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Volume 1: sections 1–266
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Schedule
Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Environment Protection and Biodiversity Conservation Act 1999* that shows the text of the law as amended and in force on 16 December 2020 (the *compilation date*).

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

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

Chapter 1—Preliminary

Part 1—Preliminary

1 Short title

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

2 Commencement

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

3 Objects of Act

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

Section 3

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

- (iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and
- (iv) identify processes that threaten all levels of biodiversity and implement plans to address these processes; and
- (f) includes provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of Ramsar wetlands of international importance; and
- (fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and
- (g) promotes a partnership approach to environmental protection and biodiversity conservation through:
 - (i) bilateral agreements with States and Territories; and
 - (ii) conservation agreements with land-holders; and
 - (iii) recognising and promoting indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and
 - (iv) the involvement of the community in management planning.

3A Principles of ecologically sustainable development

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

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

Section 4

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

4 Act to bind Crown

This Act binds the Crown in each of its capacities.

5 Application of Act

Extension to external Territories

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

Limited extraterritorial application

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

Application limited to Australians outside exclusive economic zone

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

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

Application to everyone in Australia and exclusive economic zone

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

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

Application in Greater Sunrise special regime area

- (4A) Despite subsections (2) and (4), a provision of this Act that has effect in relation to a place that is in or above the Greater Sunrise special regime area applies only in relation to:
 - (a) Australian nationals who are not nationals or permanent residents of Timor-Leste; and
 - (b) Australian permanent residents who are not nationals or permanent residents of Timor-Leste; and
 - (c) the Commonwealth; and
 - (d) Commonwealth agencies; and
 - (e) the States; and
 - (f) the self-governing Territories; and
 - (g) agencies of the States or self-governing Territories; and
 - (h) Australian aircraft; and
 - (i) Australian vessels; and
 - (j) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels); and

Section 5

- (k) persons, aircraft or vessels declared under subsection (4B) to be subject to the provision.
- (4B) The Minister may, by notifiable instrument, declare all or any of one or more of the following to be subject to a provision of this Act, if the Minister is satisfied that Timor-Leste has agreed to them being subject to the provision as it has effect in relation to a place that is in or above the Greater Sunrise special regime area:
- (a) nationals of a foreign country who are not nationals or permanent residents of Timor-Leste;
 - (b) aircraft with the nationality of a foreign country other than Timor-Leste;
 - (c) vessels with the nationality of a foreign country other than Timor-Leste;
 - (d) members of crews (including persons in charge) of aircraft or vessels described in paragraph (b) or (c).
- (4C) Despite subsections (2), (4) and (4A), a provision of this Act that has effect in relation to a place that is in or above the Greater Sunrise special regime area does not apply in relation to an act, omission, matter or thing that relates to any of the Petroleum Activities within the meaning of the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force from time to time.

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

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

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

Definitions

- (5) In this Act:
-

Australian aircraft means:

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

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

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

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

Australian national means:

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

Australian permanent resident means a person who:

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

Australian vessel means:

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

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

Section 6

national of a foreign country means:

- (a) a citizen of the country; or
- (b) a corporation incorporated in the country.

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

- (1) This section applies if:
 - (a) under the *Fisheries Management Act 1991*, a plan of management in force under that Act applies to particular fishing activities in a particular area of water; and
 - (b) the area of water is not within, or is not wholly within:
 - (i) the Australian jurisdiction; or
 - (ii) a Commonwealth area; or
 - (iii) a Commonwealth marine area; and
 - (c) the area of water is not:
 - (i) an area of water, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; or
 - (ii) an area of water within the limits of a State or the Northern Territory.
- (2) If, apart from this subsection, a provision of this Act would, or would not, apply in relation to the fishing activities (or in relation to fish or other things taken in the course of the activities) because the area of water mentioned in subsection (1) is not within, or is not wholly within:
 - (a) the Australian jurisdiction; or
 - (b) a Commonwealth area; or
 - (c) a Commonwealth marine area;that provision has effect in relation to the fishing activities (and in relation to fish or other things taken in the course of the activities) as if the area of water were wholly within:
 - (d) the Australian jurisdiction; or

- (e) a Commonwealth area; or
- (f) a Commonwealth marine area;

as the case requires.

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

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

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

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

(3) In this section:

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

7 Application of the *Criminal Code*

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

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

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

Section 8

8 Native title rights not affected

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

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

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

9 Relationship with other Acts

Aboriginal Land Rights (Northern Territory) Act 1976

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

Airports Act 1996 not affected

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

Antarctic Treaty (Environment Protection) Act 1980 not affected

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

10 Relationship with State law

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

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 it is for a purpose for which, under a zoning plan for a zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

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

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

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).

Section 13

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

(4) In this section:

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

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

13 What is a *declared World Heritage property*?

Properties on World Heritage List

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

Properties not yet on World Heritage List

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

14 Declaring a property to be a declared World Heritage property

Making declarations

- (1) The Minister may declare a specified property to be a declared World Heritage property by notice in the *Gazette* if:
- (a) the property is a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List; or
 - (b) the Minister is satisfied that:

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

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

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

Consulting State or Territory before making declaration

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

Consultation not required if threat is imminent

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

Failure to comply with subsection (2)

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

When a declaration is in force

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

Section 14

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

Specified period for which declaration is in force

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

Declarations because of threat in force for a year or less

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

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

Revoking declarations specifying nominated property

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

Amending declarations specifying nominated property

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

Revoking declarations specifying property not yet nominated

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

15A Offences relating to declared World Heritage properties

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

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Section 15A

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

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

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

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

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

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 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 commit an offence against section 495.

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

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

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

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

- (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 AA—National Heritage

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

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

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 Territory; or
 - (d) between 2 Territories;

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

Civil Penalty:

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

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

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

(a) a Commonwealth area; or

(b) a Territory;

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

Civil Penalty:

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

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

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

Civil Penalty:

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

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

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

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

Civil Penalty:

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

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

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

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

- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or
- (b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or
- (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).

15C Offences relating to National Heritage places

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:
 - (a) the corporation or agency takes an action; and
 - (b) the action results or will result in a significant impact on the heritage values of a place; and
 - (c) the heritage values are National Heritage values of the place; and
 - (d) the place is a National Heritage place.

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

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

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

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

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- (a) the corporation or agency takes an action; and
- (b) the action is likely to have a significant impact on the heritage values of a place; and
- (c) the heritage values are National Heritage values of the place; and
- (d) the place is a National Heritage place.

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

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

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

(3) A person commits an offence if:

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

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

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

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

(4) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or

- (iv) between 2 Territories; and
- (c) the action is likely to have a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place; and
- (e) the place is a National Heritage place.

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

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

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

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

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

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

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

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

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

(e) the place is a National Heritage place.

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

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

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

(7) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and

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

(d) the place is a National Heritage place.

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

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

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

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

(8) A person commits an offence if:

(a) the person takes an action; and

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

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

(d) the place is a National Heritage place.

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

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

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

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

(9) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action results or will result in a significant impact on the heritage values of a place; and
- (ba) the heritage values are National Heritage values of the place; and
- (bb) the place is a National Heritage place; and
- (c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

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

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

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

(10) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is likely to have a significant impact on the heritage values of a place; and
- (ba) the heritage values are National Heritage values of the place; and
- (bb) the place is a National Heritage place; and
- (c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

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

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

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

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- (13) An offence against any of subsections (1) to (10) (inclusive) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 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 commit an offence against section 495.

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

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

- (16) Subsections (1) to (10) (inclusive) do not apply to an action if:
- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or
 - (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.

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17 What is a *declared Ramsar wetland*?

Areas designated for listing

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

Areas declared by the Minister

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

17A Making and revoking declarations of wetlands

Declaring threatened wetlands of international importance

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

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

Consulting State or Territory before making declaration

- (2) Before the Minister makes a declaration relating to a wetland wholly or partly within a State or self-governing Territory, the
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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:

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

17B Offences relating to declared Ramsar wetlands

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

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

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

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

- (2) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action is likely to have a significant impact on the ecological character of a wetland; and
 - (c) the wetland is a declared Ramsar wetland.

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

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

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

- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 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 commit an offence against section 495.

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

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

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

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

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

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

(2) A person commits an offence if:

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

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 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 commit an offence against section 495.

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

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

- (a) the listed threatened species subject to the significant impact (or likely to be subject to the significant impact) is:
 - (i) a species included in the extinct category of the list under section 178; or
 - (ii) a conservation dependent species; or
- (b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant

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

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

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

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

- (1) A subsection of section 18 or 18A relating to a listed threatened species does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of any subsection of that section that relates to a listed threatened species.
- (2) A subsection of section 18 or 18A relating to a listed threatened ecological community does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of either subsection of that section that relates to a listed threatened ecological community.
- (3) A subsection of section 18 or 18A does not apply to an action if:
 - (a) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (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).
- (4) A subsection of section 18 or 18A does not apply to an action, to the extent that it is covered by subsection 517A(7).

Subdivision D—Listed migratory species

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

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

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

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

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

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

(2) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is likely to have a significant impact on a species; and
- (c) the species is a listed migratory species.

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 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 commit an offence against section 495.

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

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

- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- (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

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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*.

20B Certain actions relating to listed migratory species not prohibited

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

Subdivision E—Protection of the environment from 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
 - (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;

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- (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, commits 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, commits an offence if:
- (a) the corporation or agency takes a nuclear action; and
 - (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 commits 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 commits an offence if:
- (a) the person takes a nuclear action; and

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- (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 commits 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 commits 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 commit an offence against section 495.

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

- (8) Subsections (1), (2), (3), (4), (5) and (6) do not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (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:

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- (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
 - (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.

Section 24

24 What is a *Commonwealth marine area*?

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

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

24A Offences relating to marine areas

Actions in Commonwealth marine areas affecting the environment

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

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

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

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

Actions in Commonwealth marine areas likely to affect the environment

(2) A person commits an offence if:

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

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

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

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

Actions outside Commonwealth marine areas affecting those areas

(3) A person commits an offence if:

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

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

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

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

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Actions likely to affect environment in Commonwealth marine areas

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

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

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

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

Fishing with impact in State or Territory waters managed by Commonwealth

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

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

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

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

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

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

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

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

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

Penalties

- (7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 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 commit an offence against section 495.

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

Section 24A

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 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 FA—Great Barrier Reef Marine Park

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

Actions in Great Barrier Reef Marine Park affecting the environment

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

Civil penalty:

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

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

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

Civil penalty:

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

Section 24C

Exceptions to prohibition

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

24C Offences relating to Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

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

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

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

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

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

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

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

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

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

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

- (5) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside the Great Barrier Reef Marine Park but in the Australian jurisdiction; and
 - (c) the action results in or will result in a significant impact on the environment in an area; and
 - (d) the area is the Great Barrier Reef Marine Park.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

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

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

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

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

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- (c) the action is likely to have a significant impact on the environment in an area; and
- (d) the area is the Great Barrier Reef Marine Park.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

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

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

Defences

- (9) Subsection (1), (3), (5) or (7) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (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: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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

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

- (1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action if:
- (a) the action involves:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action:
 - (i) has or will have a significant impact on a water resource; or
 - (ii) is likely to have a significant impact on a water resource.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) A person must not take an action if:
- (a) the action involves:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; and
 - (c) the action:
 - (i) has or will have a significant impact on a water resource; or
 - (ii) is likely to have a significant impact on a water resource.

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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 an action if:
- (a) the action involves:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action is taken in:
 - (i) a Commonwealth area; or
 - (ii) a Territory; and
 - (c) the action:
 - (i) has or will have a significant impact on a water resource; or
 - (ii) is likely to have a significant impact on a water resource.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (4) Subsections (1) to (3) do not apply to an action if:
- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the constitutional corporation, Commonwealth, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or
 - (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).
- (5) A person who wishes to rely on subsection (4) in proceedings for a contravention of a civil penalty provision bears an evidential burden in relation to the matters in that subsection.

24E Offences relating to water resources

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:
 - (a) the corporation or agency takes an action involving:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action:
 - (i) results or will result in a significant impact on a water resource; or
 - (ii) is likely to have a significant impact on a water resource.
- Penalty: Imprisonment for 7 years or 420 penalty units, or both.
- Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.
- Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.
- (2) A person commits an offence if:
 - (a) the person takes an action involving:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or

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(iv) between 2 Territories; and

(c) the action:

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

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

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

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

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

(3) A person commits an offence if:

(a) the person takes an action involving:

(i) coal seam gas development; or

(ii) large coal mining development; and

(b) the action is taken in:

(i) a Commonwealth area; or

(ii) a Territory; and

(c) the action:

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

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

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

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

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

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

- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or
- (b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or
- (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 subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Subdivision G—Additional matters of national environmental significance

25 Requirement for approval of prescribed actions

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

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

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

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

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

- (4) The regulations may prescribe different things as matter protected by this section in relation to different actions prescribed for the purposes of subsection (1).
- (5) This section applies only to actions:
- (a) taken in a Territory or a place acquired by the Commonwealth for public purposes (within the meaning of section 52 of the Constitution); or
 - (b) taken in a Commonwealth marine area; or
 - (c) taken for the purpose of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (d) taken by a constitutional corporation; or
 - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (6) Regulations prescribing an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.

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

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

- (1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.

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- (3) Regulations made for the purposes of subsection (1) may only specify actions:
- (a) taken in a Territory; or
 - (b) taken in a Commonwealth marine area; or
 - (c) taken for the purpose of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (d) taken by a constitutional corporation; or
 - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (4) Regulations specifying an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.
- (5) In this section:
- regulatory provision* means:
- (a) a civil penalty provision set out in this Division; or
 - (b) a provision of this Division that creates an offence.

Subdivision HA—Limitation on liability for actions of third parties

25AA Limitation on liability for actions of third parties

- (1) A provision mentioned in subsection (2) or (3) does not apply to an action (the *primary action*) if:
- (a) a person (the *primary person*) takes the action; and
 - (b) as a consequence of the primary action, another person (the *secondary person*) takes another action (the *secondary action*); and
 - (c) the secondary action is not taken at the direction or request of the primary person; and

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

Defence to offences

- (2) For the purposes of subsection (1), the following provisions do not apply to the primary action:
- (a) subsections 15A(1) and (2);
 - (b) subsections 15C(1) to (10);
 - (c) subsections 17B(1) and (2);
 - (d) subsections 18A(1) and (2);
 - (e) subsections 20A(1) and (2);
 - (f) subsections 22A(1) to (6);
 - (g) subsections 24A(1) to (6);
 - (h) subsections 24C(1), (3), (5) and (7);
 - (i) subsections 24E(1) to (3).

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

Exception to civil penalties

- (3) For the purposes of subsection (1), the following provisions do not apply to the primary action:
- (a) subsection 12(1);
 - (b) subsections 15B(1) to (5) and (7);
 - (c) subsection 16(1);
 - (d) subsections 18(1) to (6);
 - (e) subsection 20(1);
 - (f) subsections 21(1) to (3);
 - (g) subsections 23(1) to (3);
 - (ga) subsections 24B(1) and (2);
 - (gb) subsections 24D(1) to (3);
 - (h) subsection 25(1).

Section 25B

Subdivision I—Evidentiary certificates

25B Evidentiary certificates

Contravention

- (1) The Minister may issue a written certificate:
 - (a) stating that a specified person has contravened, or is contravening, a specified civil penalty provision set out in this Division; and
 - (b) setting out particulars of that contravention.
- (2) The 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, 480A, 480K 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, 480A, 480K or 481, a certificate under subsection 25B(1) is prima facie evidence of the matters in the certificate.
- (2) In any proceedings under section 475, a certificate under subsection 25B(4) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection 25B(1) or (4) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.
- (4) The 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).

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Section 25F

- (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

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Section 27

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

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

27 What is *Commonwealth land*?

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

27A Offences relating to Commonwealth land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Section 27A

- (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 commit an offence against section 495.

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

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

- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
- (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: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of *environment* in section 528.

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

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

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

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

Civil Penalty:

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

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

27C Offences relating to Commonwealth Heritage places overseas

- (1) A person commits an offence if:
-

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Section 27C

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

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

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

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

(2) A person commits an offence if:

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

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

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

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

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 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 commit an offence against section 495.

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

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

- (5) Subsections (1) and (2) do not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (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—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 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place from an action taken by the Commonwealth or a Commonwealth agency, because the

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heritage values of a place are part of the environment. See the definition of *environment* in section 528.

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

- (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
 - (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, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.
- (4) The Minister may make a written declaration that all actions, or a specified class of actions, taken by a specified Commonwealth agency are actions to which this section does not apply.

- (5) The Minister may make a declaration under subsection (4) relating to a Commonwealth agency's actions only if he or she is satisfied that:
- (a) in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory (including a law of a State that is applied to a Commonwealth place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*), that has either or both of the following objects (whether express or implied):
 - (i) to protect the environment;
 - (ii) to promote the conservation and ecologically sustainable use of natural resources; and
 - (b) the impacts that the actions have, will have or are likely to have on the environment, are adequately addressed under the State or Territory law.

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

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

- (1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.
- (3) In this section:
- regulatory provision*** means:
- (a) a civil penalty provision set out in this Division; or
 - (b) a provision of this Division that creates an offence.

Subdivision D—Limitation on liability for actions of third parties

28AB Limitation on liability for actions of third parties

- (1) A provision mentioned in subsection (2) or (3) does not apply to an action (the *primary action*) if:
- (a) a person (the *primary person*) takes the action; and
 - (b) as a consequence of the primary action, another person (the *secondary person*) takes another action (the *secondary action*); and
 - (c) the secondary action is not taken at the direction or request of the primary person; and
 - (d) the significant impact referred to in the provision is a consequence of the secondary action.

Defence to offences

- (2) For the purposes of subsection (1), the following provisions do not apply to the primary action:
- (a) subsections 27A(1) to (4);
 - (b) subsections 27C(1) and (2).

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

Exception to civil penalties

- (3) For the purposes of subsection (1), the following provisions do not apply to the primary action:
- (a) subsections 26(1) and (2);
 - (b) subsection 27B(1);
 - (c) subsection 28(1).

Part 4—Cases in which environmental approvals are not needed

Division 1—Actions covered by bilateral agreements

29 Actions declared by agreement not to need approval

- (1) A person may take an action described in a provision of Part 3, other than section 24D or 24E, without an approval under Part 9 for the purposes of the provision if:
 - (a) the action is taken in a State or self-governing Territory; and
 - (b) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or Territory not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with a management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process 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) either of the following applies:
 - (i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or Territory identified in or under the bilateral agreement;
 - (ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and
 - (e) the action is taken in accordance with the bilaterally accredited management arrangement or bilaterally accredited authorisation process.

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Part 4 Cases in which environmental approvals are not needed

Division 1 Actions covered by bilateral agreements

Section 30

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

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

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

30 Extended operation in State and Northern Territory waters

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

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

31 Extended operation in non-self-governing Territories

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

- (a) the action is taken in a Territory (the *action Territory*) that is not a self-governing Territory; and
- (b) an Act providing for the government of the action Territory provides that some or all of the law of a State or self-governing Territory is in force in the action Territory as a law of the Territory; and
- (c) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or self-governing Territory not to require approval under Part 9 for the purposes of the provision of Part 3 (because the action is approved or taken in accordance with a bilaterally accredited management arrangement or a bilaterally accredited authorisation process); 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) either of the following applies:
 - (i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or self-governing Territory identified in or under the bilateral agreement;
 - (ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or self-governing Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and
- (g) the action is taken in accordance with the bilaterally accredited management arrangement or bilaterally accredited authorisation process.

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

Section 32

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

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 arrangement or an accredited authorisation process for the purposes of the declaration); and
- (b) the declaration is in operation when the action is taken; and
- (c) one of the following applies:
 - (i) in the case of an accredited management arrangement—the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration;
 - (ii) in the case of an accredited authorisation process—the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and
- (d) the action is taken in accordance with the accredited management arrangement or accredited authorisation process.

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 arrangement or authorisation process that is an accredited management arrangement or an accredited authorisation process 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 arrangement**?*

- (2) A management arrangement is an **accredited management arrangement** 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:
- (a) the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration; and
 - (b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

*What is an **accredited authorisation process**?*

- (2A) An authorisation process is an **accredited authorisation process** 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:

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Part 4 Cases in which environmental approvals are not needed

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- (a) the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and
- (b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

Accrediting management arrangement or authorisation process

- (3) For the purposes of subsection (2) or (2A), the Minister may accredit by written instrument a management arrangement or authorisation process for the purposes of a declaration. However, the Minister may do so only if the Minister is satisfied that:
 - (a) the management arrangement or authorisation process and the law under which it is in operation, or in which it is set out, 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 arrangement or authorisation process:
 - (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 arrangement or authorisation process 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 arrangement or authorisation process.

Note: Subdivision C sets out more prerequisites for accrediting a management arrangement or authorisation process.

*Tabling of management arrangement or authorisation process
before accreditation*

- (4) The Minister must cause to be laid before each House of the Parliament:
- (a) a copy of:
 - (i) in the case of a management arrangement—the management arrangement; or
 - (ii) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;that the Minister is considering accrediting for the purposes of subsection (2) or (2A); and
 - (b) a notice that the Minister proposes to accredit the management arrangement or authorisation process for the purposes of a declaration under this section.

Limitations on accreditation during period for opposition

- (5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:
- (a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process 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 arrangement or authorisation process is given in that House—subject to subsection (5A), within 15 sitting days of that House after the notice is given.
- (5A) If:
- (a) notice of a motion to oppose accreditation of the management arrangement or authorisation process is given in a House of the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and

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(b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;
then, subject to paragraph (5)(a), the Minister may accredit the management arrangement or authorisation process after the motion is withdrawn or otherwise disposed of.

No accreditation after accreditation opposed

- (6) The Minister must not accredit the management arrangement or authorisation process if either House of the Parliament passes a resolution opposing accreditation of the management arrangement or authorisation process following a motion of which notice has been given within 15 sitting days after the management arrangement or relevant part of the law 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 arrangement or authorisation process if, at the end of 15 sitting days after notice of a motion to oppose accreditation of the management arrangement or authorisation process that was given in a House of the Parliament within 15 sitting days after the management arrangement or relevant part of the law 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 arrangement or authorisation process 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 arrangement or relevant part of the law is taken for the purposes of subsections (5), (5A), (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 15A	the world heritage values of a declared World Heritage property
1B	section 15B	the National Heritage values of a National Heritage place
1C	section 15C	the National Heritage values of a National Heritage place
2	section 16	the ecological character of a declared Ramsar wetland
2A	section 17B	the ecological character of a declared Ramsar wetland
3	subsection 1 8(1)	a listed threatened species in the extinct in the wild category

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

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
13C	subsection 2 4A(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
13D	subsection 2 4B(1)	the environment
13E	subsection 2 4B(2)	the environment in the Great Barrier Reef Marine Park
13F	subsections 24C(1) and (3)	the environment
13G	subsections 24C(5) and (7)	the environment in the Great Barrier Reef Marine Park
13H	section 24D	a water resource
13J	section 24E	a water resource
14	section 25	a thing prescribed by the regulations for the purposes of this item in relation to an action to which section 25 applies
15	subsection 2 6(1)	the environment
16	subsection 2 6(2)	the environment on Commonwealth land
16A	subsection 2 7A(1) or (2)	the environment
16B	subsection 2 7A(3) or (4)	the environment on Commonwealth land
16C	section 27B	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
16D	subsections 27C(1) and (2)	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
17	section 28	the environment

Section 34A

Subdivision C—Prerequisites for making declarations

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

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

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

34B Declarations relating to declared World Heritage properties

- (1) The Minister may make a declaration under section 33 relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the declaration 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 arrangement or authorisation process 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 arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the property in accordance with the Australian World Heritage management principles.

34BA Declarations relating to National Heritage places

- (1) The Minister may make a declaration under section 33 relating to a National Heritage place only if:
 - (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and
 - (b) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of such a declaration only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National 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 arrangement or authorisation process 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 arrangement or authorisation process is not inconsistent with Australia's obligations under the Ramsar Convention; and

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- (b) the Minister is satisfied that the management arrangement or authorisation process 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
 - (ca) the Minister has had regard to any approved conservation advice for the species or community; and
 - (d) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process 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 arrangement or authorisation process 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 arrangement or authorisation process 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 management arrangement or authorisation process is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
- (d) the Minister has had regard to any approved conservation advice for the species or community.

34E Declarations relating to migratory species

- (1) The Minister may make a declaration under section 33 relating to a listed migratory species only if:
 - (a) the Minister is satisfied that the declaration is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
 - (i) the Bonn Convention;
 - (ii) CAMBA;
 - (iii) JAMBA;
 - (iv) an international agreement approved under subsection 209(4); and
 - (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 arrangement or authorisation process 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 arrangement or authorisation process is not inconsistent with the

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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 arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

34F Declarations relating to Commonwealth Heritage places

- (1) The Minister may make a declaration under section 33 relating to a Commonwealth Heritage place only if:
 - (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the Commonwealth Heritage management principles; and
 - (b) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of such a declaration only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the Commonwealth Heritage management principles.

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) a declaration made under section 33 is revoked; and
 - (b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
 - (c) the action had not been completed before the revocation;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 arrangement or authorisation process 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;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.

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Publishing declarations

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

36A Minor amendments of accredited management arrangement or accredited authorisation process

- (1) If:
- (a) a management arrangement or an authorisation process is an accredited management arrangement or an accredited authorisation process; and
 - (b) the management arrangement or authorisation process is amended, or is proposed to be amended; and
 - (c) the Minister is satisfied that the amendments are, or will be, minor; and
 - (d) the Minister is satisfied that the management arrangement or authorisation process as amended meets, or will meet, the requirements of:
 - (i) paragraphs 33(3)(a), (b) and (c); and
 - (ii) section 34A; and
 - (iii) subsection 34B(2), 34BA(2), 34C(2), 34D(2), 34E(2) or 34F(2) (as the case requires);
- the Minister may, by instrument in writing, determine that this section applies to the amendments.
- (2) If the Minister makes a determination under subsection (1):
- (a) the management arrangement or authorisation process as amended is, for the purposes of this Act, taken to be an accredited management arrangement or accredited authorisation process; and
 - (b) subsections 33(1) to (8) do not apply in relation to the amendments to the management arrangement or authorisation process, or the management arrangement or authorisation process as amended; and
-

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- (c) actions taken after the determination is made in accordance with the accredited management arrangement or accredited authorisation process as amended do not require approval under Part 9 for the purposes of a specified provision of Part 3.
- (3) The Minister must publish a determination under subsection (1) in accordance with the regulations (if any).
- (4) A determination under subsection (1) is not a legislative instrument.

