or moves a member of a marine species; and
 - (b) the member is a member of a listed marine species; and
 - (c) the member has been taken in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

255 Certain actions are not offences

Sections 254, 254A, 254B, 254C, 254D and 254E do not apply to:

- (a) an action authorised by a permit that was issued under section 258 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made under Division 5 and in force; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 26(1) or (2) or 27A(1), (2), (3) or (4); or
- (d) an action that:
 - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 26(1) or (2) or 27A(1), (2), (3) or (4); and
 - (ii) is taken in accordance with a management plan that is an accredited management plan for the purposes of the declaration; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by an animal; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

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- (j) an action taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 265.

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

256 Failing to notify taking etc. of listed marine wildlife

- (1) This section applies to an action taken by a person if all of the following conditions are met:
 - (a) the person's action either:
 - (i) results in the death or injury of a member of a listed marine species that is in or on a Commonwealth area; or
 - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed marine species that is in or on a Commonwealth area;
 - (b) the person's action does not constitute an offence against section 254, 254A, 254B, 254C, 254D or 254E;
 - (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 255 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 254, 254A, 254B, 254C, 254D or 254E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 261 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
 - (a) that the action was taken; and
 - (b) of other particulars (if any) about the action that are prescribed by the regulations.

- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply to the person if he or she, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action.
- (5) A person is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units if a person:
 - (a) fails to do an act; and
 - (b) the failing to do the act results in a contravention of subsection (2).

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

257 Application for permits

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 258.
- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause notice of the application to be given to each person and body registered under section 266A (about registration for consultation on permit applications).
- (4) The notice must:
 - (a) state that an application for a permit has been made; and
 - (b) set out details of the application; and
 - (c) invite persons and bodies to make written submissions to the Minister about whether a permit should be issued; and
 - (d) specify:
 - (i) an address for lodgment of submissions; and
 - (ii) a day by which submissions must be lodged.
- (5) The day specified must not be a day occurring within 5 days after the last day on which the notice was given.

Section 258

258 Minister may issue permits

- (1) Subject to subsection (3), the Minister may, on application by a person under section 257, issue a permit to the person.
- (2) A permit authorises its holder to take the actions specified in the permit without breaching section 254, 254A, 254B, 254C, 254D or 254E.
- (3) The Minister must not issue the permit unless satisfied that:
 - (a) the specified action will significantly contribute to the conservation of the listed marine species concerned or other listed marine species; or
 - (b) the impact of the specified action on a member of the listed marine species concerned is incidental to, and not the purpose of, the taking of the action and:
 - (i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and
 - (ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and
 - (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or
 - (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed marine species concerned; or
 - (d) the specified action is necessary in order to control pathogens and are conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed marine species concerned.
- (4) In making a decision on the application, the Minister must consider all written submissions made by persons or bodies registered under section 266A (about registration for consultation on permit applications) to the Minister on or before the day, and at the address for lodgment, specified in the notice under section 257.

259 Conditions of permits

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
 - (a) vary or revoke a condition of a permit; or
 - (b) impose further conditions of a permit.

260 Contravening conditions of a permit

The holder of a permit is guilty of an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

261 Authorities under permits

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.

Section 262

- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

262 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

263 Suspension or cancellation of permits

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

263A Review of decisions about permits

An application may be made to the Administrative Appeals 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.

264 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

265 Minister may accredit plans or regimes

The Minister may, by instrument in writing, accredit for the purposes of this Division:

- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
- (b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
- (ba) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force;

if satisfied that:

- (c) the plan requires persons engaged in fishing under the plan to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and
- (d) the fishery to which the plan relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

266 Regulations

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed marine species killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed marine species may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed marine species; and

Section 266

- (d) provide for the protection and conservation of listed marine species; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 4A—Register for consultations about permits

266A Register for consultation about permit applications

- (1) At intervals of not more than 12 months, the Minister must cause to be published a notice inviting applications from persons or bodies wishing to be registered for a specified period of at least 12 months to be told of each application for a permit under Division 1, 2, 3 or 4. The notice must be published:
 - (a) in the *Gazette*; and
 - (b) in a daily newspaper that circulates generally in each State and self-governing Territory; and
 - (c) in any other way required by the regulations (if any).
- (2) The Minister must register any person or body that applies in writing for registration.
- (3) Registration has effect for the period specified in the notice.