Division 3—Actions covered by Ministerial declarations and bioregional plans

Subdivision A—Effect of declarations

37 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 an action, or one of a class of actions, declared by the Minister under section 37A not to require approval under Part 9 for the purposes of the provision (because the taking of the action is in accordance with a particular bioregional plan); and
- (b) the declaration is in operation when the action is taken; and
- (c) the action is taken:
 - (i) in the bioregion to which the plan applies; and
 - (ii) in accordance with the plan.

Note: Division 2 of Part 12 deals with bioregional plans.

Subdivision B—Making declarations

37A Making declarations that actions do not need approval under Part 9

Subject to Subdivisions C and D, the Minister may, by legislative instrument, declare that an action or class of actions specified in the declaration, wholly or partly by reference to the fact that the taking of the action or class of actions is in accordance with a bioregional plan, 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 37K provides for revocation of a declaration.

Subdivision C—Prerequisites for making declarations

37B General considerations

- (1) In deciding whether to make a declaration under section 37A, the Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:
 - (a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the action or class of actions to which the declaration relates;
 - (b) economic and social matters.
- (2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.
- (3) The Minister must not make a declaration under section 37A in relation to an action or class of actions and a provision of Part 3 if the Minister considers that the action, or an action in the class, if taken, would have unacceptable or unsustainable impacts on a matter protected by the provision.

37C Minister may make declaration only if prescribed criteria are met

The Minister may make a declaration under section 37A 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.

37D Declarations relating to declared World Heritage properties

The Minister may make a declaration under section 37A 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

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- (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 Minister is satisfied that the declaration is not inconsistent with a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

37E Declarations relating to National Heritage places

The Minister may make a declaration under section 37A relating to a National Heritage place only if:

- (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and
- (b) the Minister is satisfied that the declaration is not inconsistent with:
 - (i) an agreement to which the Commonwealth is a party in relation to the National Heritage place; or
 - (ii) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

37F Declarations relating to declared Ramsar wetlands

The Minister may make a declaration under section 37A 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.

37G Declarations relating to listed threatened species and ecological communities

The Minister may make a declaration under section 37A 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 Minister has had regard to any approved conservation advice for the species or community.

37H Declarations relating to listed migratory species

The Minister may make a declaration under section 37A relating to a listed migratory species only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with 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.

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37J No declarations relating to nuclear actions

The Minister must not make a declaration relating to 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.

Subdivision D—Other rules about declarations

37K Revoking declarations

Revoking declarations

- (1) The Minister may, by legislative instrument, revoke a declaration made under section 37A.

Revocation does not affect some actions

- (2) If:
 - (a) a declaration made under section 37A is revoked; and
 - (b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
 - (c) the action had not been completed before the revocation;this Act continues to operate in relation to the action as if the declaration had not been revoked.

37L Other rules about declarations

Minister must not give preference

- (1) In making a declaration under section 37A, or revoking a declaration under section 37K, relating to an action taken:

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- (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;
- 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) Within 10 business days after the Minister makes a declaration under section 37A, or an instrument under section 37K revoking a declaration, the Minister must publish the declaration or instrument in accordance with the regulations.

Division 3A—Actions covered by conservation agreements

37M Actions declared by conservation agreement not to need approval

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

- (a) the action is included in a class of actions declared in a conservation agreement, in accordance with section 306A, not to require approval under Part 9 for the purposes of the provision; and
- (b) the conservation agreement is in operation when the action is taken; and
- (c) the action is taken in accordance with the conditions (if any) specified in the declaration.

Division 4—Forestry operations in certain regions

Subdivision A—Regions covered by regional forest agreements

38 Part 3 not to apply to certain RFA forestry operations

- (1) Part 3 does not apply to an RFA forestry operation that 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, by legislative instrument, declare that subsection (1) does not apply to an RFA region.
- (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;

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Division 4 Forestry operations in certain regions

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- (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.

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 zoning plan

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

- (a) the action is taken in a zone (within the meaning of the *Great Barrier Reef Marine Park Act 1975*) of the Great Barrier Reef Marine Park; and
- (b) it is for a purpose for which, under the zoning plan for the zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

Division 6—Actions with prior authorisation

43A Actions with prior authorisation

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:
- (a) the action consists of a use of land, sea or seabed; and
 - (b) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and
 - (c) immediately before the commencement of this Act, no further specific environmental authorisation was necessary to allow the action to be taken lawfully; and
 - (d) at the time the action is taken, the specific environmental authorisation continues to be in force.
- (1A) For the purposes of paragraphs (1)(c) and (d), a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation unless:
- (a) the action that is authorised by the authorisation following the renewal or extension is the same as the action that was authorised by the authorisation before the commencement of this Act; and
 - (b) the renewal or extension could properly be made or given without any further consideration of the environmental impacts of the action.

Note: If a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation, the condition in paragraph (1)(c) or (d) would not be met.

- (2) In this Act:

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

- (a) to protect the environment;

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

specific environmental authorisation means an environmental authorisation that:

- (a) identifies the particular action by reference to acts and matters uniquely associated with that action; or
- (b) was issued or granted following a consideration of the particular action by reference to acts and matters uniquely associated with that action.

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

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act.
 - (2) However, subsection (1) does not apply to an action if:
 - (a) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and
 - (b) at the time the action is taken, the specific environmental authorisation continues to be in force.
- Note: In that case, section 43A applies instead.
- (3) For the purposes of this section, neither of the following is a ***continuation*** of a use of land, sea or seabed:
 - (a) an enlargement, expansion or intensification of use;
 - (b) either:
 - (i) any change in the location of where the use of the land, sea or seabed is occurring; or
 - (ii) any change in the nature of the activities comprising the use;that results in a substantial increase in the impact of the use on the land, sea or seabed.

Chapter 3—Bilateral agreements

Part 5—Bilateral agreements

Division 1—Object of Part

44 Object of this Part

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

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

Division 2—Making bilateral agreements

Subdivision A—Power to make bilateral agreements

45 Minister may make agreement

Making bilateral agreement

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

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

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

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

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

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 arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E.

What is a bilaterally accredited management arrangement?

- (2) A management arrangement is a **bilaterally accredited management arrangement** 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, other than section 24D or 24E, if and only if:

- (a) the management arrangement is in force under a law of the State or Territory that is a party to the agreement and the law is identified in or under the agreement; and
- (b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

*What is a **bilaterally accredited authorisation process**?*

- (2A) An authorisation process is a ***bilaterally accredited authorisation process*** 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, other than section 24D or 24E, if and only if:
- (a) the authorisation process is set out in a law of the State or Territory that is a party to the agreement, and the law and the process are identified in or under the agreement; and
 - (b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

Accrediting management arrangement or authorisation process

- (3) For the purposes of subsection (2) or (2A), the Minister may accredit in writing a management arrangement or an authorisation process 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 arrangement or authorisation process and the law under which it is in force, or in which it is set out, 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 arrangement or authorisation process:
 - (i) have or will have; or
 - (ii) are likely to have;

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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 arrangement or authorisation process 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 arrangement or authorisation process.

Note: Subdivision B sets out more prerequisites for accrediting a management arrangement or an authorisation process.

Tabling of management arrangement or authorisation process before accreditation

- (4) The Minister must cause to be laid before each House of the Parliament a copy of:
 - (a) in the case of a management arrangement—the management arrangement; or
 - (b) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;that the Minister is considering accrediting for the purposes of subsection (2) or (2A).

Limitations on accreditation during period for disallowance

- (5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:
 - (a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process 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 arrangement or authorisation

process is given in that House—subject to subsection (5A), within 15 sitting days of that House after the notice is given.

(5A) If:

- (a) notice of a motion to disallow accreditation of the management arrangement or authorisation process is given in a House of the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and
- (b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;

then, subject to paragraph (5)(a), the Minister may accredit the management arrangement or authorisation process after the motion is withdrawn or otherwise disposed of.

Disallowance motion passed

- (6) The Minister must not accredit the management arrangement or authorisation process if either House of the Parliament passes a resolution disallowing the accreditation of the management arrangement or authorisation process following a motion of which notice has been given within 15 sitting days after the management arrangement or relevant part of the law has been laid before the House.

Disallowance motion not defeated in time

- (7) The Minister must not accredit the management arrangement or authorisation process if, at the end of 15 sitting days after notice of a motion to disallow the management arrangement or authorisation process that was given in a House of the Parliament within 15 sitting days after the management arrangement or relevant part of the law 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.

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Extended time after dissolution or prorogation

- (8) If:
- (a) notice of a motion to disallow the management arrangement or authorisation process 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 arrangement or relevant part of the law is taken for the purposes of subsections (5), (5A), (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 arrangement or authorisation process 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) If the declaration is for actions approved in accordance with a bilaterally accredited management arrangement, 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 the management arrangement; and
- (b) not to approve the taking of actions that would be inconsistent with the management arrangement.

47 Agreement may declare classes of actions do not need assessment

Declaration of actions that do not need further assessment

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

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

Prerequisite to declaration

- (2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if 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

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- (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.

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

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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 Certain limits on scope of bilateral agreements

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

Subdivision B—Prerequisites for making bilateral agreements

49A Consultation on draft agreement

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

- (a) has published in accordance with the regulations:
- (i) a draft of the agreement; and
 - (ii) an invitation for any person to give the Minister comments on the draft within a specified period of at least 28 days after the latest day on which the draft or invitation was published; and

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- (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 arrangement or an authorisation process 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 management arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention; and

- (b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the property in accordance with the Australian World Heritage management principles.

51A Agreements relating to National Heritage places

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a National Heritage place only if:
 - (a) the Minister is satisfied that the agreement will promote the management of the place in accordance with the National Heritage management principles; and
 - (b) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of such a bilateral agreement only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National 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 arrangement or an authorisation process under section 46 for the purposes of a

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bilateral agreement containing a provision relating to a declared Ramsar wetland only if:

- (a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the Ramsar Convention; and
- (b) the Minister is satisfied that the management arrangement or authorisation process 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
 - (ca) the Minister has had regard to any approved conservation advice for the species or community; and
 - (d) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or an authorisation process 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 management arrangement or authorisation process 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 arrangement or authorisation process 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 management arrangement or authorisation process is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
- (d) the Minister has had regard to any approved conservation advice for the species or community.

54 Agreements relating to migratory species

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a listed migratory species only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
 - (i) the Bonn Convention;
 - (ii) CAMBA;
 - (iii) JAMBA;
 - (iv) an international agreement approved under subsection 209(4); and
 - (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.

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- (2) The Minister may accredit a management arrangement or an authorisation process 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 management arrangement or authorisation process 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 arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species to which the provision relates.

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 arrangement or an authorisation process, 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.

Subdivision C—Minor amendments of bilateral agreements

56A Ministerial determination of minor amendments to bilateral agreements

- (1) This section applies if:
 - (a) the Minister intends to develop a draft amendment to a bilateral agreement (the *principal agreement*); and
 - (b) the Minister is satisfied that the amendment will not have a significant effect on the operation of the principal agreement; and
 - (c) the Minister makes a determination, in writing, to that effect.
- (2) If the Minister makes a determination under paragraph (1)(c):
 - (a) the following provisions of this Part do not apply in relation to the amendment to the principal agreement:
 - (i) subsection 45(3);
 - (ii) paragraphs 45(4)(b) and (c);
 - (iii) section 49A; and
 - (b) the Minister must publish the principal agreement, as amended by the amending agreement, at the same time as

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publishing the amending agreement under
paragraph 45(4)(a).

- (3) A determination made under paragraph (1)(c) is not a legislative instrument.

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.

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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

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actions in a specified class, in accordance with the notice. This subsection has effect subject to sections 61 and 62.

Reasons for giving notice

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

Publishing notice and reasons

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

60 Emergency suspension of effect of bilateral agreement

- (1) This section applies if the Minister is satisfied that:
- (a) the State or Territory that is party to a bilateral agreement is not complying with it, or will not comply with it; and
 - (b) as a result of the non-compliance, a significant impact is occurring or imminent on any matter protected by a provision of Part 3 that is relevant to an action in a class of actions to which the agreement relates.
- (2) The Minister may suspend the effect of the agreement or specified provisions of the agreement for the purposes of this Act or specified provisions of 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:

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- (a) given to the appropriate Minister of the State or Territory;
and
- (b) published in accordance with the regulations.

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

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

63 Cancellation or suspension at request of other party

Minister must give notice of cancellation or suspension

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

Notice of suspension

- (2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of 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 arrangement or an authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement,

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

Subdivision B—Expiry of bilateral agreements

65 Expiry and review of bilateral agreements

- (1) A bilateral agreement ceases to have effect for the purposes of this Act at the time when the agreement provides for it to cease to so have effect.

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

- (2) The Minister must cause a review of the operation of a bilateral agreement to be carried out at least once every 5 years while the agreement remains in effect. The Minister must give a copy of the report of each review to the appropriate Minister of the State or Territory that is party to the agreement.

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

- (3) The Minister must publish the report on each subsection (2) review 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 arrangement or

an authorisation process that was a bilaterally accredited management arrangement or a bilaterally accredited authorisation process 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
- (ca) information included in the referral; 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 (or would, but for section 25AA or 28AB, be) prohibited by the provision. The provision is a *controlling provision* for the action.

67A Prohibition on taking controlled action without approval

A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the relevant provision of Part 3.

Note: A person can be restrained from contravening this section by an injunction under section 475.

68 Referral by person proposing to take action

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (3) In a referral under this section, the person must state whether or not the person thinks the action the person proposes to take is a controlled action.

- (4) If the person states that the person thinks the action is a controlled action, the person must identify in the statement each provision that the person thinks is a controlling provision.
- (5) Subsections (1) and (2) do not apply in relation to a person proposing to take an action if the person has been informed by the Minister under section 73 that the proposal has been referred to the Minister.
- (6) This section is affected by section 68A.

68A Actions proposed to be taken under a contract etc.

- (1) This section applies in relation to an action that is proposed to be taken under a contract or an agreement, arrangement or understanding, other than:
 - (a) a subcontract; or
 - (b) an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding.

Note: A person proposing to take an action under a subcontract, or an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding, is not required or permitted to refer the proposal to take the action to the Minister under section 68.

- (2) For the purposes of section 68 and subject to subsection (3), a reference to, or relating to, a person proposing to take the action is a reference to, or relating to, any of the following persons:
 - (a) a party to the contract, agreement, arrangement or understanding for whose benefit the action is proposed to be taken;
 - (b) a person who:
 - (i) requested or procured, or proposes to request or procure, the creation of the contract, agreement, arrangement or understanding; and
 - (ii) is to be responsible for controlling and directing the taking of the proposed action.

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- (3) If a person (the **first person**) referred to in paragraph (2)(a) or (b) refers a proposal to take the action to the Minister under section 68:
 - (a) no other person is required or permitted to refer a proposal to take the action to the Minister under section 68; and
 - (b) for the purposes of this Chapter, a reference to, or relating to, the person proposing to take the action is a reference to, or relating to, the first person.
- (4) For the purposes of this section, a reference to a contract or subcontract or an agreement, arrangement or understanding includes a reference to a proposed contract, proposed subcontract, proposed agreement, proposed arrangement or proposed understanding.
- (5) Nothing in this section is intended to affect the capacity of a person to refer a proposal to take an action to the Minister under subsection 68(1) or (2) on behalf of the person proposing to take the action.

69 State or Territory may refer proposal to Minister

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

Note: Section 68 applies instead.

70 Minister may request referral of proposal

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

- (a) the person; or
 - (b) a State, self-governing Territory or agency of a State or self-governing Territory that the Minister believes has administrative responsibilities relating to the action;
- to refer the proposal to the Minister within 15 business days or a longer period agreed by the Minister and the requested person, State, Territory or agency (as appropriate).

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

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

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

Deemed referral of proposal

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

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- (6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.
- (8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

71 Commonwealth agency may refer proposal to Minister

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

Note: Section 68 applies instead.

72 Form and content of referrals

- (1) A referral of a proposal to take an action must be made in a way prescribed by the regulations.
- (2) A referral of a proposal to take an action must include the information prescribed by the regulations.
- (3) A referral of a proposal to take an action may include alternative proposals relating to any of the following:
 - (a) the location where the action is to be taken;
 - (b) the time frames within which the action is to be taken;
 - (c) the activities that are to be carried out in taking the action.

73 Informing person proposing to take action of referral

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

- (a) inform the person of the referral; and

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

73A Informing Great Barrier Reef Marine Park Authority of proposal affecting Great Barrier Reef Marine Park

If:

- (a) a proposal to take an action is referred to the Minister; and
- (b) the action, or a component of the action, is to be taken in the Great Barrier Reef Marine Park;

the Minister must, as soon as practicable after receiving the referral, give a copy of the referral to the Great Barrier Reef Marine Park Authority.

74 Inviting provision of information on referred proposal

Inviting other Commonwealth Ministers to provide information

- (1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the **Environment Minister**) 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 the Australian Heritage Council

- (1A) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 15B or 15C could be a controlling provision for the proposed action because of National Heritage values of a National Heritage place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

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Note: Sections 15B and 15C protect the National Heritage values of National Heritage places.

- (1B) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 23, 24A, 24B, 24C, 26, 27A, 27B, 27C or 28 could be a controlling provision for the proposed action because of heritage values of a place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Note: Sections 23, 24A, 24B, 24C, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of *environment* in section 528.

Inviting comments from appropriate State or Territory Minister

- (2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):
- (a) inform the appropriate Minister of the State or Territory; and
 - (b) invite that Minister to give the Environment Minister within 10 business days:
 - (i) comments on whether the proposed action is a controlled action; and
 - (ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

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

Inviting public comment

- (3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the internet:

- (a) the referral; and
- (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Note: If the action is also the subject of a permit application under section 200, 215, 237 or 257 and the application is made at the same time as the referral, the referral and invitation for comments that must be published under this subsection may be published together with the application and invitation for comments that must be published under section 200, 215, 237 or 257.

Non-disclosure of commercial-in-confidence information

- (3A) The Environment Minister may refuse to cause to be published on the internet, under subsection (3), so much of the information included in a referral as the Minister is satisfied is commercial-in-confidence.
- (3B) The Environment Minister must not be satisfied that particular information included in a referral is commercial-in-confidence unless a person demonstrates to the Minister that:
 - (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.

74A Minister may request referral of a larger action

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

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

74AA Offence of taking action before decision made in relation to referral etc.

Referral made: taking action while decision making process still going on

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) either:
 - (i) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68; or
 - (ii) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister under section 69 or 71 and the person has been informed of the referral under section 73; and
 - (c) the referral has not been withdrawn under section 170C; and

- (d) the Minister has not decided under subsection 74A(1) not to accept the referral; and
- (e) provisions of this Chapter are not stopped by Division 1A from applying in relation to the referral; and
- (f) provisions of this Chapter are not stopped by section 155 from applying because of the referral in relation to the action (or a larger action of which the action is a component); and
- (g) no decision that the action (or a larger action of which the action is a component) is not a controlled action is in operation under section 75 in relation to the referral; and
- (h) no decision is in operation under Part 9 in relation to the referral approving, or not approving, the taking of the action (or a larger action of which the action is a component).

Penalty: 500 penalty units.

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

- (2) Subsection (1) does not apply to the taking of an action by a person if:
 - (a) the taking of the action is reasonably necessary in order to comply with a requirement or request made under this Part or Part 8 or 9 in relation to the action (or a larger action of which the action is a component); and
 - (b) before taking the action, the person gave the Minister written notice of the taking of the action; and
 - (c) the notice was given in accordance with any applicable requirements of the regulations.

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

Referral requested: taking action before requested referral is made

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

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- (b) the Minister, under section 70, has requested the referral by the person of a proposal to take the action (or a larger action of which the action is a component) to the Minister; and
- (c) the request has not been revoked; and
- (d) the referral has not been made.

Penalty: 500 penalty units.

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

Division 1A—Decision that action is clearly unacceptable

74B Application of this Division

- (1) This Division applies to the referral of a proposal to take an action if, within 20 business days after the Minister receives the referral:
 - (a) the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
 - (b) the Minister decides that this Division should apply to the referral.
- (2) If this Division applies to a referral, any other provisions of this Chapter that would, apart from this subsection, have applied to the referral cease to apply to the referral.
- (3) Subsection (2) has effect subject to paragraph 74D(6)(a).

74C Informing person proposing to take action that action is clearly unacceptable

- (1) As soon as practicable after making the decision under paragraph 74B(1)(b) in relation to a referral, the Minister must give written notice of the decision to:
 - (a) the person proposing to take the action that is the subject of the referral; and
 - (b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action that is the subject of the referral).
- (2) The notice must:
 - (a) state that the Minister considers that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
 - (b) set out the reasons for the Minister's decision.

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- (3) After receiving the notice under subsection (1), the person proposing to take the action may:
- (a) withdraw the referral and take no further action in relation to the proposed action; or
 - (b) withdraw the referral and refer a new proposal to take a modified action to the Minister in accordance with Division 1; or
 - (c) request the Minister, in writing, to reconsider the referral.

Note 1: Section 170C sets out the procedure for withdrawing a referral.

Note 2: A referral of a proposal to take a modified action will be a new referral for the purposes of this Chapter.

74D Procedure if Minister is requested to reconsider referral

- (1) This section applies if the Minister receives a request under paragraph 74C(3)(c) to reconsider a referral.

Inviting public comment

- (2) The Minister must, within 10 business days after receiving the request, publish on the internet:
- (a) a notice stating that the Minister proposes not to approve the taking of the action that is the subject of the referral; and
 - (b) the reasons for the Minister's decision; and
 - (c) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing on:
 - (i) the impacts that the action would have on a matter protected by a provision of Part 3; and
 - (ii) the Minister's proposal to refuse to approve the taking of the action.

Report about relevant impacts of action

- (3) Within 10 business days after the end of the period for comment under paragraph (2)(c), the Secretary must:

- (a) prepare a written report about the relevant impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3; and
- (b) give the Minister:
 - (i) the report; and
 - (ii) a copy of any comments received by the Secretary within the period for comment.

In preparing the report, the Secretary must have regard to the comments referred to in subparagraph (b)(ii).

Decision following reconsideration

- (4) Within 20 business days after receiving the report under subsection (3), the Minister must:
 - (a) if the Minister still considers that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3—decide to refuse to approve the taking of the action; or
 - (b) decide that the referral is to be dealt with under the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral.
- (5) If the Minister decides to refuse to approve the taking of the action, the Minister must, within 10 business days after making the decision, give notice of the decision to:
 - (a) the person proposing to take the action; and
 - (b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action).

Note: The person proposing to take the action may request reasons for the refusal and the Minister must give them. See section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.

- (6) If the Minister makes a decision under paragraph (4)(b):
 - (a) the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral start to apply to the referral; and

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- (b) for the purposes of the application of those provisions, a day is not to be counted as a business day if it is:
- (i) on or after the day the Minister received the referral;
and
 - (ii) on or before the day the Minister makes the decision under paragraph (4)(b).

Note: If the Minister had already complied with section 74 in relation to the referral before the Minister made the decision under paragraph 74B(1)(b) in relation to the referral, the Minister is not required to comply with section 74 again.

Division 2—Ministerial decision whether action needs approval

75 Does the proposed action need approval?

Is the action a controlled action?

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

Note: The Minister may revoke a decision made under subsection (1) about an action and substitute a new decision. See section 78.

- (1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

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

Considerations in decision

- (2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:
 - (a) the Minister must consider all adverse impacts (if any) the action:
 - (i) has or will have; or
 - (ii) is likely to have;

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- on the matter protected by each provision of Part 3; and
- (b) must not consider any beneficial impacts the action:
- (i) has or will have; or
 - (ii) is likely to have;
- on the matter protected by each provision of Part 3.

Note: *Impact* is defined in section 527E.

- (2A) For the purposes of subsection (2), if the provision of Part 3 is subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 24D(3), 24E(3), 26(1) or 27A(1), then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:
- (a) has or will have; or
 - (b) is likely to have;
- on the matter.
- (2AA) For the purposes of subsection (2), if the provision of Part 3 is subsection 24B(1) or 24C(1) or (3), then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:
- (a) has or will have; or
 - (b) is likely to have;
- on the matter.
- (2B) Without otherwise limiting any adverse impacts that the Minister must consider under paragraph (2)(a), the Minister must not consider any adverse impacts of:
- (a) any RFA forestry operation to which, under Division 4 of Part 4, Part 3 does not apply; or
 - (b) any forestry operations in an RFA region that may, under Division 4 of Part 4, be undertaken without approval under Part 9.

Designating a proponent of the action

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

Consent to designation

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

Timing of decision and designation

- (5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: If the Minister decides, under subsection 75(1), that the action is a controlled action, the Minister must, unless the Minister has requested more information under subsection 76(3) or section 89, decide on the approach to be used for assessment of the relevant impacts of the action on the same day as the Minister makes the decision under subsection 75(1)—see subsection 88(2).

Time does not run while further information being sought

- (6) If the Minister has requested more information under subsection 76(1) or (2) for the purposes of making a decision, a day is not to be counted as a business day for the purposes of subsection (5) if it is:
- (a) on or after the day the Minister requested the information; and
 - (b) on or before the day on which the Minister receives the last of the information requested.

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Running of time may be suspended by agreement

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

76 Minister may request more information for making decisions

- (1) 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.
- (2) Before the Minister makes the decisions under subsection 75(1) in relation to the action, the Minister may request the person proposing to take the action to provide information about whether or not the action is a component of a larger action that is proposed to be taken by the person.
- (3) If the Minister believes on reasonable grounds that the information given to the Minister in relation to the 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 person proposing to take the action to provide specified information relevant to making the decision.
- (4) Without limiting subsection (3), if the action is to be taken in a State or self-governing Territory, the Minister may request the person proposing to take the action to provide information about:
- (a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and

- (b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.
- (5) The Minister may make a request under subsection (3) even if the Minister has not yet made the decisions under subsection 75(1) in relation to the action.

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:
-

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- (a) has been given the notice; and
- (b) within 28 days of being given the notice, has requested the Minister to provide reasons.

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

77A Action to be taken in a particular manner

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

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

- (1A) For the purposes of subsection (1), it does not matter whether or not the Minister believes that the action will be taken in accordance with:
- (a) an accredited management arrangement or an accredited authorisation process for the purposes of a declaration under section 33; or
 - (b) a bioregional plan to which a declaration made under section 37A relates; or
 - (c) a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of a bilateral agreement.
- (2) A person must not take an action, that is the subject of a notice that includes a particular manner under subsection (1), in a way that is inconsistent with the manner specified in the notice.

Civil penalty:

- (a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
- (b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.

Division 3—Reconsideration of decisions

78 Reconsideration of decision

Limited power to vary or substitute decisions

- (1) The Minister may revoke a decision (the **first decision**) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:
- (a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:
 - (i) has or will have; or
 - (ii) is likely to have;on a matter protected by a provision of Part 3; or
 - (aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:
 - (i) has or will have; or
 - (ii) is likely to have;on a matter protected by a provision of Part 3; or
 - (b) the following requirements are met:
 - (i) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77;
 - (ii) the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or
 - (ba) the following requirements are met:
 - (i) the first decision was that the action was not a controlled action because of a provision of a bilateral agreement and a management arrangement or an authorisation process that is a bilaterally accredited

- management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement;
- (ii) the provision of the agreement no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in force under, or set out in, a law of a State or a self-governing Territory identified in or under the agreement; or
- (c) the following requirements are met:
- (i) the first decision was that the action was not a controlled action because of a declaration under section 33 and a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration;
- (ii) the declaration no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in operation under, or set out in, a law of the Commonwealth identified in or under the declaration; or
- (ca) the following requirements are met:
- (i) the first decision was that the action was not a controlled action because of a declaration under section 37A and a bioregional plan to which the declaration relates;
- (ii) the declaration no longer operates in relation to the action, or the bioregional plan is no longer in force; or
- (d) the Minister is requested under section 79 to reconsider the decision.

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

Note 2: A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca). See section 78A.

Note 3: If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry

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out the processes referred to in sections 73 and 74 again before making the new 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 appropriate person to be the designated proponent of the action, the Minister may revoke the designation and designate another person (the **later proponent**) as proponent of the action.

Consent to designation

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

Effect of change of designated proponent

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

78A Request for reconsideration of decision by person other than State or Territory Minister

- (1) A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca).

Note: Section 79 deals with requests for reconsideration by a Minister of a State or self-governing Territory.

- (2) A request under subsection (1) must:
- (a) be in writing; and
 - (b) set out the basis on which the person thinks the decision should be reconsidered; and
 - (c) if the regulations specify other requirements for requests under subsection (1)—comply with those requirements.

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- (3) If a request is made under subsection (1) in relation to a decision that an action is a controlled action, or that particular provisions are controlling provisions for an action, then:
- (a) if the request is made by the designated proponent of the action—Part 8 ceases to apply in relation to the action until the Minister makes a decision in relation to the request; but
 - (b) if the request is made by another person—the application of Part 8 in relation to the action is not affected by the making of the request (subject to the outcome of the reconsideration).
- (4) If:
- (a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and
 - (b) the Minister confirms the decision that is the subject of the request under subsection (1);
- then:
- (c) the application of Part 8 in relation to the action resumes (as does any assessment process under that Part that had previously commenced in relation to the action); and
 - (d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:
 - (i) on or after the day the Minister received the request; and
 - (ii) on or before the day the Minister confirms the decision.

78B Minister must inform interested persons of request and invite comments

- (1) The Minister (the *Environment Minister*) must comply with this section if he or she receives a request under section 78A to reconsider a decision made under subsection 75(1) about an action.

Informing designated proponent of request and inviting comments

- (2) If the request is made by a person other than the designated proponent of the action, the Environment Minister must:
- (a) inform the designated proponent of the request in accordance with subsection (3); and

- (b) invite the designated proponent to give the Environment Minister, within 10 business days, comments on the request.
- (3) For the purpose of paragraph (2)(a), the Environment Minister must inform the designated proponent of the request by giving the designated proponent such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

Inviting other Commonwealth Ministers to provide information

- (4) The Environment Minister must:
 - (a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the request; and
 - (b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

Inviting comments from appropriate State or Territory Minister

- (5) If the request relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister must:
 - (a) inform the appropriate Minister of the State or Territory of the request; and
 - (b) invite that Minister to give the Environment Minister, within 10 business days:
 - (i) comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action; and
 - (ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

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

Inviting public comment

- (6) The Environment Minister must publish on the internet:
- (a) the request; and
 - (b) an invitation for anyone to give the Environment Minister, within 10 business days (measured in Canberra), comments in writing on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

78C Minister must reconsider decision and give notice of outcome

Reconsideration of decision

- (1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in relation to a request under section 78A to reconsider a decision about an action, the Minister must:
- (a) reconsider the decision; and
 - (b) either:
 - (i) confirm the decision; or
 - (ii) revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

Notice of outcome of reconsideration

- (2) The Minister must give written notice of the outcome of the reconsideration to:
- (a) the person who requested the reconsideration; and
 - (b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and
 - (c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and

- (d) if the reconsideration relates to an action referred to in subsection 78B(5)—the appropriate Minister of the State or Territory.
- (3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

Reasons for outcome of reconsideration

- (4) The Minister must give reasons for the outcome of the reconsideration to a person who:
- (a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and
 - (b) within 28 days after being given the notice, has requested the Minister to provide reasons.

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

79 Reconsideration of decision on request by a State or Territory

- (1) This section applies if the Minister (the *Environment Minister*) has made a decision under subsection 75(1) about whether a provision of Division 1 of Part 3 is a controlling provision for an action proposed to be taken in a State or a self-governing Territory.

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

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

- (2) Within 10 business days after the appropriate Minister of the State or Territory is notified of the decision under subparagraph 77(1)(a)(iii), that Minister may request the Environment Minister to reconsider the Environment Minister's decisions made under subsection 75(1).

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- (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;
- (aa) an assessment on referral information (see Division 3A);
- (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).

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

Relationship between subsections (1) and (2)

- (3) Subsection (1) has effect despite subsection (2).
- (4) For the purposes of subsections (1) and (2), if subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 24D(3), 24E(3), 26(1) or 27A(1) is, or would be, a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:
- (a) has or will have; or
 - (b) is likely to have;
- on the matter.
- (5) For the purposes of subsections (1) and (2), if subsection 24B(1) or 24C(1) or (3) is or would be a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:
- (a) has or will have; or
 - (b) is likely to have;
- on the matter.

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

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

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

Chapter 4 Environmental assessments and approvals

Part 8 Assessing impacts of controlled actions

Division 2 Application of this Part

Section 84

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

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

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

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

84 This Part does not apply if action covered by declaration

When this Part does not apply

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

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

Declaration

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

Prerequisites for making a declaration

- (3) The Minister may make a declaration only if he or she is satisfied that:

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

Further requirements for making a declaration

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

Specified manner of assessment

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

Publishing declaration

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

Revoking declaration

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

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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;
- (aa) an assessment on referral information;
- (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

87 Minister must decide on approach for assessment

Minister must choose one assessment approach

- (1) The Minister must decide which one of the following approaches must be used for assessment of the relevant impacts of an action that the Minister has decided is a controlled action:
 - (a) assessment by an accredited assessment process;
 - (aa) assessment on referral information under Division 3A;
 - (b) assessment on preliminary documentation under Division 4;

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- (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.

Considerations in making choice

- (3) In making the decision, the Minister must consider:
 - (a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
 - (b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
 - (c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and
 - (d) the matters (if any) prescribed by the regulations; and
 - (e) the guidelines (if any) published under subsection (6).

Accredited assessment process

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

Assessment on referral information

- (4A) The Minister may decide on an assessment on referral information under Division 3A only if the Minister is satisfied (after considering the matters in subsection (3)) that the action meets the criteria prescribed in the regulations for the purposes of this subsection.

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.

88 Timing of decision on assessment approach

Initial decision

- (1) The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: Section 156 sets out rules about time limits.

When initial decision must be made

- (2) The Minister must make the decision under subsection (1) on the same day as the Minister has decided, under subsection 75(1), that the action is a controlled action, unless the Minister has requested more information under subsection 76(3) or section 89 for the

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purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.

Time does not run while further information sought

- (4) If the Minister has requested more information in relation to the action under subsection 76(1), (2) or (3) or section 89, a day is not to be counted as a business day for the purposes of subsection (1) if it is:
- (a) on or after the day the Minister requested the information; and
 - (b) on or before the day on which the Minister receives the last of the information requested.

Running of time may be suspended by agreement

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

89 Minister may request more information for making decision

- (1) 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.
- (2) Without limiting subsection (1), if the action is to be taken in a State or self-governing Territory, the Minister may request the designated proponent of the action to provide information about:
- (a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and
 - (b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.

- (3) The Minister may make a request in relation to an action under this section even if the Minister has made a request under subsection 76(3) in relation to the action.

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).

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.

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91 Notice of decision on assessment approach

- (1) Within 10 business days after making a decision on the approach to be used for assessment of the relevant impacts of an action, the Minister must:
- (a) give written notice of the decision to:
 - (i) the person proposing to take the action; and
 - (ia) the designated proponent of the action (if the designated proponent is not the person proposing to take the action); and
 - (ii) if the action is to be taken in a State or self-governing Territory and a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of the State or Territory; and
 - (b) publish notice of the decision 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.

- (1A) In the written notice of the decision, the Minister must also advise the person proposing to take the action that the person may elect under section 132B to submit an action management plan for approval.

Note: An action management plan is approved after a decision is made approving the taking of the action.

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

Division 3A—Assessment on referral information

92 Application of this Division

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

93 Recommendation report

- (1) The Secretary must comply with this section within 30 business days after the Minister makes the decision under section 87.
- (2) The Secretary must prepare a draft recommendation report that includes recommendations on:
 - (a) whether the taking of the action should be approved under Part 9; and
 - (b) if approval is recommended, any conditions that should be attached to the approval.
- (3) The Secretary must publish on the internet:
 - (a) the draft recommendation report; and
 - (b) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing relating to the draft recommendation report or the action.
- (3A) The Secretary may refuse to publish on the internet, under subsection (3), so much of the draft recommendation report as:
 - (a) is:
 - (i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
 - (ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

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- (b) the Secretary is satisfied is commercial-in-confidence.
- (3B) The Secretary must not be satisfied that a part of the draft recommendation report is commercial-in-confidence unless a person demonstrates to the Secretary that:
 - (a) release of the information in that part would cause competitive detriment to the person; and
 - (b) the information in that part is not in the public domain; and
 - (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information in that part is not readily discoverable.
- (4) After the end of the period for comment, the Secretary must finalise the draft recommendation report, taking account of any comments received within that period.
- (5) As soon as practicable after finalising the draft recommendation report, the Secretary must give the Minister:
 - (a) the finalised recommendation report; and
 - (b) either:
 - (i) a copy of any comments received within the period for comment; or
 - (ii) if no comments were received within that period—a written statement to that effect.

Division 4—Assessment on preliminary documentation

94 Application of this Division

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

95 Direction to publish referral information and invitation to comment—no further information required

- (1) This section applies if the Minister was satisfied, at the time of making the decision (the *assessment approach decision*) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.
- (2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:
 - (a) specified information included in the referral to the Minister of the proposal to take the action; and
 - (b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and
 - (c) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.
- (3) The designated proponent must comply with the direction.

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

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- (4) A direction given under subsection (2) is not a legislative instrument.

95A Direction to publish referral information and invitation to comment—further information required

- (1) This section applies if the Minister was not satisfied, at the time of making the decision (the *assessment approach decision*) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.
- (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts.
- (3) Within 10 business days after receiving the information requested under subsection (2), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:
- (a) specified information included in the referral to the Minister of the proposal to take the action; and
 - (b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and
 - (c) specified information relating to the action that was received in response to the Minister's request under subsection (2); and
 - (d) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.
- (4) The designated proponent must comply with the direction.

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

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

95B Procedure after end of period for comment

Procedure if comments are received

- (1) If comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as practicable after the end of that period:
- (a) prepare a document that:
 - (i) sets out the information given to the Minister previously in relation to the action, with any changes or additions needed to take account of the comments; and
 - (ii) contains a summary of the comments received and how those comments have been addressed; and
 - (b) give the Minister:
 - (i) a copy of the document prepared under paragraph (a); and
 - (ii) a copy of the comments received.
- (1A) The designated proponent is taken not to have given the Minister the documents referred to in paragraph (1)(b) if the required fee has not been paid.
- (2) Within 10 business days after the designated proponent has given the Minister the documents referred to in paragraph (1)(b), the designated proponent must publish, in accordance with the regulations, a copy of the document prepared under paragraph (1)(a).

Procedure if no comments are received

- (3) If no comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as

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practicable after the end of that period, give the Minister a written statement to that effect.

- (3A) The designated proponent is taken not to have given the Minister the statement referred to in subsection (3) if the required fee has not been paid.
- (4) Within 10 business days after the designated proponent has given the Minister the statement referred to in subsection (3), the designated proponent must publish, in accordance with the regulations, a copy of the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires.

Definition

- (5) In this section:

period for comment means the period within which comments may be given under 95(2)(c) or 95A(3)(d), as the case requires.

95C Recommendation report

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
- (a) whether the taking of the action should be approved under Part 9; and
 - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires, and before the end of the period applicable under paragraph 130(1B)(c) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

Division 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.

96A Minister must give designated proponent written guidelines for preparation of draft public environment report

- (1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft public environment report about the relevant impacts of the action. The guidelines so given are referred to as the *PER guidelines*.
- (2) The PER guidelines must be:
 - (a) one or more sets of standard guidelines prepared under section 96B that the Minister decides are appropriate for the preparation of the draft report in relation to the action; or
 - (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft report in relation to the action—tailored guidelines prepared under section 97.
- (3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft report in relation to the action, the Minister must seek to ensure that the draft report, if prepared in accordance with those guidelines, will:
 - (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
 - (b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 97(2).

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- (4) The Minister must give the PER guidelines to the designated proponent:
- (a) within 20 business days after the assessment approach decision was made under section 87; or
 - (b) if the Minister, under section 97, invites a person to comment on a draft of tailored guidelines for the preparation of the draft report within a specified period—within 20 business days after:
 - (i) the end of that period; or
 - (ii) if there is more than one such period, the end of the later or latest of those periods.

96B Standard guidelines

- (1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft public environment reports about the relevant impacts of actions.

Note: See also subsection 96A(3).

- (2) A set of standard guidelines must set out requirements for the content and presentation of draft public environment reports about the relevant impacts of actions.
- (3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:
- (a) actions that are proposed to be taken by a specified industry sector; or
 - (b) actions for which a specified provision of Part 3 is a controlling provision.
- (4) A set of standard guidelines made under this section is not a legislative instrument.

97 Tailored guidelines

- (1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft public environment report about the relevant impacts of an action if the Minister decides that standard guidelines

are not appropriate for the preparation of the draft report in relation to that action.

- (1A) Tailored guidelines must set out requirements for the content and presentation of the draft report in relation to the action.
- (2) In preparing tailored 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) Tailored 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.

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

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- (a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and
 - (b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft report includes information about those other impacts for the purposes of deciding whether to grant the permission.
- (4) Division 2 does not limit:
- (a) subsection (3) or (3A); or
 - (b) section 98 so far as it relates to tailored guidelines prepared in reliance on that subsection.
- (5) In preparing tailored guidelines, the Minister may:
- (a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and
 - (b) take account of the comments received (if any).
- (6) Tailored guidelines made under this section are not a legislative instrument.

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 public environment report in accordance with the PER guidelines about:
 - (i) the relevant impacts of the action; and
 - (ii) if the PER guidelines are tailored guidelines that require the draft report to include information about other impacts—those other impacts; and
 - (ab) give the draft report to the Minister; 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
 - (ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft report or the action 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 is in accordance with the PER guidelines.

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

- (1) After the end of the period specified in the invitation to comment under section 98, the designated proponent must finalise the draft public environment report.
- (2) The finalised report must:
 - (a) take account of any comments received within the period for comment; and
 - (b) contain a summary of any such comments and how those comments have been addressed.
- (3) As soon as practicable after finalising the draft report, the designated proponent must give the Minister:
 - (a) the finalised report; and
 - (b) either:
 - (i) a copy of any comments received within the period for comment; or

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- (ii) if no comments were received within that period—a written statement to that effect.
- (3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.
- (4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised report in accordance with the regulations.

100 Recommendation report

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
 - (a) whether the taking of the action should be approved under Part 9; and
 - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the finalised public environment report under section 99 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

Division 6—Environmental impact statements

101 Application

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

101A Minister must give designated proponent written guidelines for preparation of draft environmental impact statement

- (1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft environmental impact statement about the relevant impacts of the action. The guidelines so given are referred to as the *EIS guidelines*.
- (2) The EIS guidelines must be:
 - (a) one or more sets of standard guidelines prepared under section 101B that the Minister decides are appropriate for the preparation of the draft statement in relation to the action; or
 - (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to the action—tailored guidelines prepared under section 102.
- (3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft statement in relation to the action, the Minister must seek to ensure that the draft statement, if prepared in accordance with those guidelines, will:
 - (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
 - (b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 102(2).

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- (4) The Minister must give the EIS guidelines to the designated proponent:
- (a) within 20 business days after the assessment approach decision was made under section 87; or
 - (b) if the Minister, under section 102, invites a person to comment on a draft of tailored guidelines for the preparation of the draft statement within a specified period—within 20 business days after:
 - (i) the end of that period; or
 - (ii) if there is more than one such period, the end of the later or latest of those periods.

101B Standard guidelines

- (1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft environmental impact statements about the relevant impacts of actions.

Note: See also subsection 101A(3).

- (2) A set of standard guidelines must set out requirements for the content and presentation of draft environmental impact statements about the relevant impacts of actions.
- (3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:
- (a) actions that are proposed to be taken by a specified industry sector; or
 - (b) actions for which a specified provision of Part 3 is a controlling provision.
- (4) A set of standard guidelines made under this section is not a legislative instrument.

102 Tailored guidelines

- (1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft environmental impact statement about the relevant impacts of an action if the Minister decides that standard

guidelines are not appropriate for the preparation of the draft statement in relation to that action.

- (1A) Tailored guidelines must set out requirements for the content and presentation of the draft statement in relation to the action.
- (2) In preparing tailored guidelines, the Minister must seek to ensure that the draft statement will:
- (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
 - (b) address any matters specified by the regulations.
- (3) Tailored guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:
- (a) the action is to be taken in a State or self-governing Territory; and
 - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft statement includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and
 - (c) the action:
 - (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
 - (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

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

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- (3A) Tailored guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:
- (a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and
 - (b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft statement includes information about those other impacts for the purposes of deciding whether to grant the permission.
- (4) Division 2 does not limit:
- (a) subsection (3) or (3A); or
 - (b) section 103 so far as it relates to tailored guidelines prepared in reliance on that subsection.
- (5) In preparing tailored guidelines, the Minister may:
- (a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and
 - (b) take account of the comments (if any) received.
- (6) Tailored guidelines made under this section are not a legislative instrument.

103 Designated proponent must invite comment on draft environmental impact statement

Designated proponent's obligations

- (1) The designated proponent of the action must:
- (a) prepare a draft environmental impact statement in accordance with the EIS guidelines about:
 - (i) the relevant impacts of the action; and
 - (ii) if the EIS guidelines are tailored guidelines that require the draft statement to include information about other impacts—those other impacts; and

- (ab) give the draft statement to the Minister; and
- (b) obtain the Minister's approval for publication of the draft statement; and
- (c) publish in accordance with the regulations:
 - (i) the draft statement; and
 - (ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft statement or the action within the period specified in the invitation.

Approval of publication of draft statement

- (2) The Minister may only approve the publication of the draft statement if he or she is satisfied that the draft statement is in accordance with the EIS guidelines.

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 environmental impact statement

- (1) After the end of the period specified in the invitation to comment under section 103, the designated proponent must finalise the draft environmental impact statement.
- (2) The finalised statement must:
 - (a) take account of any comments received within the period for comment; and
 - (b) contain a summary of any such comments and how those comments have been addressed.
- (3) As soon as practicable after finalising the draft statement, the designated proponent must give the Minister:
 - (a) the finalised statement; and

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- (b) either:
 - (i) a copy of any comments received within the period for comment; or
 - (ii) if no comments were received within that period—a written statement to that effect.
- (3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.
- (4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised statement in accordance with the regulations.

105 Recommendation report

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
 - (a) whether the taking of the action should be approved under Part 9; and
 - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the finalised environmental impact statement under section 104 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

Division 7—Inquiries

Subdivision A—Preliminary

106 Simplified outline

The following is a simplified outline of this Division:

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

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

Commissioners must report to the Minister and publish their reports.

Subdivision B—Establishment of inquiries

107 Appointing commissioners and setting terms of reference

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

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

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

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- (2) If the Minister appoints 2 or more commissioners for an inquiry, the Minister must appoint one of them to preside at the inquiry.
- (3) In specifying in the terms of reference the matters relating to the action that are to be the subject of the inquiry and report, the Minister:
- (a) must specify the relevant impacts of the action; and
 - (b) if subsection (4) or (4A) applies—may specify other certain or likely impacts of the action.
- (4) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:
- (a) the action is to be taken in a State or self-governing Territory; and
 - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the inquiry reports on those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and
 - (c) the action:
 - (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
 - (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.
- (4A) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:
- (a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

- (b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the report includes information about those other impacts for the purposes of deciding whether to grant the permission.
- (5) The Minister may also specify in the terms of reference the manner in which the commission is to carry out the inquiry.

108 Publicising inquiry

- (1) As soon as practicable, the commission must publish in accordance with the regulations and in any other way it thinks fit:
 - (a) the terms of reference; and
 - (b) the information relating to the action given to the Minister under this Chapter before the Minister made the decision under Division 3 to use an inquiry to assess the relevant impacts of the action.
- (2) The commission need not publish the information described in paragraph (1)(b) if, before the Minister appointed the commission, the designated proponent of the action published:
 - (a) 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:

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- (a) may determine the procedure to be followed in its inquiry;
and
- (b) is not subject to any directions by an employee of the Commonwealth or by a Commonwealth agency; and
- (c) is not bound by the rules of evidence.

110 Inquiry to be public

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

111 Calling witnesses

Summoning witnesses

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

Failure of witness to attend

- (2) A person served with a summons to appear as a witness at an inquiry by a commission must not:
 - (a) fail to attend as required by the summons; or

- (b) fail to appear and report from day to day unless excused or released from further attendance by or on behalf of the commission.

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

Offence

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

Allowances for witnesses

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

112 Dealing with witnesses

Power to administer oath or affirmation

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

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

Refusal to be sworn or to answer questions

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

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

Offence

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

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

No privilege against self-incrimination

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

Answers and documents cannot be used in criminal proceedings

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

Sworn witnesses may also give written evidence on oath

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

113 Dealing with documents given to commission

Inspecting and copying documents produced or given at inquiry

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

Keeping documents produced or given at inquiry

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

114 Inspections of land, buildings and places

- (1) If a commissioner, or a person authorised by a commissioner, enters any land, building or place by consent as described in section 115 or under a warrant issued under section 116, the commissioner or person may:
 - (a) inspect the land, building or place; and
 - (b) inspect any material on the land, or on or in the building or place.
- (2) However, the commissioner or authorised person may not make the inspection if:
 - (a) the person occupying or in charge of the land, building or place asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
 - (b) the commissioner or person does not produce it.
- (3) A person (the *offender*) commits an offence punishable on conviction by imprisonment for not more than 6 months if:
 - (a) the offender obstructs or hinders another person; and

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- (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

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

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

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

117 Warrants by telephone or other electronic means

Application

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

Voice communication

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

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Information

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

Issue of warrant

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

Notification

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

Form of warrant

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

Completed form of warrant to be given to magistrate

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

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

Attachment

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

Presumption

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

118 Identity cards

- (1) The Minister may cause to be issued to a commissioner or a person authorised by a commissioner an identity card:
- (a) in a form approved by the Minister; and
 - (b) containing a recent photograph of the person to whom it is issued.
- (2) As soon as practicable after the commission to which the commissioner was appointed has reported to the Minister on its inquiry, the commissioner or authorised person must return his or her identity card to the Minister.
- (3) A person must not contravene subsection (2).

Penalty: 1 penalty unit.

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119 Contempt

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

Penalty: 30 penalty units.

120 Protection of commissioners and witnesses

Protection of commissioners

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

Rights and obligations of witnesses

- (2) A person appearing before a commission as a witness at an inquiry:
 - (a) has the same protection as a witness in proceedings in the High Court; and

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

Interfering with witness is an offence

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

Interference with a witness' employment

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

Interference with employee who proposes to give evidence

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

Offences

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

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

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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.

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129 Other terms and conditions

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

Part 9—Approval of actions

Division 1—Decisions on approval and conditions

Subdivision A—General

130 Timing of decision on approval

Basic rule

- (1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.
- (1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.
- (1B) The **relevant period**, in relation to a controlled action, is as follows:
 - (a) if the action is the subject of an assessment report—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;
 - (b) if Division 3A of Part 8 (assessment on referral information) applies to the action—the period of 20 business days beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);
 - (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;
 - (d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public

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environment report or the finalised environmental impact statement, as the case requires;

- (e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

What is an assessment report?

- (2) An **assessment report** is a report given to the Minister as described in:
 - (a) subsection 47(4) (about assessments under a bilateral agreement); or
 - (b) subsection 84(3) (about assessments in a manner specified in a declaration); or
 - (c) subsection 87(4) (about assessments by accredited assessment processes).

Notice of extension of time

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

Time does not run while awaiting advice from Independent Expert Scientific Committee

- (4A) If, under section 131AB, the Minister is required to obtain advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development before making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:
 - (a) on or after the day the Minister requested the advice; and
 - (b) on or before the day on which the Minister obtains the advice.

Time does not run while further information is sought

- (5) If, under section 132, the Minister has requested more information for the purposes of making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:
- (a) on or after the day the Minister requested the information; and
 - (b) on or before the day on which the Minister receives the last of the information requested.

131 Inviting comments from other Ministers before decision

- (1) Before the Minister (the *Environment Minister*) decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she 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.

131AA Inviting comments before decision from person proposing to take action and designated proponent

- (1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:

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- (a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:
 - (i) the decision the Minister proposes to make; and
 - (ii) if the Minister proposes to approve the taking of the action—any conditions the Minister proposes to attach to the approval; and
 - (b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.
- (2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):
- (a) a copy of whichever of the following documents applies to the action:
 - (i) an assessment report;
 - (ii) a finalised recommendation report given to the Minister under subsection 93(5);
 - (iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
 - (b) any information relating to economic and social matters that the Minister has considered; and
 - (c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and
 - (d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.
- (3) The Minister is not required to provide under subsection (2):
- (a) information that is in the public domain; or
 - (b) a copy of so much of a document as is in the public domain;
- or

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- (c) in the case of information referred to in paragraph (2)(b) or (c)—any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.
- (4) The Minister must not provide under subsection (2):
- (a) a copy of so much of a document as:
 - (i) is an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
 - (ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (ii) the Minister is satisfied contains information that is commercial-in-confidence; or
 - (b) information that:
 - (i) is of such a nature that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a)(i); or
 - (ii) the Minister is satisfied is commercial-in-confidence.
- (5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:
- (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.
- (6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).

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- (7) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to:
- (a) the Minister's decision under section 133 whether or not to approve, for the purposes of a controlling provision, the taking of the action; and
 - (b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides, under section 134, to attach conditions to the approval—the Minister's decision under section 134 to attach those conditions to the approval.

131AB Minister must obtain advice from Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development

- (1) This section applies if:
- (a) the taking of an action, for the purposes of a controlling provision, involves:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the Minister believes that the taking of the action:
 - (i) is likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity; and
 - (ii) may have an adverse impact on a matter protected by a provision of Part 3.
- (2) Before the Minister decides whether or not to approve, for the purposes of the controlling provision, the taking of the action, the Minister must obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.

131A Inviting public comment before decision

Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and

what conditions (if any) to attach to an approval, he or she may publish on the internet:

- (a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and
- (b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

132 Requesting further information for approval decision

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;
- (d) if:
 - (i) the action is to be taken in a State or self-governing Territory; and
 - (ii) a controlling provision for the action is in Division 1 of Part 3 (about matters of national environmental significance); and
 - (iii) the relevant impacts of the action have been assessed under a law of the State or Territory;the appropriate Minister of that State or Territory;
- (e) any other person the Minister considers appropriate.

Section 132A

132A Requesting notice from appropriate State or Territory Minister about certain actions

- (1) This section applies to an action that is to be taken in a State or self-governing Territory only if the action:
- (a) is to be taken by a person for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (b) is to be taken by a constitutional corporation; or
 - (c) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

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

- (2) However, this section does not apply to an action if:
- (a) the action:
 - (i) is a nuclear action; or
 - (ii) is to be taken entirely in a Commonwealth marine area; or
 - (iii) is to be taken entirely on Commonwealth land; or
 - (iv) is to be taken by the Commonwealth or a Commonwealth agency; and
 - (b) the relevant impacts of the action have been assessed under Part 8.
- (3) Before the Minister (the *Environment Minister*) decides whether or not to approve for the purposes of a controlling provision the taking of the action, and what conditions (if any) to attach to an approval, the Environment Minister may request the appropriate Minister of the State or Territory to give the Environment Minister a notice stating the method that has been used to assess the certain and likely impacts of the action on things other than matters protected by the controlling provisions for the action.

132B Election to have an action management plan approved after approval of the taking of an action granted

- (1) A person proposing to take an action may, at any time before an approval of the taking of the action is granted under section 133, elect to submit an action management plan for approval.
- (2) An election must:
 - (a) be in writing; and
 - (b) be given to the Minister before the Minister grants an approval under section 133.
- (3) If, after making an election, the person (the *first person*) notifies the Minister under section 156F that another person (the *second person*) proposes to take the action instead, the second person may revoke the election made by the first person under this section.
- (4) An election cannot be revoked once the Minister has granted an approval under section 133.

133 Grant of approval

Approval

- (1) After receiving the assessment documentation relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.
- (1A) If the referral of the proposal to take the action included alternative proposals relating to any of the matters referred to in subsection 72(3), the Minister may approve, for the purposes of subsection (1), one or more of the alternative proposals in relation to the taking of the action.

Content of approval

- (2) An approval must:

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- (a) be in writing; and
- (b) specify the action (including any alternative proposals approved under subsection (1A)) that may be taken; and
- (c) name the person to whom the approval is granted; and
- (d) specify each provision of Part 3 for which the approval has effect; and
- (e) specify the period for which the approval has effect; and
- (f) set out the conditions attached to the approval.

Note: The period for which the approval has effect may be extended. See Division 5.

Persons who may take action covered by approval

- (2A) An approval granted under this section is an approval of the taking of the action specified in the approval by any of the following persons:
- (a) the holder of the approval;
 - (b) a person who is authorised, permitted or requested by the holder of the approval, or by another person with the consent or agreement of the holder of the approval, to take the action.

Notice of approval

- (3) The Minister must:
- (a) give a copy of the approval to the person named in the approval under paragraph 133(2)(c); and
 - (b) provide a copy of the approval to a person who asks for it (either free or for a reasonable charge determined by the Minister).

Limit on publication of approval

- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
- (a) is:
 - (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

- (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
- (b) the Minister believes it is in the national interest not to provide.

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

Notice of refusal of approval

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

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

Definition

- (8) In this section:

assessment documentation, in relation to a controlled action, means:

- (a) if the action is the subject of an assessment report—that report; or
- (b) if Division 3A of Part 8 (assessment on referral information) applies to the action:
 - (i) the referral of the proposal to take the action; and
 - (ii) the finalised recommendation report relating to the action given to the Minister under subsection 93(5); or
- (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the

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- Minister under subsection 95B(3), as the case requires, relating to the action; and
- (ii) the recommendation report relating to the action given to the Minister under section 95C; or
- (d) if Division 5 of Part 8 (public environment reports) applies to the action:
- (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; or
- (e) if Division 6 of Part 8 (environmental impact statements) applies to the action:
- (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105.

134 Conditions of approval

Condition to inform persons taking action of conditions attached to approval

- (1A) An approval of the taking of an action by a person (the **first person**) is subject to the condition that, if the first person authorises, permits or requests another person to undertake any part of the action, the first person must take all reasonable steps to ensure:
- (a) that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and
 - (b) that the other person complies with any such condition.
- For the purposes of this Chapter, the condition imposed by this subsection is attached to the approval.

Generally

- (1) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
- (a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
 - (b) 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).

Examples of kinds of conditions that may be attached

- (3) The conditions that may be attached to an approval include:
- (aa) conditions requiring specified activities to be undertaken for:
 - (i) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or
 - (ii) 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 may or will be, or has been, caused by the action); and

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- (ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and
- (a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:
 - (i) to comply with this Act and the regulations; and
 - (ii) not to contravene a condition attached to the approval; and
 - (iii) to meet any liability of a person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and
- (b) conditions requiring the holder of the approval to insure against any specified liability of the holder to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
- (c) conditions requiring a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and
- (d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the action is approved; and
- (e) if an election has been made, or is taken to have been made, under section 132B in respect of the approval—conditions requiring:
 - (i) an action management plan to be submitted to the Minister for approval, accompanied by the fee (if any) prescribed by the regulations; and
 - (ii) implementation of the plan so approved; and
- (f) conditions requiring specified environmental monitoring or testing to be carried out; and

- (g) conditions requiring compliance with a specified industry standard or code of practice; and
- (h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

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

Note: Paragraph (e)—an election is taken to have been made if an approval is varied to add a condition requiring an action management plan, see subsection 143(1A).

Certain conditions require consent of holder of approval

- (3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:
 - (a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;
 - (b) a condition referred to in paragraph (3)(ab).
- (3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:
 - (a) the holder cannot withdraw that consent after the condition has been attached to the approval; and
 - (b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition, and cannot withdraw that consent.

Conditions attached under paragraph (3)(c)

- (3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:
 - (a) as in force at a particular time; or
 - (b) as is in force or existing from time to time;even if the instrument does not yet exist at the time the approval takes effect.

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Conditions attached under paragraph (3)(e)

- (3D) When making a decision whether to approve an action management plan, if the Minister believes on reasonable grounds that the Minister does not have enough information to make a decision, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

Considerations in deciding on condition

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

Effect of conditions requiring compliance with conditions specified in another instrument

- (4A) If:
- (a) a condition (the **principal condition**) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the **other conditions**) specified in an instrument of a kind referred to in that paragraph; and
 - (b) the other conditions are in excess of the power conferred by subsection (1);
- the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.

Validity of decision

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

134A Inviting public comment before approving action management plan

- (1) Before approving an action management plan, the Minister may publish:
- (a) the plan; and
 - (b) an invitation for anyone to give the Minister, within 11 business days, written comments on the plan.
- (2) The regulations may provide for requirements relating to the way the Minister must publish the plan and invitation to comment.

135 Certain approvals and conditions must not give preference

- (1) This section deals with the approval:
- (a) for the purposes of section 21 or 22A of a 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.

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135A Publication of recommendation reports

- (1) This section applies in relation to the following reports:
 - (a) a finalised recommendation report given to the Minister under subsection 93(5);
 - (b) a recommendation report given to the Minister under section 95C, 100 or 105.
- (2) Subject to subsections (3) and (4), the Secretary must provide a copy of a report to which this section applies to a person who asks for it (either at no charge or at a reasonable charge determined by the Secretary).
- (3) The Secretary is not required to provide a copy of the report under subsection (2) to anyone until after the Minister has decided, for the purposes of each controlling provision, whether or not to approve the taking of the action concerned.
- (4) The Secretary may refuse to provide, under subsection (2), a copy of so much of the report as:
 - (a) is:
 - (i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
 - (ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (b) the Secretary is satisfied is commercial-in-confidence.
- (5) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
 - (a) release of the information in that part would cause competitive detriment to the person; and
 - (b) the information in that part is not in the public domain; and

- (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
- (d) the information in that part is not readily discoverable.

Subdivision B—Considerations for approvals and conditions

136 General considerations

Mandatory considerations

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

Factors to be taken into account

- (2) In considering those matters, the Minister must take into account:
 - (a) the principles of ecologically sustainable development; and
 - (b) the assessment report (if any) relating to the action; and
 - (ba) if Division 3A of Part 8 (assessment on referral information) applies to the action—the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
 - (bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
 - (ii) the recommendation report relating to the action given to the Minister under section 95C; and

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- (c) if Division 5 (public environment reports) of Part 8 applies to the action:
 - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; and
- (ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
 - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105; and
- (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action—the report of the commissioners; and
- (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
- (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
- (fa) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in accordance with section 131AB; and
- (g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice.

Note: The Minister must also take into account any relevant comments given to the Minister in response to an invitation under paragraph 131AA(1)(b). See subsection 131AA(6).

Person's environmental history

- (4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister

may consider whether the person is a suitable person to be granted an approval, having regard to:

- (a) the person's history in relation to environmental matters; and
- (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
- (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.

Minister not to consider other matters

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

137 Requirements for decisions about World Heritage

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

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

137A Requirements for decisions about National Heritage places

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

- (a) the National Heritage management principles; or

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- (b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or
- (c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

138 Requirements for decisions about Ramsar wetlands

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

139 Requirements for decisions about threatened species and endangered communities

- (1) 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.
- (2) If:
 - (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
 - (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.

140 Requirements for decisions about migratory species

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

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

140A No approval for certain nuclear installations

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.
- (1A) Subsection (1) does not apply to a person who is not the holder of the approval if:
- (a) the person was not informed of the condition; and
 - (b) the person could not reasonably have been expected to be aware of the condition.

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

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

142A Offence of breaching conditions on approval

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

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

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

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

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

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

- (4) An offence against subsection (1) or (3) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 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 commit an offence against section 495.

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

142B Strict liability offence for breach of approval condition

- (1) A person whose taking of an action has been approved under this Part commits an offence if:
- (a) the person takes an action or omits to take an action; and
 - (b) the action or omission contravenes a condition attached to the approval.

Penalty: 60 penalty units.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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

Note 4: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(2) Subsection (1) does not apply to a person who is not the holder of the approval if:

- (a) the person was not informed of the condition; and
- (b) the person could not reasonably have been expected to be aware of the condition.

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

(3) Subsection (1) is an offence of strict liability.

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

Division 3—Variation of conditions and suspension 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 (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if:
- (a) any condition attached to the approval has been contravened;
or
 - (b) both of the following conditions are satisfied:
 - (i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
 - (ii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or
 - (ba) all of the following conditions are satisfied:
 - (i) the action has had a significant impact on a matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
 - (ii) the Minister is satisfied that the impact is substantially greater than the impact that was identified in assessing the action;
 - (iii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or
 - (c) the holder of the approval agrees to the proposed revocation, variation or addition, or the Minister has extended the period for which the approval has effect under section 145D, and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:

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- (i) protecting a matter protected by any provision of Part 3 for which the approval has effect; or
 - (ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).
- (1A) If, under paragraph (1)(c), the holder of an approval agrees to conditions mentioned in paragraph 134(3)(e) (about an action management plan) being added and attached to the approval, the holder is taken to have made an election under section 132B before the approval was granted.
- (1B) The holder of an approval may request the Minister, in writing, to vary a condition attached to an approval of an action.
- (2) The Minister may, by written instrument, revoke any condition (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of Part 3 for which the approval has effect.
- (3) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister may have regard to:
 - (a) the person's history in relation to environmental matters; and
 - (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
 - (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.
- (4) The revocation, variation or addition takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.
- (5) As soon as possible after making the instrument, the Minister must:

- (a) give a copy of it to the holder of the approval; and
- (b) publish the instrument in accordance with the regulations.

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

- (6) However, the Minister must not publish so much of the instrument as:
 - (a) is:
 - (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or
 - (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (b) the Minister believes it is in the national interest not to publish.

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

143A Variation of action management plan

Written application required

- (1) If an action management plan is a condition of an approval of an action, the holder of the approval may, at any time, apply to the Minister for a variation of the action management plan.
- (2) An application for a variation must be:
 - (a) in writing; and
 - (b) accompanied by:
 - (i) any information or documents required by the regulations; and
 - (ii) the application fee (if any) prescribed by the regulations.

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Minister may approve a variation of action management plan

- (3) The Minister may approve a variation to an action management plan if requested to do so.
- (4) When making a decision whether to vary an action management plan, if the Minister believes on reasonable grounds that the application does not include enough information, the Minister may request the applicant to provide specified information relevant to making the decision.
- (5) If the holder of an approval applies for a variation of an action management plan, the Minister must notify the person, in writing, of the Minister's decision.

144 Suspension of approval

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

Part 3 for a specified period (which must not start before the day on which the instrument is made) if:

- (a) either:
 - (i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or
 - (ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable grounds that the thing has not been done within that time; and
 - (b) the Minister is satisfied that:
 - (i) the approval would not have been granted without that condition being attached; or
 - (ii) because of the failure to comply with the requirement, the suspension is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.
- (3) In deciding whether or not to suspend an approval of the taking of an action by a person, the Minister may have regard to:
- (a) the person's history in relation to environmental matters; and
 - (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
 - (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.
- (4) During the specified period, the specified provision of Part 3 applies as if the Minister had not given the approval.
- (5) As soon as possible after making the instrument, the Minister must:
- (a) give a copy of it to the holder of the approval; and
 - (b) publish the instrument in accordance with the regulations.

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145 Revocation of approval

- (1) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:
 - (a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or
 - (b) the conditions specified in subsection (2) are satisfied.
- (2) The conditions are that:
 - (a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and
 - (b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.
- (2A) The Minister may, by written instrument, revoke an approval under this Part of an action for the purposes of a specified provision of Part 3 if he or she believes that:
 - (a) the impacts that the action has had, will have or is likely to have were not accurately identified in information available to the Minister when the approval was given; and
 - (b) the information did not accurately identify those impacts because of negligence or a deliberate act or omission by the person proposing to take the action or the designated proponent of the action.
- (2B) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:
 - (a) either:
 - (i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or
 - (ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable

- grounds that the thing has not been done within that time; and
- (b) the Minister is satisfied that:
- (i) the approval would not have been granted without that condition being attached; or
 - (ii) because of the failure to comply with the requirement, the revocation is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.
- (3) In deciding whether or not to revoke an approval of the taking of an action by a person, the Minister may have regard to:
- (a) the person's history in relation to environmental matters; and
 - (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
 - (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.
- (4) The revocation takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.
- (5) As soon as possible after making the instrument, the Minister must:
- (a) give a copy of it to the person who was the holder of the approval; and
 - (b) publish the instrument in accordance with the regulations.

145A Reinstating suspended or revoked approval

Application

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

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- (b) revoked an approval under this Part of the taking of an action by a person.

Requesting reinstatement of approval

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

Deciding whether to reinstate approval

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

Considerations for decision

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

Extra time for decision

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

Requesting information for decision

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

Reversal of decision to suspend or revoke approval

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

Notice of decision about reversal

- (8) The Minister must:
- (a) give the person who was the holder of the approval written notice of the Minister's decision; and
 - (b) publish notice of the decision in accordance with the regulations.

Division 4—Transfer of approvals

145B Transfer with Minister's consent

Transfer by written agreement

- (1) A person (the **transferor**) who is the holder of an approval under this Part for the purposes of a provision of Part 3 may transfer the approval to another person (the **transferee**) by written agreement, subject to the Minister's consent.

Transfer ineffective until Minister consents

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

Effect of consent

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

Considerations in deciding whether to consent

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

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- (a) whether the transferee would be a suitable person to be granted the approval, having regard to:
 - (i) the transferee's history in relation to environmental matters; and
 - (ii) if the transferee is a body corporate—the history of its executive officers in relation to environmental matters; and
 - (iii) if the transferee is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers; and
- (b) whether the transferee can comply with the conditions attached to the approval.

Giving copies of consents to transferor and transferee

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

Division 5—Extension of period of effect of approval

145C Application to Minister to extend period of effect of approval

- (1) Subject to subsection (2), the holder of an approval under this Part may apply, in writing, to the Minister to extend the period (the *approval period*) for which the approval has effect.
- (2) Subsection (1) does not apply if:
 - (a) the approval has been suspended or revoked under this Part and has not been reinstated; or
 - (b) the approval has otherwise ceased to have effect.
- (3) An application under subsection (1) must include the information (if any) prescribed by the regulations.

145D Minister must decide whether or not to extend approval period

- (1) Within 20 business days after receiving an application under subsection 145C(1), the Minister must decide, in writing, whether or not to extend the approval period.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 145E.
- (2) The Minister may decide to extend the approval period only if the Minister is satisfied that the extension will not result in a substantial increase in, or substantial change in the nature of, the adverse impacts (if any) the action:
 - (a) has or will have; or
 - (b) is likely to have;on the matter protected by each provision of Part 3 for which the approval has effect.
- (3) In considering the matter referred to in subsection (2), the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Division:

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- (a) matters relevant to any matter protected by a provision of Part 3 for which the approval has effect;
 - (b) economic and social matters.
- (4) As soon as possible after deciding whether or not to extend the approval period, the Minister must:
- (a) give a copy of the decision to the holder of the approval; and
 - (b) if the decision is to extend the approval period—publish the decision in accordance with the regulations.

145E Minister may request further information for making decision

- (1) If the Minister believes on reasonable grounds that he or she does not have enough information to decide whether or not to extend the approval period, the Minister may request the holder of the approval to provide specified information relevant to making the decision.
- (2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 145D(1) if it is:
- (a) on or after the day the Minister requested the information; and
 - (b) on or before the day on which the Minister receives the last of the information requested.

Part 10—Strategic assessments

Division 1—Strategic assessments generally

Subdivision A—Assessment of actions to be taken in accordance with policy, plan or program

146 Minister may agree on strategic assessment

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

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

- (1B) The agreement must provide for:
-

- (a) the preparation of terms of reference for a report on the impacts to which the agreement relates; or
 - (b) all of the following:
 - (i) the preparation of draft terms of reference for a report on the impacts to which the agreement relates;
 - (ii) 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;
 - (iii) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference.
- (2) The agreement must provide for:
- (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.

Chapter 4 Environmental assessments and approvals

Part 10 Strategic assessments

Division 1 Strategic assessments generally

Section 146A

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 arrangement or an authorisation process, the Minister may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the management arrangement or authorisation process do not need approval for the purposes of a specified provision of Part 3.

- (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).

Subdivision B—Approval of taking of actions in accordance with endorsed policy, plan or program

146A Definition

In this Subdivision and Subdivision C:

endorsed policy, plan or program means a policy, plan or program that has been endorsed by the Minister in accordance with an agreement as mentioned in paragraph 146(2)(f).

146B Minister may approve taking of actions in accordance with endorsed policy, plan or program

- (1) Subject to Subdivision C, the Minister may approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

Note: Subdivision C sets out matters that the Minister must take into account in deciding whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

- (2) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program must:
-

- (a) be in writing; and
 - (b) specify the action or class of actions that may be taken in accordance with the endorsed policy, plan or program; and
 - (c) specify each provision of Part 3 for which the approval has effect; and
 - (d) specify the period for which the approval has effect; and
 - (e) set out the conditions attached to the approval.
- (2A) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program may specify the person or persons who may take the action or an action in the class of actions.
- (3) The Minister must:
- (a) give a copy of the approval to the person responsible for the adoption or implementation of the endorsed policy, plan or program; and
 - (b) provide a copy of the approval to a person who asks for it (either at no charge or for a reasonable charge determined by the Minister).
- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
- (a) is:
 - (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets); or
 - (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (b) the Minister believes it is in the national interest not to provide.

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

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- (5) An approval given under subsection (1) is not a legislative instrument.

146C Inviting comments from other Ministers before deciding whether or not to approve taking of actions in accordance with endorsed policy, plan or program

- (1) Before the Minister (the *Environment Minister*) decides whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, he or she must:
- (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action or class of actions of the decision the Environment Minister proposes to make; and
 - (b) invite each Minister informed to give the Environment Minister, within 10 business days, comments on the proposed decision.
- (2) A Minister who is invited to comment may make comments:
- (a) that relate to economic and social matters relating to the action or class of actions to which the proposed decision relates; and
 - (b) that may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

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

146D Effect of approval of taking of actions in accordance with endorsed policy, plan or program

- (1) If an approval under section 146B is in force, the following provisions have effect:
- (a) the Minister is taken to have decided under Division 2 of Part 7 that:
 - (i) each action specified in the approval under paragraph 146B(2)(b), or each action in a class of

- actions specified in the approval under that paragraph, is a controlled action; and
- (ii) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action;
- (b) the Minister is taken to have approved under Part 9, for the purposes of each controlling provision for each controlled action, the taking of the action by any of the following:
- (i) the person or persons (if any) specified in the approval under subsection 146B(2A) as the person or persons who may take the action;
 - (ii) any other person who may take the action in accordance with the endorsed policy, plan or program.
- (2) Parts 7 and 8 and paragraph 170A(c) do not apply in relation to an action if an approval of the taking of the action, or an approval of the taking of a class of actions that includes the action, in accordance with an endorsed policy, plan or program is in force under section 146B.
- (3) Subject to subsection (4), section 134 and Divisions 2, 3 and 4 of Part 9 apply in relation to an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b).
- Note: Section 134 deals with conditions of approvals, Division 2 of Part 9 deals with compliance with conditions, Division 3 of Part 9 deals with variation of conditions and suspension and revocation of approvals and Division 4 of Part 9 deals with transfer of approvals.
- (4) Subsection 145A(4) applies in relation to a decision whether or not to reinstate an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b), as if:
- (a) the reference to Subdivision B of Division 1 of Part 9 were a reference to Subdivision C of this Division; and
 - (b) the reference to a decision whether or not to approve the taking of an action were a reference to a decision whether or not to approve, under this Subdivision, the taking of an action in accordance with an endorsed policy, plan or program.

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Subdivision C—Considerations for approving taking of actions in accordance with endorsed policy, plan or program

146E Minister must comply with this Subdivision

The Minister must comply with this Subdivision in deciding:

- (a) whether or not to approve, under section 146B, the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and
- (b) in the case of a decision to approve the taking of such an action or class of actions, what conditions (if any) to attach to the approval.

Note: For the meaning of *endorsed policy, plan or program*, see section 146A.

146F General considerations

- (1) The Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:
 - (a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the approval;
 - (b) economic and social matters.
- (2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.

146G Approvals relating to declared World Heritage properties

If the approval relates to a declared World Heritage property, the Minister must not act inconsistently with:

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

146H Approvals relating to National Heritage places

If the approval relates to a National Heritage place, the Minister must not act inconsistently with:

- (a) the National Heritage management principles; or
- (b) an agreement to which the Commonwealth is party in relation to the National Heritage place; or
- (c) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

146J Approvals relating to declared Ramsar wetlands

If the approval relates to a declared Ramsar wetland, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

146K Approvals relating to listed threatened species and ecological communities

- (1) This section applies if the approval relates to a listed threatened species or a listed threatened ecological community.
- (2) The Minister must not act inconsistently with:
 - (a) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (b) a recovery plan for the species or community or a threat abatement plan.
- (3) The Minister must have regard to any approved conservation advice for the species or community.

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146L Approvals relating to listed migratory species

If the approval relates to a listed migratory species, the Minister must not act inconsistently with whichever of the following conventions or agreements because of which the species is listed:

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

146M No approvals relating to nuclear actions

The Minister must not approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program if the action, or an action in the class of actions, consists of, or involves the construction or operation of, any of the following nuclear installations:

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

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).

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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.

Further assessment for policy or plan for Torres Strait fishing

- (3) The Minister administering the *Torres Strait Fisheries Act 1984* must make another agreement under section 146 in relation to the policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act).

153 Minister must make declaration if he or she endorses plan or policy

- (1) This section applies if:
- (a) the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:
 - (i) a plan of management under the *Fisheries Management Act 1991* for a fishery; or
 - (ii) policies of the Australian Fisheries Management Authority for managing a fishery for which there is not a plan of management under the *Fisheries Management Act 1991*; or
 - (iii) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or

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- (iv) policies for managing fishing under the *Torres Strait Fisheries Act 1984*; and
 - (b) the Minister accredits, under subsection 33(3) of this Act, as an accredited arrangement a management plan or regime consisting of the endorsed plan or policies.
- (2) The Minister must make a declaration under section 33 that actions approved in accordance with the accredited arrangement do not require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6).

Note: The declaration and accreditation will allow actions that would otherwise be prohibited by sections 23 and 24A to be taken without approval if they are taken in accordance with the accredited arrangement. See section 32.

154 This Division does not limit Division 1

This Division does not limit Division 1.

Part 11—Miscellaneous rules about assessments and approvals

Division 1—Rules about timing

155 This Chapter ceases to apply to lapsed proposals

- (1) If:
- (a) a person who proposes to take a controlled action or is the designated proponent of an action is required or requested under this Chapter to do something; and
 - (b) the person does not do the thing within a period that the Minister believes is a reasonable period;
- the Minister may give the person a written notice inviting the person to satisfy the Minister within a specified reasonable period that assessment of the action should continue or that the Minister should make a decision about approving the action.
- Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how documents may be served and when they are taken to be served.
- (2) If, by the end of the specified period, the person fails to satisfy the Minister that assessment of the action should continue or that the Minister should make a decision about approving the action, the Minister may declare in writing that this Chapter no longer applies to the action.
- (3) This Chapter (apart from this section) ceases to apply in relation to the action on the date specified in the declaration. The Minister must not specify a date earlier than the date of making of the declaration.
- (4) The Minister must:
- (a) give a copy of the declaration to the person and to the Secretary; and
 - (b) publish the declaration in accordance with the regulations.

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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 1A—Variation of proposals to take actions

156A Request to vary proposal to take an action

- (1) If:
- (a) a proposal (the *original proposal*) by a person to take an action has been referred to the Minister under Division 1 of Part 7; and
 - (b) after the referral is made, the person wishes to change the original proposal;
- the person may, subject to subsection (2), request the Minister to accept a variation (a *varied proposal*) of the original proposal.
- (2) Subsection (1) does not apply if:
- (a) the Minister has made a decision under section 74A to not accept the referral of the original proposal; or
 - (b) the Minister has made a decision under section 75 that the proposed action is not a controlled action; or
 - (c) a particular manner for taking the proposed action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action; or
 - (d) the Minister has made a decision under section 133 approving or refusing to approve the taking of the proposed action; or
 - (e) the referral of the original proposal has been withdrawn under section 170C.
- (3) A request under subsection (1) must:
- (a) be made in a way prescribed by the regulations; and
 - (b) include the information prescribed by the regulations.
- (4) If a request is made under subsection (1), any provisions of this Chapter that would, apart from this subsection, have applied in relation to the original proposal cease to apply to that proposal.

Note: Provisions that have ceased to apply in relation to the original proposal under subsection (4) will start to apply to that proposal, or to

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the varied proposal, after the Minister has decided whether or not to accept the varied proposal. See section 156D.

156B Minister must decide whether or not to accept a varied proposal

- (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C.
- (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal.
- (3) In considering, for the purposes of subsection (2), whether or not the character of the varied proposal is substantially the same as the character of the original proposal, the Minister must have regard to the change (if any) in:
 - (a) the nature of the activities proposed to be carried out in taking the action; and
 - (b) the nature and extent of the impacts (if any) the action:
 - (i) has or will have; or
 - (ii) is likely to have;on the matter protected by each provision of Part 3.

156C Minister may request further information in relation to a varied proposal

- (1) If the Minister believes on reasonable grounds that a request under subsection 156A(1) to accept a varied proposal to take an action does not include enough information for the Minister to decide whether or not to accept the varied proposal, the Minister may

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

- (2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 156B(1) if it is:
- (a) on or after the day the Minister requested the information; and
 - (b) on or before the day on which the Minister receives the last of the information requested.

156D Effect of Minister's decision to accept or not accept a varied proposal

- (1) If the Minister decides to accept a varied proposal to take an action:
- (a) any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to the varied proposal; and
 - (b) for the purpose of the application of those provisions, anything done in relation to the original proposal is taken to have been done in relation to the varied proposal.
- (2) If the Minister decides not to accept a varied proposal to take an action, any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to that proposal.
- (3) For the purpose of the application of the provisions of this Chapter in relation to the varied proposal under subsection (1), or in relation to the original proposal under subsection (2), a day is not to be counted as a business day if it is:
- (a) on or after the day the Minister received the request under subsection 156A(1) to accept the varied proposal; and
 - (b) on or before the day the Minister made the decision under subsection 156B(1).

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156E Notice of decision

- (1) Within 10 business days after deciding under subsection 156B(1) whether or not to accept a varied proposal to take an action, the Minister must give written notice of the decision to:
 - (a) the person proposing to take the action; and
 - (b) the designated proponent of the action (if the designated proponent of the action is not the person proposing to take the action).
- (2) If:
 - (a) the request to accept the varied proposal related to an action that is to be taken in a State or self-governing Territory; and
 - (b) a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance); and
 - (c) the Minister decided to accept the varied proposal;the Minister must also, within the period referred to in subsection (1), give written notice of the decision to the appropriate Minister of the State or Territory.
- (3) If the Minister decided to accept the varied proposal, the Minister must, within the period referred to in subsection (1), publish the request to accept the varied proposal and notice of the decision in accordance with the regulations.

Division 1B—Change of person proposing to take action

156F Change of person proposing to take action

Notice of change of person proposing to take action

- (1) At any time:
- (a) after a proposal by a person to take an action has been referred to the Minister under Division 1 of Part 7; and
 - (b) before the Minister has approved, or refused to approve, the taking of the action under section 133;
- the person (the **first person**) proposing to take the action and another person (the **second person**) may notify the Minister, in writing, that:
- (c) the first person no longer proposes to take the action; and
 - (d) the second person proposes to take the action instead.

Note: A person who is the holder of an approval under Part 9 may transfer the approval to another person under section 145B.

When notice cannot be given

- (2) Subsection (1) does not apply if:
- (a) the Minister has made a decision under section 74A to not accept the referral of the proposal to take the action; or
 - (b) the Minister has made a decision under section 75 that the action is not a controlled action; or
 - (c) a particular manner for taking the action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action.

Requirements for notice

- (3) A notice must:
- (a) include the information (if any) prescribed by the regulations; and

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- (b) be accompanied by the fee (if any) prescribed by the regulations.

Effect of notice

- (4) If a notice is given to the Minister under subsection (1):
 - (a) any provisions of this Chapter that, apart from this paragraph, would have applied to the first person in relation to the action cease to apply to that person and start to apply to the second person; and
 - (b) for the purposes of the application of those provisions:
 - (i) the second person is taken to be named in the referral of the proposal to take the action as the person proposing to take the action; and
 - (ii) the second person is taken to have done anything the first person did in relation to the action; and
 - (iii) anything done in relation to the first person in relation to the action is taken to have been done in relation to the second person.

Publication of notice

- (5) Within 10 business days after receiving a notice under subsection (1), the Minister must publish a copy of the notice in accordance with the regulations.

Division 2—Actions in area offshore from a State or the Northern Territory

157 Actions treated as though they were in a State or the Northern Territory

- (1) A provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a State also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the State by section 4 of the *Coastal Waters (State Title) Act 1980*.
- (2) So far as a provision of this Chapter that is expressed to apply in relation to actions taken or to be taken in a self-governing Territory relates to the Northern Territory, the provision also applies in the same way to actions taken or to be taken on, under or over the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*.

Division 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, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates. This does not limit the matters the Minister may consider.
- (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 3A—Approval process decisions not affected by
listing events that happen after section 75
decision made**

**158A Approval process decisions not affected by listing events that
happen after section 75 decision made**

(1) In this section:

approval process decision means any of the following decisions:

- (a) a decision under section 75 whether an action is a controlled action;
- (b) a decision under section 75 whether a provision of Part 3 is a controlling provision for an action;
- (c) a decision under section 78 in relation to a decision referred to in paragraph (a) or (b) of this definition;
- (d) a decision under section 87 on the approach for the assessment of the impacts of an action;
- (e) a decision under section 133 whether to approve an action;
- (f) a decision under section 134 to attach conditions to an approval of an action;
- (g) a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;
- (h) any other decision made under a provision of this Chapter that is specified in the regulations.

listing event means any of the following events:

- (a) a property becoming a declared World Heritage property;
- (b) a change in the world heritage values of a declared World Heritage property;
- (c) a place becoming a National Heritage place;
- (d) a change in the National Heritage values included in the National Heritage List for a National Heritage place;
- (e) a place becoming a Commonwealth Heritage place;

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- (f) a change in the Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place;
 - (g) a wetland becoming a declared Ramsar wetland;
 - (h) a change in the boundaries of any of the following:
 - (i) a World Heritage property;
 - (ii) a National Heritage place;
 - (iii) a Commonwealth Heritage place;
 - (iv) a declared Ramsar wetland;
 - (v) the Great Barrier Reef Marine Park;
 - (i) a species becoming a listed threatened species;
 - (j) an ecological community becoming a listed threatened ecological community;
 - (k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment;
 - (l) a species becoming a listed migratory species;
 - (m) any other event of a kind specified in the regulations.
- (2) This section applies if:
- (a) the Minister has, before or after the commencement of this section, decided under section 75 (the **primary decision**) whether an action (the **relevant action**) is a controlled action (whether the decision is that the action is a controlled action, or that the action is not a controlled action); and
 - (b) at a time that is after the commencement of this section and after the primary decision was made, a listing event occurs.
- (3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.
- (4) After the listing event occurs, the listing event is to be disregarded:

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- (a) in making any further approval process decision in relation to the relevant action; and
 - (b) in doing anything under this Chapter, in relation to the relevant action, because of the making of an approval process decision in relation to the relevant action (whether that approval process decision is or was made before or after the listing event occurred).
- (5) This section has effect despite any other provision of this Act and despite any other law.

Division 4—Application of Chapter to actions that are not controlled actions

Subdivision A—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;
- (aa) an assessment on referral information under Division 3A;
- (b) an assessment on preliminary documentation under Division 4 of Part 8;

- (c) a public environment report under Division 5 of Part 8;
- (d) an environmental impact statement under Division 6 of Part 8;
- (e) an inquiry under Division 7 of Part 8.

The Minister must give the agency or employee advice on protecting the environment from the action, within 30 days of receiving the report of the assessment.

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.

Minister may decide advice is not required

- (1A) Subsection (1) does not apply in relation to an authorisation of an action if:
- (a) the agency or employee has referred a proposal to give the authorisation to the Minister under subsection 161(1); and
 - (b) the Minister has decided under subsection 161A(1) that this Subdivision does not apply in relation to the referral or the action.

Relevant actions

- (2) Subsection (1) applies in relation to:

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- (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.

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 (disregarding subsection 160(1A)) 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:

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- (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 (disregarding subsection 160(1A)) 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.

161A Minister may decide that advice is not required

- (1) If:
 - (a) the Minister receives a referral under subsection 161(1) of a proposal by a Commonwealth agency or employee of the Commonwealth to give an authorisation of an action; and
 - (b) the Minister is satisfied, on the basis of the information in the referral, that the action does not have, will not have or is not likely to have a significant impact on the environment;the Minister may decide, in writing, that this Subdivision does not apply in relation to the referral or the action.
- (2) If the Minister decides that this Subdivision does not apply in relation to the referral or the action, this Act (other than Divisions 2 and 3 of Part 7) applies as if the Minister had decided under Division 2 of Part 7 that the action is not a controlled action.
- (3) If the Minister decides that this Subdivision does not apply in relation to the referral or the action, the Minister must:

- (a) give written notice of the decision to the agency or employee who referred the proposal to give an authorisation of the action; and
- (b) publish notice of the decision in accordance with the regulations.

161B Certain provisions of other Acts not to apply if Minister decides that advice is not required

- (1) This section applies in relation to a provision of another Act that is expressed to apply if:
 - (a) the advice of the Minister is sought under this Subdivision in relation to a proposal to give an authorisation (however described) of an action; or
 - (b) a proposal to give an authorisation (however described) of an action is referred to the Minister under this Subdivision.
- (2) The provision does not apply in relation to an action if:
 - (a) a proposal to give an authorisation (however described) of the action has been referred to the Minister under section 161; and
 - (b) the Minister has decided under section 161A that this Subdivision does not apply in relation to the referral or the action.

Note: See, for example, subsections 94(6A) and 95(3A) of the *Airports Act 1996* and subsections 16(5) and 29(5) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

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

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- (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;
 - (c) any other matter relating to protection of the environment from the action.
- (2) The Minister must give the advice within 30 business days of receiving:
 - (a) a report mentioned in subsection 84(3) relating to the action; or
 - (aa) a finalised recommendation report under Division 3A of Part 8 (as applied by section 162) relating to the action; or
 - (ab) the documents given to the Minister under subsection 95B(1) (as applied by section 162), or the statement given to the

- Minister under subsection 95B(3) (as applied by section 162), as the case requires, relating to the action; or
- (ac) a finalised public environment report under Division 5 of Part 8 (as applied by section 162) relating to the action; or
 - (ad) a finalised environmental impact statement under Division 6 of Part 8 (as applied by section 162) relating to the action; 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 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

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- (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (d) is to be taken in the State or Territory and is an action whose assessment under this Subdivision is an appropriate means of giving effect to Australia's obligations under an agreement with one or more other countries.
- (2) This section applies to the adoption or implementation of a policy, plan or program in the same way as it applies to any other action.
 - (3) Despite subsection (1), this Subdivision does not apply in relation to an action to be taken in 2 or more States or self-governing Territories unless there is an agreement between the Minister and a Minister of each of those States and Territories that this Subdivision should apply in relation to the action.

167 Making an agreement

Power to make agreement

- (1) The Minister may make a written agreement with a Minister of a State or self-governing Territory to apply this Subdivision in relation to an action to be taken in the State or Territory.

Prerequisites for making agreement

- (2) The Minister may agree only if he or she is satisfied that the action is not a controlled action.

Minister must not make an agreement that gives preference

- (3) The Minister must not enter into an agreement that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:
 - (a) by a constitutional corporation; or
 - (b) by a person for the purposes of trade or commerce between Australia and another country or between 2 States.

168 Content of an agreement

Generally

- (1) An agreement to apply this Subdivision in relation to an action must:
 - (a) specify that one of the following is to apply in relation to the action:
 - (i) Division 3A of Part 8;
 - (ii) Division 4 of Part 8;
 - (iii) Division 5 of Part 8;
 - (iv) Division 6 of Part 8;
 - (v) Division 7 of Part 8;
 - (vi) Subdivision A of Division 1 of Part 10; and
 - (b) if it specifies that Division 3A, 4, 5 or 6 of Part 8 is to apply in relation to the action—specify the person who is taken to be the designated proponent of the action for the purposes of that Division.

Agreement applying Division 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 tailored guidelines for the preparation of a draft report; or
 - (b) under section 98 to approve publication of a draft report or specify a period for comment.

Agreement applying Division 6 of Part 8

- (4) An agreement that specifies that Division 6 of Part 8 (about environmental impact statements) is to apply in relation to an action may deal with how the Minister will exercise his or her power:
 - (a) under section 102 to prepare tailored guidelines for the preparation of a draft statement; or

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- (b) under section 103 to approve publication of a draft statement or specify a period for comment.

Agreement applying Division 7 of Part 8

- (5) An agreement that specifies that Division 7 of Part 8 (about inquiries) is to apply in relation to an action may deal with how the Minister will exercise his or her power under section 107:
 - (a) to appoint one or more persons as commissioners, and to appoint a person to preside; or
 - (b) to specify the matters relating to the action that are to be the subject of the inquiry and report; or
 - (c) to specify the time within which the commission must report to the Minister; or
 - (d) to specify the manner in which the commission is to carry out the inquiry.

Agreement applying Part 10

- (6) An agreement that specifies that Subdivision A of Division 1 of Part 10 is to apply may:
 - (a) be in the same document as an agreement mentioned in that Subdivision; or
 - (b) specify the manner in which an agreement the Minister makes under that Subdivision is to provide for matters that that Subdivision requires that agreement to provide for.

169 Application of a Division of Part 8

Provisions that apply

- (1) If the agreement states that a particular Division of Part 8 is to apply in relation to the assessment of an action, the following provisions of this Act (the ***applied provisions***) apply in relation to the action as set out in subsection (2):
 - (a) that Division;
 - (b) the other provisions of this Act (except Part 9), so far as they relate to that Division.

Modification of applied provisions

- (2) The applied provisions apply in relation to the action as if:
- (a) the Minister had decided under Division 2 of Part 7 that the action was a controlled action; and
 - (b) the Minister had decided that the relevant impacts of the action must be assessed under the Division specified in the agreement applying the Division; and
 - (c) the person specified in the agreement as the person who is taken to be the designated proponent of the action for the purposes of that Division had been designated as the proponent of the action by the Minister under section 75; and
 - (d) a reference in the applied provisions to the relevant impacts of the action were a reference to the impact that the action has, will have or is likely to have on the environment; and
 - (e) a reference in the applied provisions to making an informed decision on approving under Part 9 (for the purposes of each controlling provision) the taking of the action were a reference to making an informed report and recommendations relating to the action.

Modification of Division 4 of Part 8

- (3) Also, if the agreement states that Division 4 of Part 8 is to apply in relation to the action, that Division applies in relation to the action as if paragraphs 95(2)(a) and (b) and 95A(3)(a), (b) and (c) merely referred to specified information relating to the action.

Minister must give copy of report to State or Territory Minister

- (4) The Minister must give a copy of the report he or she receives from the Secretary or commission of inquiry under the applied provisions in relation to the action to each Minister of a State or Territory who is party to the agreement.

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170 Application of Subdivision A of Division 1 of Part 10

If an agreement to apply this Subdivision states that Subdivision A of Division 1 of Part 10 is to apply:

- (a) that Subdivision applies as if:
 - (i) the reference in subsection 146(1) to relevant impacts of actions were a reference to the impacts the actions have, will have or are likely to have on the environment; and
 - (ii) paragraph 146(2)(f) were omitted; and
- (b) the Minister must give a copy of the report provided to the Minister under the agreement made under section 146, and of any recommendations made by the Minister under the agreement, to each Minister of a State or Territory who is party to the agreement to apply this Subdivision.

Division 5—Publication of information relating to assessments

170A Publication of information relating to assessments

The Secretary must publish on the 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;
- (da) each draft recommendation report and invitation (if any) published in the immediately preceding week under Division 3A of Part 8 (about assessment on referral information);
- (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;

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- (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) each finalised recommendation report given to the Minister under Division 3A of Part 8 in the immediately preceding week;
- (ia) each recommendation report given to the Minister in the immediately preceding week under section 95C, 100 or 105;
- (j) any other matter prescribed by the regulations.

170B Information critical to protecting matters of national environmental significance not to be disclosed

- (1) The Minister may, by notice in writing to a person, direct the person not to disclose specified information when publishing a document or material as required or permitted by a specified provision of this Chapter, if the Minister considers that the information is critical to the protection of a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance).
- (2) A provision of this Chapter that is specified in a direction under subsection (1) has effect as if it did not require or permit the publication of the information specified in the direction.
- (3) A person who is given a direction under subsection (1) must not contravene the direction.

Civil penalty: 100 penalty units.

170BA Designated proponent may request Minister to permit commercial-in-confidence information not to be disclosed

- (1) This section applies in relation to the assessment documentation that must be published by the designated proponent of an action to which Division 4, 5 or 6 of Part 8 applies.
- (2) The designated proponent may request the Minister, in writing, to permit the designated proponent not to publish so much of the

assessment documentation relating to the action as the designated proponent considers is commercial-in-confidence.

- (3) A request under subsection (2) must include the information prescribed by the regulations.
- (4) If the Minister is satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence, the Minister may, by written notice to the designated proponent, permit the designated proponent not to publish that part of the assessment documentation.
- (5) The Minister must not be satisfied that a part of the assessment documentation relating to the action is commercial-in-confidence unless a person demonstrates to the Minister that:
 - (a) release of the information in that part would cause competitive detriment to the person; and
 - (b) the information in that part is not in the public domain; and
 - (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information in that part is not readily discoverable.
- (6) If the Minister permits the designated proponent not to publish a part of the assessment documentation that the Minister considers is commercial-in-confidence, the provision of Division 4, 5 or 6 of Part 8 that requires the designated proponent to publish the assessment documentation has effect as if it did not require the publication of that part of the assessment documentation.
- (7) In this section:

assessment documentation, in relation to an action to which Division 4, 5 or 6 of Part 8 applies, means:

- (a) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires; and

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- (ii) the document prepared under paragraph 95B(1)(a) or the information referred to in subsection 95B(4), as the case requires; or
- (b) if Division 5 of Part 8 (public environment reports) applies to the action:
 - (i) the draft public environment report relating to the action given to the Minister under paragraph 98(1)(ab); and
 - (ii) the finalised public environment report relating to the action given to the Minister under section 99; or
- (c) if Division 6 of Part 8 (environmental impact statements) applies to the action:
 - (i) the draft environmental impact statement relating to the action given to the Minister under paragraph 103(1)(ab); and
 - (ii) the finalised environmental impact statement relating to the action given to the Minister under section 104.

Division 6—Withdrawal of referrals

170C Withdrawal of referral of proposal to take an action

- (1) Subject to subsection (2), a person who:
 - (a) has referred a proposal to take an action to the Minister under section 68; or
 - (b) is named as the person proposing to take an action in a proposal that is referred to the Minister under section 69 or 71;may withdraw the referral, by written notice to the Minister.
- (2) The referral cannot be withdrawn after the Minister has decided, under Part 9, whether or not to approve the taking of the action.
- (3) If the Minister receives a notice withdrawing the referral, the Minister must publish notice of the withdrawal of the referral in accordance with the regulations.
- (4) If the referral is withdrawn, the provisions of this Chapter that would, apart from this subsection, have applied to the action cease to apply to the action.

Division 7—Miscellaneous

170CA Fees

- (1) The Minister may, in writing, determine the amounts of fees that may be charged if the approach for assessing the relevant impacts of an action that the Minister has decided is a controlled action is:
 - (a) assessment by inquiry under Division 7 of Part 8; or
 - (b) assessment by strategic assessment under Division 1 of Part 10.
- (2) Before making a determination, the Minister must consult:
 - (a) the person proposing to take the action; or
 - (b) if the person proposing to take the action is not the designated proponent—the designated proponent; or
 - (c) if the approach is assessment by strategic assessment—the person responsible for the adoption or implementation of the relevant policy, plan or program;about the amounts of fees to be charged.
- (3) The Minister may, in the determination made under subsection (1), determine the way in which a fee is to be worked out.
- (4) A determination made under subsection (1) is not a legislative instrument.

Chapter 5—Conservation of biodiversity and heritage

Part 11A—Interpretation

170D References to business days are references to Canberra business days

A reference in this Chapter to a business day is a reference to a day that is a business day in Canberra.

Part 12—Identifying and monitoring biodiversity and making bioregional plans

Division 1—Identifying and monitoring biodiversity

171 Identifying and monitoring biodiversity

- (1) The Minister may, on behalf of the Commonwealth, co-operate with, and give financial or other assistance to, any person for the purpose of identifying and monitoring components of biodiversity.
- (2) Without limiting subsection (1), the co-operation and assistance may include co-operation and assistance in relation to all or any of the following:
 - (a) identifying and monitoring components of biodiversity that are important for its conservation and ecologically sustainable use;
 - (b) identifying components of biodiversity that are inadequately understood;
 - (c) collecting and analysing information about the conservation status of components of biodiversity;
 - (d) collecting and analysing information about processes or activities that are likely to have a significant impact on the conservation and ecologically sustainable use of biodiversity;
 - (e) assessing strategies and techniques for the conservation and ecologically sustainable use of biodiversity;
 - (f) systematically determining biodiversity conservation needs and priorities.
- (3) In this Act:

components of biodiversity includes species, habitats, ecological communities, genes, ecosystems and ecological processes.
- (4) For the purposes of this section, the components of biological diversity that are important for its conservation and ecologically

sustainable use are to be identified having regard to the matters set out in Annex I to the Biodiversity Convention.

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

172 Inventories of listed threatened species etc. on Commonwealth land

- (1) The Minister may prepare an inventory covering an area of Commonwealth land that identifies, and states the abundance of, the listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species on the area of land if:
- (a) the Minister is satisfied that the area of land is of importance for the conservation of biodiversity; and
 - (b) the area of land is not covered by a plan that:
 - (i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and
 - (ii) is in force under a law of the Commonwealth.
- (2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of an inventory if:
- (a) the inventory is to cover an area of Commonwealth land; and
 - (b) the agency has an interest in the area of land.
- (3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in an area of Commonwealth land if the agency:
- (a) has a legal or equitable interest in the area; or
 - (b) occupies the area; or
 - (c) has administrative responsibilities relating to the area or to actions taken in the area.

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173 Surveys of cetaceans, listed threatened species etc. in Commonwealth marine areas

- (1) The Minister may prepare a survey covering a Commonwealth marine area that identifies, and states the extent of the range of, cetaceans, listed threatened species, listed threatened ecological communities, listed migratory species and listed marine species in the area if:
 - (a) the Minister is satisfied that the area is of importance for the conservation of biodiversity; and
 - (b) the area is not covered by a plan that:
 - (i) has an object (whether express or implied) of either protecting the environment or promoting the conservation of biodiversity; and
 - (ii) is in force under a law of the Commonwealth.
- (2) A Commonwealth agency must provide all reasonable assistance in connection with the preparation of a survey if:
 - (a) the survey is to cover a Commonwealth marine area; and
 - (b) the agency has an interest in the area.
- (3) For the purposes of paragraph (2)(b), a Commonwealth agency has an interest in a Commonwealth marine area if the agency:
 - (a) has a legal or equitable interest in the area; or
 - (b) occupies the area; or
 - (c) has administrative responsibilities relating to the area or to actions taken in the area.

174 Inventories and surveys to be updated

The Minister must take reasonable steps to ensure that the inventories and surveys prepared under this Division are maintained in an up-to-date form.

Division 2—Bioregional 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;
 - (ba) heritage values of places;
 - (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.
- (4A) A bioregional plan prepared under subsection (1) or (2) is not a legislative instrument.
- (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.

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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 legislative instrument, establish a list of threatened species divided into the following categories:
 - (a) extinct;
 - (b) extinct in the wild;
 - (c) critically endangered;
 - (d) endangered;
 - (e) vulnerable;
 - (f) conservation dependent.
- (2) The list, as first established, must contain only the species contained in Schedule 1 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.
- (3) The Minister must include:
 - (a) in the extinct category of the list, as first established, only the species mentioned in subsection (2) that were listed as presumed extinct; and
 - (b) in the endangered category of the list, as first established, only the native species mentioned in subsection (2) that were listed as endangered; and
 - (c) in the vulnerable category of the list, as first established, only the species mentioned in subsection (2) that were listed as vulnerable.

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- (4) If the Minister is satisfied that a species included in the list, as first established, in:
- (a) the extinct category; or
 - (b) the endangered category; or
 - (c) the vulnerable category;
- is not eligible to be included in that or any other category, or is eligible to be, or under subsection 186(3), (4) or (5) can be, included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.

179 Categories of threatened species

- (1) A native species is eligible to be included in the *extinct* category at a particular time if, at that time, there is no reasonable doubt that the last member of the species has died.
- (2) A native species is eligible to be included in the *extinct in the wild* category at a particular time if, at that time:
- (a) it is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; or
 - (b) it has not been recorded in its known and/or expected habitat, at appropriate seasons, anywhere in its past range, despite exhaustive surveys over a time frame appropriate to its life cycle and form.
- (3) A native species is eligible to be included in the *critically endangered* category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.
- (4) A native species is eligible to be included in the *endangered* category at a particular time if, at that time:
- (a) it is not critically endangered; and
 - (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

- (5) A native species is eligible to be included in the **vulnerable** category at a particular time if, at that time:
- (a) it is not critically endangered or endangered; and
 - (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.
- (6) A native species is eligible to be included in the **conservation dependent** category at a particular time if, at that time:
- (a) the species is the focus of a specific conservation program the cessation of which would result in the species becoming vulnerable, endangered or critically endangered; or
 - (b) the following subparagraphs are satisfied:
 - (i) the species is a species of fish;
 - (ii) the species is the focus of a plan of management that provides for management actions necessary to stop the decline of, and support the recovery of, the species so that its chances of long term survival in nature are maximised;
 - (iii) the plan of management is in force under a law of the Commonwealth or of a State or Territory;
 - (iv) cessation of the plan of management would adversely affect the conservation status of the species.
- (7) In subsection (6):
- fish** includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

180 Native species of marine fish

- (1) A native species of marine fish is eligible to be included in a category mentioned in a paragraph of subsection 178(1) at a particular time if, at that time, the species meets the prescribed criteria for that category.

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- (2) A subsection of section 179 referring to a category (the *relevant category*) does not apply to a native species of marine fish if regulations are in force for the purposes of subsection (1) of this section prescribing criteria for the relevant category.

181 Listing of threatened ecological communities

- (1) The Minister must, by legislative instrument, establish a list of threatened ecological communities divided into the following categories:
- (a) critically endangered;
 - (b) endangered;
 - (c) vulnerable.
- (2) Subject to subsection (3), the Minister must not include an ecological community in a particular category of the list, as first established, unless satisfied that the ecological community is eligible to be included in that category when the list is first published.
- (3) The list, as first established, must contain only the ecological communities listed in Schedule 2 to the *Endangered Species Protection Act 1992* immediately before the commencement of this Act, and they must be listed in the endangered category.
- (4) If the Minister is satisfied that an ecological community included in the endangered category of the list, as first established under subsection (3), is not eligible to be included in that or any other category, or is eligible to be included in another category, the Minister must, within 6 months after the commencement of this Act, amend the list accordingly in accordance with this Subdivision.
- (5) To avoid doubt, the instrument first establishing the list under subsection (1) is not taken to have been a legislative instrument.

Note: When the list was first established, it was required to be established by instrument published in the Gazette.

182 Critically endangered, endangered and vulnerable communities

- (1) An ecological community is eligible to be included in the ***critically endangered*** category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.
- (2) An ecological community is eligible to be included in the ***endangered*** category at a particular time if, at that time:
 - (a) it is not critically endangered; and
 - (b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.
- (3) An ecological community is eligible to be included in the ***vulnerable*** category at a particular time if, at that time:
 - (a) it is not critically endangered nor endangered; and
 - (b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.

183 Listing of key threatening processes

- (1) The Minister must, by legislative instrument, establish a list of threatening processes that are key threatening processes.
- (2) The list, as first established, must contain only the key threatening processes contained in Schedule 3 to the *Endangered Species Protection Act 1992*, as in force immediately before the commencement of this Act.

184 Minister may amend lists

Subject to this Subdivision, the Minister may, by legislative instrument, amend a list referred to in section 178, 181 or 183 by:

- (a) including items in the list in accordance with Subdivision AA; or

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- (aa) including items in the list in accordance with subsection 186(3), (4) or (5); or
- (b) deleting items from the list; or
- (c) in the case of the list referred to in section 178 or 181—transferring items from one category in the list to another category in the list in accordance with Subdivision AA; or
- (d) correcting an inaccuracy or updating the name of a listed threatened species or listed threatened ecological community.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

186 Amending list of threatened native species

Including native species in a category

- (1) Subject to subsections (3), (4) and (5), the Minister must not include (whether as a result of a transfer or otherwise) a native species in a particular category unless satisfied that the native species is eligible to be included in that category.
- (2) In deciding whether to include a native species in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
 - (a) whether the native species is eligible to be included in that category; or
 - (b) the effect that including the native species in that category could have on the survival of the native species.

Deleting native species from a category

- (2A) The Minister must not delete (whether as a result of a transfer or otherwise) a native species from a particular category unless satisfied that:
 - (a) the native species is no longer eligible to be included in that category; or

- (b) the inclusion of the native species in that category is not contributing, or will not contribute, to the survival of the native species.
- (2B) In deciding whether to delete a native species from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
- (a) whether the native species is eligible to be included in that category; or
 - (b) the effect that the inclusion of the native species in that category is having, or could have, on the survival of the native species.

Including similar species to an eligible species

- (3) The Minister may include a native species in the critically endangered category if satisfied that:
- (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(3)) that it is difficult to differentiate between the 2 species; and
 - (b) this difficulty poses an additional threat to the last-mentioned species; and
 - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as critically endangered.
- (4) The Minister may include a native species in the endangered category if satisfied that:
- (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(4)) that it is difficult to differentiate between the 2 species; and
 - (b) this difficulty poses an additional threat to the last-mentioned species; and
 - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as endangered.

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- (5) The Minister may include a native species in the vulnerable category if satisfied that:
- (a) it so closely resembles in appearance, at any stage of its biological development, a species that is eligible to be included in that category (see subsection 179(5)) that it is difficult to differentiate between the 2 species; and
 - (b) this difficulty poses an additional threat to the last-mentioned species; and
 - (c) it would substantially promote the objects of this Act if the first-mentioned species were regarded as vulnerable.

187 Amending list of ecological communities

Including ecological communities in a category

- (1) The Minister must not include (whether as a result of a transfer or otherwise) an ecological community in a particular category unless satisfied that the ecological community is eligible to be included in that category.
- (2) In deciding whether to include an ecological community in a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
- (a) whether the ecological community is eligible to be included in that category; or
 - (b) the effect that including the ecological community in that category could have on the survival of the ecological community.

Deleting ecological communities from a category

- (3) The Minister must not delete (whether as a result of a transfer or otherwise) an ecological community from a particular category unless satisfied that:
- (a) the ecological community is no longer eligible to be included in that category; or

- (b) the inclusion of the ecological community in that category is not contributing, or will not contribute, to the survival of the ecological community.
- (4) In deciding whether to delete an ecological community from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to:
 - (a) whether the ecological community is eligible to be included in that category; or
 - (b) the effect that the inclusion of the ecological community in that category is having, or could have, on the survival of the ecological community.

188 Amending list of key threatening processes

- (1) The Minister must not add a threatening process to the list unless satisfied that it is eligible to be treated as a key threatening process.
- (2) The Minister must not delete a threatening process from the list unless 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.
- (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.

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189 Minister must consider advice from Scientific Committee

- (1) In deciding whether to make an amendment covered by paragraph 184(1)(aa), (b) or (d), the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.
- (1A) Subsection (1) has effect subject to section 192.
- (1B) If advice from the Scientific Committee for the purposes of subsection (1) is to the effect that a particular native species, or a particular ecological community, is eligible to be included in the relevant list in a particular category, the advice must also contain:
- (a) a statement that sets out:
 - (i) the grounds on which the species or community is eligible to be included in the category; and
 - (ii) the main factors that are the cause of it being so eligible; and
 - (b) either:
 - (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or
 - (ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community; and
 - (c) a recommendation on the question whether there should be a recovery plan for the species or community.
- (2) In preparing advice under subsection (1), the Scientific Committee may obtain advice from a person with expertise relevant to the subject matter of the proposed amendment.
- (3) In preparing advice for a proposed amendment to delete an item:
- (a) included in a category of a list referred to in section 178 or 181; and
 - (b) that had not been included in that category in accordance with subsection 186(3), (4) or (5);

the only matters the Scientific Committee may consider are matters relating to:

- (c) the survival of the native species or ecological community concerned; or
 - (d) the effect that the inclusion in the list of the native species or ecological community concerned is having, or could have, on the survival of that native species or ecological community.
- (3A) In preparing advice for a proposed amendment to:
- (a) include a native species in a category of the list referred to in section 178 in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species; or
 - (b) delete a native species from a category of the list referred to in section 178 that had been included in that category in accordance with subsection 186(3), (4) or (5) because of the species' resemblance to another species;

the only matters the Scientific Committee may consider are matters relating to:

- (c) the survival of either species; or
- (d) the effect that the inclusion in the list of the first-mentioned species is having, or could have, on the survival of either species.

189A Certain information may be kept confidential

- (1) This section applies if the Minister considers that the survival of a native species or ecological community could be threatened by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:
 - (a) the precise location of the species in the wild, or of the community;
 - (b) any other information about the species or community.
- (2) It is sufficient compliance with this Act if only a general description of the location of the species or community is included

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in an instrument or other document created for the purposes of this Act.

189B Disclosure of Scientific Committee's assessments and advice

- (1) A member of the Scientific Committee has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Committee or another member of the Committee:
 - (a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;
 - (b) advice under section 189 concerning an amendment covered by subsection 189(1) or any information relating to the advice.
- (2) However:
 - (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to an item does not exist after:
 - (i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 in relation to the item; or
 - (ii) the Minister decides under paragraph 194Q(1)(b) not to include the item in a list referred to in section 178, 181 or 183; and
 - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to an amendment does not exist after:
 - (i) registration under Division 3 of Part 4 of the *Legislative Instruments Act 2003* of an instrument made under section 189 relating to the amendment; or
 - (ii) the Minister decides under this Subdivision not to remove the item from a list referred to in section 178, 181 or 183.

- (3) Subsection (1) does not apply to a disclosure of particular information if:
- (a) the Chair of the Scientific Committee requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and
 - (b) the Minister gives that permission; and
 - (c) the disclosure is made to that person (or a person within that group).
- (4) After a member of the Scientific Committee has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 194N in relation to whether an item is eligible for inclusion (whether as a result of a transfer or otherwise) in a list referred to in section 178, 181 or 183; or
 - (b) advice under section 189 concerning an amendment covered by subsection 189(1);
- the member must give a copy of the assessment or advice to anyone who asks for it.
- (5) If:
- (a) a member of the Scientific Committee proposes to give a person under subsection (4):
 - (i) a copy of an assessment relating to an item concerning a native species or ecological community; or
 - (ii) a copy of advice relating to an amendment concerning a native species or ecological community; and
 - (b) the member is aware that, under section 189A, it would be sufficient compliance with this Act if the copy included only a general location of the species or community;
- the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

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190 Scientific Committee may provide advice about species or communities becoming threatened

- (1) If the Scientific Committee is of the opinion that a native species or ecological community is not eligible to be included in any category of the list mentioned in section 178 or 181, the Committee may give advice to the Minister concerning any action that is necessary to prevent the species or community becoming threatened.
- (2) The Minister is to have regard to any advice given under subsection (1) in performing any function, or exercising any power, under this Act relevant to the species or community.

192 Rediscovery of threatened species that were extinct

- (1) If the Minister is satisfied that a native species that is listed in the extinct category has been definitely located in nature since it was last listed as extinct, the Minister may, under section 184, transfer the species from the extinct category to another category without considering advice from the Scientific Committee.
- (2) Subsection (1) does not prevent the Minister from making such an amendment after having considered advice from the Scientific Committee.

193 Species posing a serious threat to human health

- (1) If the Minister is satisfied that a native species poses a serious threat to human health, the Minister may, by legislative instrument, determine that the species is not appropriate for inclusion in any of the categories of the list referred to in section 178.
- (2) While the determination is in force, the species is not to be added to that list.
- (4) The Minister must cause a notice summarising the information contained in an instrument to be published in accordance with the regulations (if any).

194 Lists must be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the lists referred to in sections 178, 181 and 183 are available for free to the public on request; and
- (b) up-to-date copies of the lists are available on the internet.

Note: The copies of the lists made publicly available may not contain certain information kept confidential under section 189A.

Subdivision AA—The nomination and listing process

194A Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for including an item in a list referred to in section 178, 181 or 183, or transferring an item from one category in one of those lists to another category in the list.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 194C).

The usual process involves the following steps for each assessment period for a list:

- (a) the Minister may determine conservation themes (this step is optional) (see section 194D);
- (b) the Minister invites people to nominate items for inclusion in the list referred to in section 178, 181 or 183, and gives the nominations to the Scientific Committee (see sections 194E and 194F);
- (c) the Scientific Committee prepares, and gives to the Minister, a list of items (which will mostly be

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- items that have been nominated) that it thinks should be assessed (see sections 194G to 194J);
- (d) the Minister finalises the list of items that are to be assessed (see sections 194K and 194L);
 - (e) the Scientific Committee invites people to make comments about the item in the finalised list (see section 194M);
 - (f) the Scientific Committee assesses the item in the finalised list, and gives the assessments to the Minister (see sections 194N and 194P);
 - (g) the Minister decides whether an item that has been assessed should be included in the list referred to in section 178, 181 or 183 (see section 194Q).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

194B Definitions

(1) In this Subdivision:

assessment period has the meaning given by subsection 194C(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 194G(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 194K(4).

includes has a meaning affected by subsection (2).

proposed priority assessment list for an assessment period has the meaning given by subsection 194G(1).

Subdivision A List means a list referred to in section 178, 181 or 183.

- (2) A reference in this Subdivision to including an item in a list referred to in section 178 or 181 includes a reference to transferring the item from one category in the list to another category in the list.

194C Meaning of *assessment period*

- (1) For the purposes of this Subdivision, each of the following is an *assessment period* for a Subdivision A List:
- (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph in relation to the Subdivision A List;
 - (b) each period of 12 months starting on an anniversary of the day so determined.
- (2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.
- (3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

194D Minister may determine conservation themes for an *assessment period*

- (1) Before the Minister invites nominations for an assessment period for a Subdivision A List under section 194E, the Minister may determine one or more conservation themes that the Minister considers should be given priority in relation to the assessment period for the Subdivision A List.
- (2) Without limiting subsection (1), the Minister may determine as a conservation theme that priority should be given to the conservation of:

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- (a) particular groups of species; or
 - (b) particular species; or
 - (c) particular regions of Australia.
- (3) The Minister may request advice from the Scientific Committee for the purpose of making a determination under subsection (1), and may have regard to any advice the Committee provides in response to the request.
- (4) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

194E Minister to invite nominations for each assessment period

- (1) Before the start of each assessment period for a Subdivision A List, the Minister must publish a notice inviting people to nominate items for inclusion in the Subdivision A List.

Note: Nominations can be for the transfer of an item already on a list covered by section 178 or 181 from one category in the list to another category in the list (see subsection 194B(2)).

- (2) A notice under subsection (1):
- (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must invite people to nominate, to the Minister, items for inclusion in the Subdivision A List; and
 - (c) must identify the assessment period to which the notice relates; and
 - (d) must specify a date (the *cut-off date*) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
 - (f) may also include:

- (i) information related to any conservation themes that the Minister has determined under section 194D should be given priority in relation to the assessment period for the Subdivision A List; and
 - (ii) any other information that the Minister considers appropriate.
- (3) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making nominations;
 - (c) what information is to be included in a nomination.

194F Minister to give nominations to Scientific Committee

Nominations in relation to first assessment period

- (1) Within 30 business days after the cut-off date specified in the notice under subsection 194E(1) for the first assessment period, the Minister must give the Scientific Committee the nominations that the Minister:
- (a) had received before the end of that cut-off date; and
 - (b) had not already forwarded to the Scientific Committee, under section 191 (as in force before the commencement of this section), to assess; and
 - (c) had not already rejected under section 191 (as in force before the commencement of this section); and
 - (d) does not reject under subsection (3).

Nominations in relation to later assessment periods

- (2) Within 30 business days after the cut-off date (the **current cut-off date**) specified in the notice under subsection 194E(1) for an assessment period (other than the first) for a Subdivision A List, the Minister must give the Scientific Committee the nominations that were received by the Minister in the period:
- (a) starting immediately after the end of the cut-off date specified in the notice under subsection 194E(1) for the

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immediately preceding assessment period for the Subdivision A List; and

- (b) ending at the end of the current cut-off date for the Subdivision A List;

other than any such nominations that the Minister has rejected under subsection (3).

Minister may reject nominations

- (3) The Minister may, in writing, reject a nomination if the Minister considers that:
- (a) the nomination is vexatious, frivolous or not made in good faith; or
 - (b) the Minister considers that regulations referred to in paragraph 194E(3)(b) or (c) have not been complied with in relation to the nomination.
- (4) If a nomination is rejected under paragraph (3)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

- (5) In this section:

nomination means a nomination of an item for inclusion in a Subdivision A List.

194G Scientific Committee to prepare proposed priority assessment list

- (1) Within 40 business days after the Scientific Committee receives the nominations as required by subsection 194F(1) in relation to an assessment period for a Subdivision A List, the Committee must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period for the Subdivision A List.

- (2) The proposed priority assessment list for the Subdivision A List is to consist of such of the items that are eligible for assessment consideration in relation to the assessment period for the Subdivision A List as the Scientific Committee considers it appropriate to include in the proposed priority assessment list, having regard to:
- (a) any conservation themes determined by the Minister under section 194D in relation to the assessment period for the Subdivision A List; and
 - (b) the Committee's own views about what should be given priority in relation to the assessment period for the Subdivision A List; and
 - (c) the Committee's capacity to make assessments under this Division while still performing its other functions; and
 - (d) any other matters that the Committee considers appropriate.
- (3) An item is *eligible for assessment consideration* in relation to the assessment period for a Subdivision A List if:
- (a) the item has been nominated by a nomination referred to in subsection (1); or
 - (b) the Committee itself wishes to nominate the item for inclusion in the Subdivision A List; or
 - (c) the item was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) for the Subdivision A List but was not included in the finalised priority assessment list for that assessment period for the Subdivision A List.
- (4) Without limiting the generality of the Scientific Committee's discretion under subsection (2), the Committee does not have to include in the proposed priority assessment list an item that has been nominated if the Committee considers that:
- (a) if the item is not on the Subdivision A List concerned—it is unlikely that the item is eligible to be included in the Subdivision A List; or
 - (b) if the nomination is for the transfer of the item to another category in the Subdivision A List concerned—it is unlikely

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that the item is eligible to be included in that other category of the Subdivision A List.

- (5) For the purposes of subsection (4), the Committee is not required to have regard to any information beyond the information that was included in the nomination.
- (6) The proposed priority assessment list is not a legislative instrument.

194H Matters to be included in proposed priority assessment list

- (1) The proposed priority assessment list for an assessment period for a Subdivision A List is to include, for each item in the proposed priority assessment list:
 - (a) a description of the item; and
 - (b) an assessment completion time; and
 - (c) any other information required by the regulations.
- (2) The assessment completion time for an item must be either:
 - (a) a time that is at or before the end of the assessment period for the proposed priority assessment list; or
 - (b) if the Scientific Committee considers it likely that making an assessment in relation to the item will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period for the proposed priority assessment list).

194J Statement to be given to Minister with proposed priority assessment list

- (1) When the Scientific Committee gives the Minister the proposed priority assessment list for an assessment period for a Subdivision A List, the Committee must also give the Minister a statement setting out such information as the Committee considers appropriate relating to:

- (a) for each item that is included in the proposed priority assessment list—why the Committee included the item in the list; and
 - (b) for each item that is not included in the proposed priority assessment list but that was eligible for assessment consideration because of paragraph 194G(3)(a) or (c)—why the Committee did not include the item in the proposed priority assessment list.
- (2) The statement must also identify, as items nominated by the Scientific Committee, any items that are included in the proposed priority assessment list because the Committee itself wishes to nominate them (see paragraph 194G(3)(b)).

194K The finalised priority assessment list

- (1) Within 20 business days after the Minister, under section 194G, receives the proposed priority assessment list for an assessment period for a Subdivision A List, the Minister may, in writing, make changes to the proposed priority assessment list as mentioned in subsection (2).
- (2) The changes the Minister may make are as follows:
 - (a) including an item in the proposed priority assessment list (and also including the matters referred to in subsection 194H(1));
 - (b) omitting an item from the proposed priority assessment list (and also omitting the matters referred to in subsection 194H(1));
 - (c) changing the assessment completion time for an item in the proposed priority assessment list;
 - (d) any other changes of a kind permitted by the regulations.
- (3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.
- (4) At the end of the period of 20 business days referred to in subsection (1), the proposed priority assessment list, as changed (if

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at all) by the Minister, becomes the *finalised priority assessment list* for the assessment period for the Subdivision A List.

- (5) The Minister must notify the Scientific Committee of all changes that the Minister makes to the proposed priority assessment list.
- (6) The finalised priority assessment list is not a legislative instrument.

194L Publication of finalised priority assessment list

- (1) The Scientific Committee must publish the finalised priority assessment list for an assessment period for a Subdivision A List on the internet.
- (2) The Scientific Committee must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

194M Scientific Committee to invite comments on items in finalised priority assessment list

- (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must publish a notice inviting people to make comments on the item.
- (2) The Scientific Committee may, under subsection (1), publish a single notice relating to all of the items on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the items.
- (3) A notice under subsection (1), in relation to an item or items:
 - (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
 - (b) must identify the item or items to which the notice relates; and
 - (c) if the Subdivision A List is the list referred to in section 178 or 181—must identify the category of the Subdivision A List in which the item or items are proposed to be included; and

- (d) must invite people to make comments, to the Scientific Committee, setting out:
 - (i) if the Subdivision A List is the list referred to in section 178 or 181—views about whether the item or items are eligible for inclusion in that category of the Subdivision A List; and
 - (ii) if the Subdivision A List is the list referred to in section 183—views whether the item or items are eligible for inclusion in the Subdivision A List; and
 - (iii) reasons supporting those views; and
 - (e) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
 - (f) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
 - (g) may also invite people to comment on other matters that the Scientific Committee considers appropriate; and
 - (h) may also include any other information that the Scientific Committee considers appropriate.
- (4) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

194N Scientific Committee to assess items on finalised priority assessment list and give assessments to Minister

- (1) In relation to each item included in the finalised priority assessment list for an assessment period for a Subdivision A List, the Scientific Committee must (by the time required by section 194P):
- (a) make a written assessment of:
 - (i) whether the item is eligible for inclusion in the Subdivision A List; and

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- (ii) if the Subdivision A List is the list referred to in section 178 or 181—the category of that List in which the item is eligible to be included; and
- (b) give to the Minister:
 - (i) the written assessment (or a copy of it); and
 - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).
- (2) In making an assessment in relation to an item, the Scientific Committee, subject to subsections (3) and (4):
 - (a) must take into account the comments the Committee receives in response to the notice under subsection 194M(1) in relation to the item; and
 - (b) may seek, and have regard to, information or advice from any source.
- (3) The Scientific Committee is not required to take a comment referred to in paragraph (2)(a) into account if:
 - (a) the Committee does not receive the comment until after the cut-off date specified in the notice under subsection 194M(1) in relation to the item; or
 - (b) the Committee considers that regulations referred to in paragraph 194M(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the only matters the Scientific Committee may consider are matters relating to:
 - (a) whether the item is eligible for inclusion in the Subdivision A List; or
 - (b) the effect that including the item in that List could have on the survival of the native species or ecological community concerned.

194P Time by which assessments to be provided to Minister

- (1) Subsection 194N(1) must be complied with, in relation to an item included in the finalised priority assessment list for an assessment
-

period for a Subdivision A List, by the assessment completion time specified in the finalised priority assessment list for the item, or by that time as extended under this section.

- (2) The Scientific Committee may request the Minister to extend the assessment completion time (or that time as previously extended) if the Committee considers that it needs more time to make the assessment.
- (3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.
- (4) An extension under subsection (3) must be made in writing.
- (5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

194Q Decision about inclusion of an item in the Subdivision A List

Minister to decide whether or not to include item

- (1) After receiving from the Scientific Committee an assessment under section 194N of an item, the Minister must:
 - (a) include the item in the Subdivision A List concerned; or
 - (b) in writing, decide not to include the item in the Subdivision A List concerned.
- Note 1: Under this subsection the Minister can transfer an item already on a Subdivision A List to a different category in the List (see subsection 194B(1)).
- Note 2: Sections 186, 187 and 188 contain rules about including items in a Subdivision A List.
- (2) If, under subsection (1), the Minister transfers an item to a category of the Subdivision A List, the Minister must at the same time

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delete the item from the category in which it was included before the transfer.

- (3) Subject to subsection (4), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (4) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (5) Particulars of an extension or further extension under subsection (4) must be published on the internet and in any other way required by regulations.
- (6) For the purpose of deciding what action to take under subsection (1) in relation to the item:
 - (a) the Minister must have regard to:
 - (i) the Scientific Committee's assessment of the item; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 194N(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include item

- (7) If the Minister includes the item in the Subdivision A List, he or she must, within a reasonable time:
 - (a) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person that the item has been included in the Subdivision A List; and
 - (b) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and
 - (c) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

Additional requirements if Minister decides not to include item

- (8) If the Minister decides not to include the item in the Subdivision A List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the internet; and
 - (b) if the item was nominated by a person in response to a notice under subsection 194E(1)—advise the person of the decision, and of the reasons for the decision.

194R Scientific Committee may obtain advice

In performing its functions under this Subdivision, the Scientific Committee may obtain advice from a person with expertise relevant to the inclusion of an item in a Subdivision A List.

194S Co-ordination with Australian Heritage Council—Committee undertaking assessment

- (1) This section applies if:
- (a) the Scientific Committee undertakes an assessment under this Subdivision; and
 - (b) before giving the assessment to the Minister, the Committee becomes aware that:
 - (i) the Australian Heritage Council is undertaking, or has undertaken, an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
 - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.

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- (3) Before the Scientific Committee gives an assessment to the Minister under this Subdivision, the Committee must comply with subsection (4) or (6).
- (4) If the Australian Heritage Council has not yet given the Minister an assessment that deals with that matter, the Scientific Committee must:
 - (a) give the Council a copy of the assessment that the Committee proposes to give to the Minister; and
 - (b) invite the Council to give the Committee its comments in relation to that matter; and
 - (c) take into account, in finalising the assessment that the Committee gives the Minister, any comments that the Council makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.
- (5) If the Scientific Committee gives the Australian Heritage Council a copy of a proposed assessment under paragraph (4)(a), the Committee must also give the Council a copy of the assessment that the Committee gives the Minister.
- (6) If:
 - (a) the Australian Heritage Council has already given the Minister an assessment that deals with that matter; and
 - (b) the Scientific Committee has been given a copy of that assessment;the Committee must take that assessment into account in finalising the assessment that the Committee gives the Minister.
- (7) If, under section 324JR, 324JS, 341JQ or 341JR, the Australian Heritage Council gives the Scientific Committee a proposed assessment, or an assessment, that deals with a particular matter because the Committee is undertaking an assessment that deals with that matter, a member of the Committee may discuss that matter with a member of the Council.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 189B.

194T Co-ordination with Australian Heritage Council—Committee given assessment to Minister

- (1) This section applies if:
 - (a) the Scientific Committee has given to the Minister an assessment under this Subdivision; and
 - (b) the Committee is or becomes aware that:
 - (i) the Australian Heritage Council is undertaking an assessment of a place under Subdivision BA or BB of Division 1A of Part 15 or under Subdivision BA or BB of Division 3A of Part 15; and
 - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) The Scientific Committee must, within 7 days after giving the assessment to the Minister, or becoming aware, as referred to in paragraph (1)(b):
 - (a) ensure the Australian Heritage Council is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
 - (b) give the Council a copy of the assessment.
- (3) A member of the Scientific Committee may discuss the matter with a member of the Australian Heritage Council.
- (4) Subsections (2) and (3) have effect despite section 189B.

Subdivision B—Permit system

195 Subdivision does not apply to cetaceans

This Subdivision does not apply to a member of a listed threatened species that is a cetacean.

Section 196

196 Killing or injuring member of listed threatened species or community

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a species or a member of an ecological community; and
 - (c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
 - (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

196A Strict liability for killing or injuring member of listed threatened species or community

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a native species or a member of an ecological community; and
 - (c) the member is a member of a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
 - (d) the member is in or on a Commonwealth area.

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Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

196B Taking etc. member of listed threatened species or community

- (1) A person commits an offence if:

- (a) the person takes, trades, keeps or moves a member of a species or a member of an ecological community; and
- (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
- (c) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

Section 196C

196C Strict liability for taking etc. member of listed threatened species or community

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps or moves a member of a native species or a member of an ecological community; and
 - (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
 - (c) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

196D Trading etc. member of listed threatened species or community taken in Commonwealth area

- (1) A person commits an offence if:
- (a) the person trades, keeps or moves a member of a species or a member of an ecological community; and
 - (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
 - (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;

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- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

196E Strict liability for trading etc. member of listed threatened species or community taken in Commonwealth area

- (1) A person commits an offence if:
- (a) the person trades, keeps or moves a member of a native species or a member of an ecological community; and
 - (b) the member is a member of a listed threatened species (except a conservation dependent species) or a listed threatened ecological community; and
 - (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 196F.

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

196F Aggravated offence—member of listed threatened species that is a dugong or turtle

- (1) For the purposes of this Subdivision, an offence against section 196, 196A, 196B, 196C, 196D or 196E (the *underlying*

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offence) is an *aggravated offence* if the member to which the underlying offence relates is:

- (a) a member of a listed threatened species; and
- (b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(g) and (h), and on the day this section commenced, these species were listed threatened species.

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) Strict liability applies to the physical elements of circumstance, that the member is:
 - (a) a member of a listed threatened species; and
 - (b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

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

197 Certain actions are not offences

Sections 196, 196A, 196B, 196C, 196D, 196E and 207B do not apply to:

- (a) an action authorised by a permit that was issued under section 201 and is in force; or
- (b) an action provided for by, and done in accordance with, a recovery plan in force under Division 5; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2); or
- (d) an action that:
 - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and
 - (ii) is taken in accordance with a management arrangement or authorisation process that is an accredited

- management arrangement or an accredited authorisation process for the purposes of the declaration; or
- (da) an action that:
- (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and
 - (ii) is taken in accordance with the bioregional plan to which the declaration relates; or
- (db) in the case of sections 196B, 196C, 196D and 196E—an action that is trading, keeping or moving a member of a listed threatened species or a listed ecological community, if:
- (i) when the member of the species or community was taken, the species or community was not a listed threatened species or a listed threatened ecological community, as the case requires; and
 - (ii) the trading, keeping or moving of the member of the species or community occurs during the period of 6 months that started when the species or community became a listed threatened species or a listed threatened ecological community, as the case requires; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed threatened species or listed threatened ecological community; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

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- (j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A; or
- (l) an action, to the extent that it is covered by subsection 517A(7); or
- (m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:
 - (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
 - (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
 - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
 - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:
 - (i) obtained from an area that is not a Commonwealth area; or
 - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p).

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

198 Operation of sections 18 and 18A not affected

To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E, 196F and 197 do not affect the operation of section 18 or 18A.

199 Failing to notify taking of listed threatened species or listed ecological community

- (1) This section applies to an action taken by a person if all of the following conditions are met:
- (a) the person's action either:
 - (i) results in the death or injury of a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area; or
 - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area;
 - (b) the person's action does not constitute an offence against section 196, 196A, 196B, 196C, 196D or 196E, otherwise than because of paragraph 197(db);
 - (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 197 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 196, 196A, 196B, 196C, 196D or 196E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 204 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
- (a) that the action was taken; and

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- (b) of other particulars (if any) about the action that are prescribed by the regulations.
- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply if:
- (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
 - (b) the action is in a class of actions:
 - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
 - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.
- Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.
- (5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
- (a) fails to do an act; and
 - (b) the failing to do the act results in a contravention of subsection (2).

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

200 Application for permits

- (1) A person may, in accordance with the regulations, apply to the 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 to be published on the internet:

- (a) details of the application; and
- (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

201 Minister may issue permits

- (1) Subject to subsections (3) and (3A), 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

Section 202

- (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species or listed threatened ecological community concerned; or
 - (d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed threatened species or listed threatened ecological community concerned.
- (3A) The Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the listed threatened species or listed threatened ecological community concerned.
- (4) In this Act:
- indigenous tradition* means the body of traditions, observances, customs and beliefs of indigenous persons generally or of a particular group of indigenous persons.
- (5) In making a decision on the application, the Minister must consider the comments (if any) received:
- (a) in response to the invitation under subsection 200(3) for anyone to give the Minister comments on whether the permit should be issued; and
 - (b) within the period specified in the invitation.

202 Conditions of permits

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
 - (a) vary or revoke a condition of a permit; or
 - (b) impose further conditions of a permit.
- (3) Without limiting subsections (1) and (2), conditions of a permit may include conditions stating the period within which the action specified in the permit may be taken.

203 Contravening conditions of a permit

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

204 Authorities under permits

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

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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

- (1) Subject to subsection (2), 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.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

207 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

Subdivision BA—Protecting critical habitat

207A Register of critical habitat

- (1) The Minister must 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.
- (1A) In considering whether to list habitat, the Minister must take into account the potential conservation benefit of listing the habitat.
- (1B) Subsection (1) does not limit the matters:
 - (a) that the Minister may take into account in considering whether to list habitat; or
 - (b) that the regulations may require or permit the Minister to take into account in considering whether to list habitat.
- (2) The regulations must require the Minister to consider scientific advice in identifying the habitat.
- (3) The register must be made available for public inspection in accordance with the regulations (if any).
- (3A) Particular material included in the register does not have to be made available for public inspection if the Minister considers that the interests of relevant landholders could be impeded or compromised by:
 - (a) the disclosure of the material; or
 - (b) without limiting paragraph (a)—the presence or actions of persons if the material were disclosed.
- (4) Habitat listed in the register in relation to a species or ecological community is **critical habitat** for the species or ecological community.

Section 207B

207B Offence of knowingly damaging critical habitat

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the person knows that the action significantly damages or will significantly damage critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
 - (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, regimes or policies

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
 - (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
 - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
 - (i) made by a State or self-governing Territory; and
 - (ii) in force under a law of the State or self-governing Territory; or
 - (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
 - (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;
- if the Minister is satisfied that:
- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed threatened species (other than conservation dependent species) are not killed or injured as a result of the fishing; and

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- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

- (2) An instrument under subsection (1) is not a legislative instrument.

208 Regulations

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed threatened species or listed threatened ecological communities killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed threatened species or listed threatened ecological communities may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed threatened species or listed threatened ecological communities; and
- (d) provide for the protection and conservation of listed threatened species or listed threatened ecological communities; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 2—Migratory species

Subdivision A—Listing

209 Listed migratory species

- (1) The Minister must:
 - (a) establish a list of migratory species for the purposes of this Act; and
 - (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3).
- (2) The Minister must establish the list within 30 days after the commencement of this Act.
- (3) The list must include:
 - (a) all migratory species that are:
 - (i) native species; and
 - (ii) from time to time included in the appendices to the Bonn Convention; and
 - (b) all migratory species from time to time included in annexes established under JAMBA and CAMBA; and
 - (c) all native species from time to time identified in a list established under, or an instrument made under, an international agreement approved by the Minister under subsection (4).

The list must not include any other species.
- (4) The Minister may, by legislative instrument, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of migratory species.
- (6) The Minister may correct an inaccuracy or update the name of a migratory species.

Section 210

- (7) The list of migratory species made under subsection (1), and any amendments to the list made under paragraph (1)(b) or subsection (6), are legislative instruments, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the list or any amendments.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the list or any amendments. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

- (8) In this Act:

migratory species has the meaning given by Article I of the Bonn Convention.

Subdivision B—Permit system

210 Subdivision does not apply to members of listed threatened species or cetaceans

This Subdivision does not apply to a member of a listed migratory species that is a member of a listed threatened species or a cetacean.

211 Killing or injuring member of listed migratory species

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a species; and
 - (c) the member is a member of a listed migratory species; and
 - (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Section 211A

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

211A Strict liability for killing or injuring member of listed migratory species

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a migratory species; and
 - (c) the member is a member of a listed migratory species; and
 - (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

211B Taking etc. member of listed migratory species

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps or moves a member of a species; and
 - (b) the member is a member of a listed migratory species; and
 - (c) the member is in or on a Commonwealth area.

Penalty:

Section 211C

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

211C Strict liability for taking etc. member of listed migratory species

- (1) A person commits an offence if:
 - (a) the person takes, trades, keeps or moves a member of a migratory species; and
 - (b) the member is a member of a listed migratory species; and
 - (c) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

211D Trading etc. member of listed migratory species taken in Commonwealth area

- (1) A person commits an offence if:
 - (a) the person trades, keeps or moves a member of a species; and
-

Section 211E

- (b) the member is a member of a listed migratory species; and
- (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area

- (1) A person commits an offence if:

- (a) the person trades, keeps or moves a member of a migratory species; and
- (b) the member is a member of a listed migratory species; and
- (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

Section 211F

211F Aggravated offence—member of listed migratory species that is a dugong or turtle

- (1) For the purposes of this Subdivision, an offence against section 211, 211A, 211B, 211C, 211D or 211E (the *underlying offence*) is an *aggravated offence* if the member to which the underlying offence relates is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(f), (g) and (h), and on the day this section commenced, these species were listed migratory species.

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) Strict liability applies to the physical element of circumstance, that the member is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

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

212 Certain actions are not offences

- (1) Sections 211, 211A, 211B, 211C, 211D and 211E do not apply to:
- (a) an action authorised by a permit that was issued under section 216 and is in force; or
 - (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made or adopted under Division 5 and in force; or
 - (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); or
 - (d) an action that:
 - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and
 - (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited

- management arrangement or an accredited authorisation process for the purposes of the declaration; or
- (da) an action that:
- (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and
 - (ii) is taken in accordance with the bioregional plan to which the declaration relates; or
- (db) in the case of sections 211B, 211C, 211D and 211E—an action that is trading, keeping or moving a member of a listed migratory species, if:
- (i) when the member of the species was taken, the species was not a listed migratory species; and
 - (ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed migratory species; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed migratory species; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A; or

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- (l) an action, to the extent that it is covered by subsection 517A(7); or
- (m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:
 - (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
 - (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
 - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
 - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:
 - (i) obtained from an area that is not a Commonwealth area; or
 - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p); or
- (r) an action that is taken in the course of recreational fishing and the action:
 - (i) consists of, or involves, taking, trading, keeping or moving; or
 - (ii) results in the death or injury of;
a shortfin mako shark, a longfin mako shark or a porbeagle shark.

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

- (2) For the purposes of paragraph (1)(r), **recreational fishing** includes (but is not limited to) the following types of fishing:
- (a) fishing from a charter boat (within the meaning of the *Fisheries Management Act 1991*), including fishing by the person in charge of the boat, the crew of the boat or any other person on the boat;
 - (b) fishing in a fishing competition (whether or not in a professional capacity);
 - (c) fishing that is undertaken primarily for:
 - (i) inclusion on a website, or in a film, video, television program or radio program; or
 - (ii) description or representation in a magazine, newspaper, book or other such document.

213 Operation of sections 20 and 20A not affected

To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E, 211F and 212 do not affect the operation of section 20 or 20A.

214 Failing to notify taking etc. of listed migratory species

- (1) This section applies to an action taken by a person if all of the following conditions are met:
- (a) the person's action either:
 - (i) results in the death or injury of a member of a listed migratory species that is in or on a Commonwealth area; or
 - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed migratory species that is in or on a Commonwealth area;
 - (b) the person's action does not constitute an offence against section 211, 211A, 211B, 211C, 211D or 211E, otherwise than because of paragraph 212(db) or (r);
 - (c) the person's action is not an action that the person was authorised by a permit to take.

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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 if:

- (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
- (b) the action is in a class of actions:
 - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
 - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

- (a) fails to do an act; and
- (b) the failing to do the act results in a contravention of subsection (2).

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

215 Application for permits

- (1) A person may, in accordance with the regulations, apply to the 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).
- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:
 - (a) details of the application; and
 - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

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:

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- (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 the comments (if any) received:
- (a) in response to the invitation under subsection 215(3) for anyone to give the Minister comments on whether the permit should be issued; and
 - (b) within the period specified in the invitation.

217 Conditions of permits

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The 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 commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

219 Authorities under permits

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the 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.

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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

- (1) Subject to subsection (2), 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.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

222 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

222A Minister may accredit plans, regimes or policies

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
 - (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

- (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
 - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
 - (i) made by a State or self-governing Territory; and
 - (ii) in force under a law of the State or self-governing Territory; or
 - (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
 - (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;
- if the Minister is satisfied that:
- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and
 - (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

- (2) An instrument under subsection (1) is not a legislative instrument.

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223 Regulations

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed migratory species killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed migratory species may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed migratory species; and
- (d) provide for the protection and conservation of listed migratory species; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 3—Whales and other cetaceans

Subdivision A—Application of Division

224 Application of Division

- (1) This Division extends to acts, omissions, matters and things outside Australia (whether in a foreign country or not), except so far as the contrary intention appears.
- (2) A provision of this Division that has effect in relation to a place outside the outer limits of the Australian Whale Sanctuary applies only in relation to:
 - (a) Australian nationals; and
 - (b) Australian permanent residents; and
 - (d) the Commonwealth; and
 - (e) Commonwealth agencies; and
 - (f) Australian aircraft; and
 - (g) Australian vessels; and
 - (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).
- (3) This Division applies to a vessel as if it were an Australian vessel if:
 - (a) the vessel is a boat within the meaning of the *Fisheries Management Act 1991*; and
 - (b) a declaration, under subsection 4(2) of that Act, that the vessel is taken to be an Australian boat is in force.

Subdivision B—Australian Whale Sanctuary and important cetacean habitat areas

225 Australian Whale Sanctuary

- (1) The Australian Whale Sanctuary is established in order to give formal recognition of the high level of protection and management

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afforded to cetaceans in Commonwealth marine areas and prescribed waters.

(2) The *Australian Whale Sanctuary* comprises:

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

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

226 Prescribed waters

- (1) The regulations may declare the whole, or a specified part, of the coastal waters of a State or the Northern Territory to be prescribed waters.
- (2) Before the Governor-General makes a regulation under subsection (1), the Minister must obtain the agreement of the relevant Minister of the State or the Northern Territory.

227 Coastal waters

- (1) Section 15B of the *Acts Interpretation Act 1901* does not apply in relation to this Division.
 - (2) The **coastal waters** of a State or the Northern Territory are:
 - (a) the part or parts of the territorial sea that are:
 - (i) within 3 nautical miles of the baseline of the territorial sea; and
 - (ii) adjacent to that State or Territory; and
 - (b) any marine or tidal waters that are inside that baseline and are adjacent to that State or Territory but are not within the limits of a State or that Territory.
- Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.
- (3) Any part of the territorial sea that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (2), taken to be adjacent to New South Wales.

228 Minister may make declaration for coastal waters

- (1) If the Minister is satisfied that a law of a State or the Northern Territory adequately protects cetaceans in the coastal waters, or a part of the coastal waters, of the State or Territory, the Minister may make a declaration accordingly, whether or not those coastal waters or that part are prescribed waters.
- (2) A declaration must be in writing.

228A Important cetacean habitat areas

- (1) The Minister may, by legislative instrument, declare a specified area in the Australian Whale Sanctuary to be an important cetacean habitat area.
- (2) The regulations may specify criteria to be applied by the Minister in determining whether to declare an area to be an important

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cetacean habitat area. If regulations are made for the purposes of this section, the Minister may declare an area to be an important cetacean habitat area only if he or she is satisfied that the area meets the criteria prescribed by the regulations.

Subdivision C—Offences

229 Killing or injuring a cetacean

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a cetacean; and
 - (c) the cetacean is in:
 - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
 - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

- (2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

229A Strict liability for killing or injuring a cetacean

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a cetacean; and

- (c) the cetacean is in:
- (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
 - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229B Intentionally taking etc. a cetacean

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps, moves or interferes with a cetacean; and
 - (b) the cetacean is in:
 - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
 - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.
- (4) In this Act:

interfere with a cetacean includes harass, chase, herd, tag, mark or brand the cetacean.

trade a cetacean:

- (a) includes:
- (i) buy the cetacean, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
 - (ii) sell the cetacean, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or
 - (iii) cause or allow any of the acts referred to in subparagraph (i) or (ii) to be done; but
- (b) does not include export the cetacean from Australia or an external Territory or import it into Australia or an external Territory.

Note: For provisions relating to export or import, see Part 13A.

229C Strict liability for taking etc. a cetacean

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps, moves or interferes with a cetacean; and
 - (b) the cetacean is in:
 - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or

- (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a) and (b).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

229D Treating cetaceans

Treating unlawfully killed or taken cetaceans

- (1) A person commits an offence if:
- (a) the person treats a cetacean; and
 - (b) the cetacean has been:
 - (i) killed in contravention of section 229 or 229A; or
 - (ii) taken in contravention of section 229B or 229C.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

Treating unlawfully imported cetaceans

- (2A) A person commits an offence if:
- (a) the person treats a cetacean; and
 - (b) the cetacean has been unlawfully imported.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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

(3) In this Act:

treat a cetacean means divide or cut up, or extract any product from, the cetacean.

230 Possession of cetaceans

Possession of unlawfully killed cetaceans

(1) A person commits an offence if:

(a) the person has in his or her possession:

(i) a cetacean; or

(ii) a part of a cetacean; or

(iii) a product derived from a cetacean; and

(b) the cetacean has been:

(i) killed in contravention of section 229 or 229A; or

(ii) taken in contravention of section 229B or 229C.

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

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

Possession of unlawfully imported cetaceans

(3) A person commits an offence if:

(a) the person has in his or her possession:

(i) a cetacean; or

- (ii) a part of a cetacean; or
- (iii) a product derived from a cetacean; and
- (b) the cetacean, part or product, as the case may be, has been unlawfully imported.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

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

231 Certain actions are not offences

Sections 229, 229A, 229B, 229C, 229D and 230 do not apply to:

- (a) an action authorised by a permit that was issued under section 238 and is in force; or
- (aa) an action that is whale watching carried out in accordance with regulations referred to in paragraph 238(3)(c), but only if:
 - (i) the whale watching is not carried out for a commercial purpose; or
 - (ii) the whale watching is carried out in an area that is not an important cetacean habitat area; or
- (b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and in force; or
- (ba) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); or
- (bb) an action that:
 - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); and

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- (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or
- (bc) an action that:
 - (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7); and
 - (ii) is taken in accordance with the bioregional plan to which the declaration relates; or
- (c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean; or
- (d) an action that is reasonably necessary to prevent a risk to human health; or
- (e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (ga) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245; or
- (i) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (j) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or

- (k) an action that consists of the transit of a cetacean through a Commonwealth area in circumstances where the cetacean was:
- (i) obtained from an area that is not a Commonwealth area; or
 - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (ba), (bb), (bc), (ga), (h), (i) or (j).

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

232 Action to be taken on killing etc. cetaceans

- (1) This section applies to an action taken by a person if all of the following conditions are met:
- (a) the person's action:
 - (i) results in the injury or death of a cetacean, or consists of taking a cetacean, in the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters of a State or the Northern Territory for which a declaration under section 228 is in force) or in waters beyond the outer limits of the Australian Whale Sanctuary; or
 - (ii) consists of treating a cetacean killed, injured or taken in contravention of section 229, 229A, 229B or 229C;
 - (b) the person's action does not constitute an offence against section 229, 229A, 229B, 229C or 229D;
 - (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 231 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 229, 229A, 229B, 229C or 229D.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 241 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

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- (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 if:
- (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
 - (b) the action is in a class of actions:
 - (i) that are specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
 - (ii) that the agreement or arrangement provides are to be notified to the Secretary by the agency.
- Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.
- (5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
- (a) fails to do an act; and
 - (b) the failing to do the act results in a contravention of subsection (2).

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

Subdivision E—Miscellaneous offences

236 Offences relating to foreign whaling vessels

- (1) The master of a foreign whaling vessel commits an offence if the vessel is brought into a port in Australia or an external Territory and the master has not obtained the written permission of the Minister for the vessel to be brought into the port.

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

- (2) Subsection (1) is an offence of strict liability.

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

- (3) An offence against subsection (1) is punishable on conviction by a fine not exceeding 500 penalty units.

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

- (a) the vessel is brought into the port in accordance with a prescribed agreement between Australia and any other country or countries; or
- (b) the vessel is brought into the port under the direction of a person exercising powers under a law of the Commonwealth or of a State; or
- (c) an unforeseen emergency renders it necessary to bring the vessel into the port in order to secure the safety of the vessel or human life.

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

- (5) In this Act:

foreign whaling vessel means a vessel, other than an Australian vessel, designed, equipped or used for:

- (a) killing, taking, treating or carrying cetaceans; or
- (b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying cetaceans.

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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.
- (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 to be published on the internet:
 - (a) details of the application; and
 - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

238 Minister may issue permits

- (1) Subject to subsections (3) to (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 and 230.
- (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 (other than whale watching covered by paragraph 231(aa)) and:
 - (i) the whale watching is carried out in accordance with the regulations (if any) made for the purposes of this section; or
 - (ii) the whale watching will not adversely affect the conservation status of a species of cetacean or a population of that species, and is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean.
- (3AA) If the specified action would or could relate to a species of cetacean that is a listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species of cetacean.
- (3A) In making a decision on the application, the Minister must consider the comments (if any) received:
 - (a) in response to the invitation under subsection 237(3) for anyone to give the Minister comments on whether the permit should be issued; and
 - (b) within the period specified in the invitation.
- (4) The Minister must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.

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(5) In this Act:

whale watching means any activity conducted for the purpose of observing a cetacean, including but not limited to being in the water for the purposes of observing or swimming with a cetacean, or otherwise interacting with a cetacean.

239 Conditions of permits

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The 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 commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

241 Authorities under permits

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.

- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

242 Transfer of permits

On the application, in accordance with the regulations, of the holder of a permit, the 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

- (1) Subject to subsection (2), 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.

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- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

244 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

Subdivision G—Miscellaneous

245 Minister may accredit plans, regimes or policies

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
 - (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
 - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
 - (i) made by a State or self-governing Territory; and
 - (ii) in force under a law of the State or self-governing Territory; or
 - (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
 - (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and
- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

- (2) An instrument under subsection (1) is not a legislative instrument.

246 Vesting of whales in Commonwealth

(1) If:

(a) a cetacean is:

- (i) in the Australian Whale Sanctuary, other than the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force; or
- (ii) in waters beyond the outer limits of the Australian Whale Sanctuary; and

(a) a person kills, injures or takes the cetacean, whether or not in contravention of this Division;

the cetacean vests, by force of this section, in the Commonwealth.

- (2) The Commonwealth is not liable in any action, suit or proceedings in respect of any matter relating to a cetacean at any time before the taking of possession of the cetacean by the Commonwealth.

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247 Regulations

The regulations may:

- (a) provide for the transportation, treatment and disposal of cetaceans killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which cetaceans may be killed, taken or interfered with otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to cetaceans; and
- (d) provide for the protection and conservation of cetaceans; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

Division 4—Listed marine species

Subdivision A—Listing

248 Listed marine species

- (1) The Minister must, by legislative instrument, establish a list of marine species for the purposes of this Part.
- (2) The list, as first established, must contain only the following:
 - (a) all species in the Family Hydrophiidae (sea-snakes);
 - (b) all species in the Family Laticaudidae (sea-snakes);
 - (c) all species in the Family Otariidae (eared seals);
 - (d) all species in the Family Phocidae (“true” seals);
 - (e) all species in the Genus *Crocodylus* (crocodiles);
 - (f) all species in the Genus *Dugong* (dugong);
 - (g) all species in the Family Cheloniidae (marine turtles);
 - (h) the species *Dermochelys coriacea* (leatherback turtles);
 - (i) all species in the Family Syngnathidae (seahorses, sea-dragons and pipefish);
 - (j) all species in the Family Solenostomidae (ghost pipefish);
 - (k) all species in the Class Aves (birds) that occur naturally in Commonwealth marine areas.
- (3) The Minister must establish the list within 30 days after the commencement of this Act.
- (4) The Minister must cause a notice summarising the information contained in the instrument to be published in accordance with the regulations (if any).

249 Minister may amend list

- (1) Subject to this Subdivision, the Minister may, by legislative instrument, amend the list by:
 - (a) including or deleting items from the list; or

Section 250

- (b) correcting an inaccuracy or updating the name of a marine species.
- (2) Amendments of a list that delete items from the list take effect on the first day the amendments are no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.
- (3) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.
- (4) When an instrument is laid before each House of the Parliament in accordance with Part 2 of Chapter 3 of the *Legislation Act 2003*, the Minister must cause a statement to be laid before each House with the instrument explaining:
 - (a) in the case of an item that has been included in the list by the instrument—why the item was so included; or
 - (b) in the case of an item that has been deleted from the list by the instrument—why the item was so deleted.
- (5) The Minister must cause a notice summarising the information contained in an amendment under subsection (1) to be published in accordance with the regulations (if any).

250 Adding marine species to the list

- (1) The Minister must not add a marine species to the list unless:
 - (a) the Minister is satisfied that it is necessary to include the species in the list in order to ensure the long-term conservation of the species; and
 - (b) the species occurs naturally in a Commonwealth marine area.
- (2) Before adding a marine species to the list, the Minister must consult with each Minister who has an interest in a Commonwealth marine area where the species occurs naturally.

251 Minister must consider advice from Scientific Committee

- (1) In deciding whether to add an item to, or delete an item from, the list, the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the scientific aspects of the addition or deletion of the item concerned.
- (2) The Minister must:
 - (a) decide whether to add an item to, or delete an item from, the list; and
 - (b) if the Minister decides to add or delete the item—amend the list accordingly under subsection 249(1);within 90 days after receiving the Scientific Committee’s advice on the addition or deletion of the item.
- (3) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:
 - (a) is for the official purposes of the Scientific Committee; or
 - (b) relates to an addition or deletion included in an amendment of the list that has already been registered as a legislative instrument under the *Legislation Act 2003*.

Note: Amendments of the list to add or delete an item are legislative instruments (see section 249).

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.

Section 253

Subdivision B—Permit system

253 Subdivision does not apply to members of certain species and cetaceans

This Subdivision does not apply to a member of a listed marine species that is a member of a listed migratory species, a member of a listed threatened species or a cetacean.

254 Killing or injuring member of listed marine species

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action results in the death or injury of a member of a species; and
 - (c) the member is a member of a listed marine species; and
 - (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

254A Strict liability for killing or injuring member of listed marine species

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

Section 254B

- (b) the action results in the death or injury of a member of a marine species; and
- (c) the member is a member of a listed marine species; and
- (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

254B Taking etc. member of listed marine species

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps or moves a member of a species; and
 - (b) the member is a member of a listed marine species; and
 - (c) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

Section 254C

254C Strict liability for taking etc. member of listed marine species

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps or moves a member of a marine species; and
 - (b) the member is a member of a listed marine species; and
 - (c) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

254D Trading etc. member of listed marine species taken in Commonwealth area

- (1) A person commits an offence if:
- (a) the person trades, keeps or moves a member of a species; and
 - (b) the member is a member of a listed marine species; and
 - (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area

- (1) A person commits an offence if:
- (a) the person trades, keeps or moves a member of a marine species; and
 - (b) the member is a member of a listed marine species; and
 - (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

254F Aggravated offence—member of listed marine species that is a dugong or turtle

- (1) For the purposes of this Subdivision, an offence against section 254, 254A, 254B, 254C, 254D or 254E (the *underlying offence*) is an *aggravated offence* if the member to which the underlying offence relates is a member of a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are the listed marine species mentioned in paragraphs 248(2)(f), (g) and (h).

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

Section 255

- (3) Strict liability applies to the physical element of circumstance, that the member is a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

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

255 Certain actions are not offences

Sections 254, 254A, 254B, 254C, 254D and 254E do not apply to:

- (a) an action authorised by a permit that was issued under section 258 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made under Division 5 and in force; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); or
- (d) an action that:
 - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); and
 - (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or
- (da) an action that:
 - (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4); and
 - (ii) is taken in accordance with the bioregional plan to which the declaration relates; or

- (db) in the case of sections 254B, 254C, 254D and 254E—an action that is trading, keeping or moving a member of a listed marine species, if:
 - (i) when the member of the species was taken, the species was not a listed marine species; and
 - (ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed marine species; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by an animal; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (j) an action taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 265; or
- (l) an action, to the extent that it is covered by subsection 517A(7); or
- (m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

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- (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
- (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
 - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
 - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:
 - (i) obtained from an area that is not a Commonwealth area; or
 - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (l), (m), (n), (o) or (p).

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

256 Failing to notify taking etc. of listed marine wildlife

- (1) This section applies to an action taken by a person if all of the following conditions are met:
 - (a) the person's action either:
 - (i) results in the death or injury of a member of a listed marine species that is in or on a Commonwealth area; or
 - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed marine species that is in or on a Commonwealth area;
 - (b) the person's action does not constitute an offence against section 254, 254A, 254B, 254C, 254D or 254E, otherwise than because of paragraph 255(db);
 - (c) the person's action is not an action that the person was authorised by a permit to take.

- Note 1: Section 255 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 254, 254A, 254B, 254C, 254D or 254E.
- Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 261 by the holder of the permit to take the action.
- Note 3: The conditions of a permit may require the holder of the permit to give certain notices.
- (2) Within 7 days of becoming aware of the action, the person must notify the 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 if:
- (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
 - (b) the action is in a class of actions:
 - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
 - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.
- Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.
- (5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if a person:
- (a) fails to do an act; and
 - (b) the failing to do the act results in a contravention of subsection (2).

Section 257

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 to be published on the internet:
 - (a) details of the application; and
 - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

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 is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed marine species concerned.
- (4) In making a decision on the application, the Minister must consider the comments (if any) received:
- (a) in response to the invitation under subsection 257(3) for anyone to give the Minister comments on whether the permit should be issued; and
 - (b) within the period specified in the invitation.

259 Conditions of permits

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The 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 commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and

Section 261

- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

261 Authorities under permits

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the 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

- (1) Subject to subsection (2), 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.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

264 Fees

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

Subdivision C—Miscellaneous

265 Minister may accredit plans, regimes or policies

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
 - (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

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- (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
- (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
 - (i) made by a State or self-governing Territory; and
 - (ii) in force under a law of the State or self-governing Territory; or
- (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
- (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and
- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

(2) An instrument under subsection (1) is not a legislative instrument.

266 Regulations

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed marine species killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed marine species may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed marine species; and
- (d) provide for the protection and conservation of listed marine species; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.



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No. 91, 1999

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Schedule
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About this compilation

This compilation

This is a compilation of the *Environment Protection and Biodiversity Conservation Act 1999* that shows the text of the law as amended and in force on 16 December 2020 (the *compilation date*).

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

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

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

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

Subdivision AA—Approved conservation advice

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

Minister to ensure there is approved conservation advice

- (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extinct or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species or community continues to be listed.
- (2) For this purpose, *approved conservation advice* is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains:
 - (a) a statement that sets out:
 - (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and
 - (ii) the main factors that are the cause of it being so eligible; and
 - (b) either:
 - (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or

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- (ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community.

Changing approved conservation advice

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

Consultation with Scientific Committee

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

Publication requirements

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

Instruments of approval are not legislative instruments

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

Subdivision A—Recovery plans and threat abatement plans

267 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

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

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

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

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

268 Compliance with recovery plans and threat abatement plans

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

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269 Implementing recovery and threat abatement plans

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

269AA Decision whether to have a recovery plan

Minister has an initial obligation and then a discretion

- (1) The Minister must decide whether to have a recovery plan for a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community within 90 days after the species or community becomes listed. The Minister may, at any other time, decide whether to have a recovery plan for the species or community.
- (2) In this section:
 - (a) the decision that the Minister is required by subsection (1) to make in relation to the species or community within the 90 day period referred to in that subsection is the ***initial recovery plan decision***; and
 - (b) any subsequent decision that the Minister makes under subsection (1) in relation to the species or community is a ***subsequent recovery plan decision***.

Making the initial recovery plan decision

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

Section 269AA

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

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

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

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

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- (b) the Minister considers that regulations referred to in paragraph (8)(b) have not been complied with in relation to the comment.
- (7) The notice referred to in paragraph (5)(b):
- (a) must be published in accordance with the regulations referred to in paragraph (8)(a); and
 - (b) must set out the decision the Minister proposed to make; and
 - (c) must invite people to make comments, to the Minister, about the proposed decision; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (8)(b), apply to making comments; and
 - (f) may also include any other information that the Minister considers appropriate.
- (8) The regulations must provide for the following:
- (a) how a notice referred to in paragraph (5)(b) is to be published;
 - (b) the manner and form for making comments.

General publication requirements

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

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

Section 269A

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

Decisions not legislative instruments

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

269A Making or adopting a recovery plan

Application

- (1) This section applies only if the Minister's most recent decision under section 269AA in relation to a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community is to have a recovery plan for the species or community.

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

Making a plan

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

Making a plan jointly with a State or Territory

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

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Content of a plan

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

Prerequisites to making a plan

- (5) Before making a recovery plan under subsection (2) or (3) for a listed threatened species or listed threatened ecological community, the Minister must:
- (a) consult the appropriate Minister of each State and self-governing Territory in which the species or community occurs, and in which actions that the plan would provide for would occur, with a view to:
 - (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
 - (ii) making the plan jointly under subsection (3);unless the species or community occurs only in a Commonwealth area; and
 - (b) consider the advice of the Scientific Committee given under section 274; and
 - (c) consult about the plan and consider comments in accordance with sections 275 and 276.

Limits on making a plan

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

Adopting a State or Territory plan

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

Note: Section 277 requires that:

- (a) an adopted plan have the content required for a recovery plan by section 270; and
- (b) there has been adequate consultation in making the plan adopted; and
- (c) the Minister consult the Scientific Committee about the content of the plan.

Effect of adopting a plan

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

270 Content of recovery plans

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

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

- (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

270A Decision whether to have a threat abatement plan

Decision

- (1) The Minister may at any time decide whether to have a threat abatement plan for a threatening process in the list of key threatening processes established under section 183. The Minister must do so:
- (a) within 90 days of the threatening process being included in the list; and
 - (b) within 5 years of the last decision whether to have a threat abatement plan for the process, if that decision was not to have a threat abatement plan for the process.

Basis for decision

- (2) The Minister must decide to have a threat abatement plan for the process if he or she believes that having and implementing a threat abatement plan is a feasible, effective and efficient way to abate the process. The Minister must decide not to have a threat abatement plan if he or she does not believe that.

Consultation before making a decision

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

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Consulting others

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

Request may be made before listing

- (5) A request for advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process may be made before or after the process is included in the list of key threatening processes established under section 183.

Time for giving advice

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

Considering views expressed in consultation

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

Publishing decision and reasons

- (8) The Minister must publish in accordance with the regulations (if any):
- (a) a decision whether or not to have a threat abatement plan for a key threatening process; and
 - (b) the Minister's reasons for the decision.

Special rules for processes included in original list

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

270B Making or adopting a threat abatement plan

Application

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

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

Making a plan

- (2) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the process.

Making a plan jointly with a State or Territory

- (3) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the process, jointly with the States and self-governing Territories in which the process occurs or with agencies of those States and Territories.

Content of a plan

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

Prerequisites to making a plan

- (5) Before making a threat abatement plan for the process under subsection (2) or (3), the Minister must:

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- (a) consult the appropriate Minister of each State and self-governing Territory in which the process occurs, with a view to:
 - (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
 - (ii) making the plan jointly under subsection (3);unless the process occurs only in a Commonwealth area; and
- (b) consider the advice of the Scientific Committee given under section 274; and
- (c) consult about the plan and consider comments in accordance with sections 275 and 276.

Limits on making a plan

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

Adopting a State or Territory plan

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

Note: Section 277 requires that:

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

Effect of adopting a plan

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

271 Content of threat abatement plans

- (1) A threat abatement plan must provide for the research, management and other actions necessary to reduce the key threatening process concerned to an acceptable level in order to maximise the chances of the long-term survival in nature of native species and ecological communities affected by the process.
- (2) In particular, a threat abatement plan must:
- (a) state the objectives to be achieved; and
 - (b) state criteria against which achievement of the objectives is to be measured; and
 - (c) specify the actions needed to achieve the objectives; and
 - (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).
- (3) In making a threat abatement plan, regard must be had to:
- (a) the objects of this Act; and
 - (b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and
 - (c) minimising any significant adverse social and economic impacts consistently with the principles of ecologically sustainable development; and
 - (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community threatened by the key threatening process that is the subject of the plan; and
 - (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

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- (4) A threat abatement plan may:
- (a) state the estimated duration and cost of the threat abatement process; and
 - (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and
 - (c) specify any major ecological matters (other than the species or communities threatened by the key threatening process that is the subject of the plan) that will be affected by the plan's implementation.
- (5) Subsection (4) does not limit the matters that a threat abatement plan may include.

272 Eradication of non-native species

If:

- (a) the actions specified under paragraph 270(2)(c) in a recovery plan, or under paragraph 271(2)(c) in a threat abatement plan, include the eradication of a non-native species; and
- (b) the species is threatened in a country in which its native habitat occurs;

the recovery plan, or threat abatement plan, must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

273 Ensuring plans are in force

When a plan comes into force

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

Deadline for recovery plan

- (1) Subject to subsection (2), a recovery plan for a listed threatened species or a listed threatened ecological community must be made

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and in force within 3 years of the decision under section 269AA to have the plan.

- (2) The Minister may, in writing, extend the period within which a recovery plan must be made. Only one extension can be granted for the making of the plan, and the period of the extension must not be more than 3 years.

Ensuring recovery plan is in force

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

Note: The Minister may revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community. See section 283A.

Deadline for threat abatement plan

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

Ensuring threat abatement plan is in force

- (5) Once the first threat abatement plan for a key threatening process is in force, the Minister must exercise his or her powers under this Subdivision to ensure that a threat abatement plan is in force for the process until the Minister decides under section 270A not to have a threat abatement plan for the process.

Note: The Minister may revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process. See section 283A.

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274 Scientific Committee to advise on plans

- (1) The Minister must obtain and consider the advice of the Scientific Committee on:
 - (a) the content of recovery and threat abatement plans; and
 - (b) the times within which, and the order in which, such plans should be made.
- (2) In giving advice about a recovery plan, the Scientific Committee must take into account the following matters:
 - (a) the degree of threat to the survival in nature of the species or ecological community in question;
 - (b) the potential for the species or community to recover;
 - (c) the genetic distinctiveness of the species or community;
 - (d) the importance of the species or community to the ecosystem;
 - (e) the value to humanity of the species or community;
 - (f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.
- (3) In giving advice about a threat abatement plan, the Scientific Committee must take into account the following matters:
 - (a) the degree of threat that the key threatening process in question poses to the survival in nature of species and ecological communities;
 - (b) the potential of species and ecological communities so threatened to recover;
 - (c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

275 Consultation on plans

- (1) Before making a recovery plan or threat abatement plan under this Subdivision, the Minister must:
 - (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at

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- prescribed places in each State and self-governing territory;
and
- (b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and
 - (c) cause the notice to be published:
 - (i) in the *Gazette*; and
 - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory, in which the relevant listed threatened native species, listed threatened ecological community or key threatening process occurs; and
 - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
- (a) specify the places where copies of the proposed plan may be purchased; and
 - (b) invite persons to make written comments about the proposed plan; and
 - (c) specify:
 - (i) an address for lodgment of comments; and
 - (ii) a day by which comments must be made.
- (3) The day specified must not be a day occurring within 3 months after the notice is published in the *Gazette*.

276 Consideration of comments

The Minister:

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

277 Adoption of State plans

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

278 Publication of plans

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

279 Variation of plans by the Minister

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

- (3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7), vary the plan.
- (4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.
- (5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.
- (7) Sections 275, 276 and 278 apply to the variation of a plan in the same way that those sections apply to the making of a recovery plan or threat abatement plan.

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

- (1) If a State or self-governing Territory varies a plan that:
 - (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or
 - (b) has been adopted by the Minister as a recovery plan or a threat abatement plan;the variation is of no effect for the purposes of this Act unless it is approved by the Minister.
- (2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (3) The Minister must not approve a variation unless satisfied that:

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- (a) an appropriate level of consultation was undertaken in varying the plan; and
 - (b) the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.
- (4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.
- (5) Section 278 applies to the variation of a plan in the same way that it applies to the making of a recovery plan or threat abatement plan.

281 Commonwealth assistance

- (1) The Commonwealth may give to a State or self-governing Territory, or to an agency of a State or a self-governing Territory, financial assistance, and any other assistance, to make or implement a recovery plan or a threat abatement plan.
- (2) The Commonwealth may give to a person (other than a State or a self-governing Territory, or an agency of a State or Territory) financial assistance, and any other assistance, to implement a recovery plan or a threat abatement plan.
- (3) The giving of assistance may be made subject to such conditions as the Minister thinks fit. The Minister is to have regard to the advice of the Scientific Committee under section 282 before determining those conditions.

282 Scientific Committee to advise on assistance

- (1) The Scientific Committee is to advise the Minister on the conditions (if any) to which the giving of assistance under section 281 should be subject.
- (2) In giving advice about assistance for making or implementing a recovery plan, the Scientific Committee must take into account the following matters:

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- (a) the degree of threat to the survival in nature of the species or ecological community in question;
 - (b) the potential for the species or community to recover;
 - (c) the genetic distinctiveness of the species or community;
 - (d) the importance of the species or community to the ecosystem;
 - (e) the value to humanity of the species or community;
 - (f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.
- (3) In giving advice about assistance for making or implementing a threat abatement plan, the Scientific Committee must take into account the following matters:
- (a) the degree of threat that the key threatening process in question poses to the survival in nature of species and ecological communities;
 - (b) the potential of species and ecological communities so threatened to recover;
 - (c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

283 Plans may cover more than one species etc.

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

283A Revoking a plan

- (1) The Minister may, by legislative instrument:
 - (a) revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community; or

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- (b) revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process.
- (2) The Minister must publish in accordance with the regulations (if any):
 - (a) the instrument revoking the plan; and
 - (b) the Minister's reasons for revoking the plan.

284 Reports on preparation and implementation of plans

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

Subdivision B—Wildlife conservation plans

285 Wildlife conservation plans

- (1) Subject to this section, the Minister may make, by instrument in writing, and implement a wildlife conservation plan for the purposes of the protection, conservation and management of the following:
 - (a) a listed migratory species that occurs in Australia or an external Territory;
 - (b) a listed marine species that occurs in Australia or an external Territory;
 - (c) a species of cetacean that occurs in the Australian Whale Sanctuary;
 - (d) a conservation dependent species.
- (2) The Minister must not make a wildlife conservation plan for a species that is a listed threatened species (except a conservation dependent species).
- (3) Subject to section 292, the Minister may, by instrument in writing, adopt a plan that has been made by a State or a self-governing

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Territory, or by an agency of a State or self-governing Territory, as a wildlife conservation plan. The Minister may adopt a plan with such modifications as are specified in the instrument.

- (4) A plan, as modified and adopted under subsection (2), has effect as if the plan had been made by the Minister under subsection (1).
- (5) The Minister must seek the co-operation of the States and self-governing Territories in which:
 - (a) a listed migratory species occurs; or
 - (b) a listed marine species occurs; or
 - (c) a species of cetacean occurs; or
 - (d) a conservation dependent species occurs;with a view to making and implementing jointly with those States and Territories, or agencies of those States or Territories, a joint wildlife conservation plan unless the species occurs only in a Commonwealth area.
- (6) Before making a wildlife conservation plan under subsection (1) or (5), the Minister must:
 - (a) consider the advice of the Scientific Committee given under section 289; and
 - (b) consult about the plan in accordance with sections 290 and 291.
- (7) A wildlife conservation plan comes into force on the day on which it is made or adopted, or on such later day as the Minister specifies in writing.

286 Acting in accordance with wildlife conservation plans

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

287 Content of wildlife conservation plans

- (1) A wildlife conservation plan must provide for the research and management actions necessary to support survival of the migratory

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species, marine species, species of cetacean or conservation dependent species concerned.

- (2) In particular, a wildlife conservation plan must:
- (a) state the objectives to be achieved; and
 - (b) state criteria against which achievement of the objectives is to be measured; and
 - (c) specify the actions needed to achieve the objectives; and
 - (d) identify the habitats of the species concerned and the actions needed to protect those habitats; and
 - (e) identify:
 - (i) interests that will be affected by the plan's implementation; and
 - (ii) organisations or persons who will be involved in evaluating the performance of the plan; and
 - (f) specify any major benefits to migratory species, marine species, species of cetacean or conservation dependent species (other than those to which the plan relates) that will be affected by the plan's implementation; and
 - (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).
- (3) In making a wildlife conservation plan, regard must be had to:
- (a) the objects of this Act; and
 - (b) the most efficient and effective use of the resources that are allocated for the conservation of migratory species, marine species, species of cetacean and conservation dependent species; and
 - (c) minimising any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development; and
 - (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the migratory species, marine species, species of cetacean or conservation dependent species to which the plan relates; and

- (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

288 Eradication of non-native species

If:

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

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

289 Scientific Committee to advise on scheduling of plans

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

290 Consultation on plans

- (1) Before making a wildlife conservation plan under subsection 285(1) or (5), the Minister must:
 - (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at

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

291 Consideration of comments

The Minister:

- (a) must, in accordance with the regulations (if any), consider all comments on a proposed wildlife conservation plan made in response to an invitation under section 290; and
- (b) may revise the plan to take account of those comments.

292 Adoption of State plans

- (1) The Minister must not adopt a plan as a wildlife conservation plan under subsection 285(3) unless:
 - (a) the Minister is satisfied that an appropriate level of consultation has been undertaken in making the plan; and

- (b) the plan meets the requirements of section 287.
- (2) Before adopting a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the plan.

293 Publication, review and variation of plans

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

294 Variation of plans by the Minister

- (1) The Minister may, at any time, review a wildlife conservation plan that has been made or adopted under section 285 and consider whether a variation of it is necessary.
- (2) Each plan must be reviewed by the Minister at intervals of not longer than 5 years.
- (3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7) vary the plan.

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- (4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 287.
- (5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.
- (7) Sections 290, 291 and 293 apply to the variation of a plan in the same way that those sections apply to the making of a wildlife conservation plan.

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

- (1) If a State or self-governing Territory varies a plan that:
 - (a) the Minister has made jointly with the State or self-governing Territory, or an agency of the State or Territory; or
 - (b) has been adopted by the Minister as a wildlife conservation plan;the variation is of no effect for the purposes of this Act unless it is approved by the Minister.
- (2) Before approving a variation, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (3) The Minister must not approve a variation under subsection (1) unless satisfied:
 - (a) an appropriate level of consultation was undertaken in varying the plan; and
 - (b) the plan, as so varied, continues to meet the requirements of section 287.

- (4) If the Minister approves a variation of a plan, the plan has effect as so varied on and after the date of the approval, or such later date as the Minister determines in writing.
- (5) Section 293 applies to the variation of a plan in the same way that it applies to the making of a wildlife conservation plan.

296 Commonwealth assistance

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

297 Plans may cover more than one species etc.

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

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

298 Reports on preparation and implementation of plans

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

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Subdivision C—Miscellaneous

299 Wildlife conservation plans cease to have effect

If:

- (a) a wildlife conservation plan is in force for all or any of the following:
 - (i) a listed migratory species;
 - (ii) a listed marine species;
 - (iii) a species of cetacean; and
- (b) the species becomes a listed threatened species (except a conservation dependent species);

the wildlife conservation plan ceases to have effect in relation to the species on and from the day on which the species becomes a listed threatened species as mentioned in paragraph (b).

300 Document may contain more than one plan

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

300A State and Territory laws not affected

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

300B Assistance from the Scientific Committee

- (1) The Minister may, at any time, ask the Scientific Committee to provide the Minister with a statement, information or advice for the purpose of assisting the Minister in the performance or exercise of the Minister's functions or powers under section 266B, 269AA or 270A.

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

Division 6—Access to biological resources

301 Control of access to biological resources

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

Division 6A—Control of non-native species

301A Regulations for control of non-native species

The regulations may:

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

Division 7—Aid for conservation of species in foreign countries

302 Aid for conservation of species in foreign countries

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

Division 8—Miscellaneous

303 Regulations

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

303A Exemptions from this Part

- (1) A person proposing to take an action that would contravene a provision of this Part apart from this section may apply in writing to the Minister for an exemption from the provision.
- (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 this Part 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.

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- (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.

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

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

- (6) A condition may relate to reporting or monitoring.
- (7) The Minister must, in writing, revoke an accreditation if he or she is satisfied that a condition of the accreditation has been contravened.

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

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

Part 13A—International movement of wildlife specimens

Division 1—Introduction

303BA Objects of Part

- (1) The objects of this Part are as follows:
- (a) to ensure that Australia complies with its obligations under CITES and the Biodiversity Convention;
 - (b) to protect wildlife that may be adversely affected by trade;
 - (c) to promote the conservation of biodiversity in Australia and other countries;
 - (d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way;
 - (e) to promote the humane treatment of wildlife;
 - (f) to ensure ethical conduct during any research associated with the utilisation of wildlife;
 - (h) to ensure that the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.

Note: CITES means the Convention on International Trade in Endangered Species—see section 528.

- (2) In order to achieve its objects, this Part includes special provisions to conserve the biodiversity of Australian native wildlife.

303BAA Certain indigenous rights not affected

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

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

(c) ceremonial or religious purposes.

303BB Simplified outline

The following is a simplified outline of this Part:

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

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303BC Definitions

In this Part, unless the contrary intention appears:

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

engage in conduct means:

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

export means:

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

but does not include:

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

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

import means:

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

but does not include:

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

import by way of introduction from the sea, in relation to a specimen, means take in the marine environment not under the jurisdiction of any country and then bring into Australia or into an

external Territory without having been imported into any other country.

marine environment means the sea, and includes:

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

recipient means:

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

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

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

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

take includes:

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

trade means trade within the ordinary meaning of that expression.

Note: See also section 528.

Division 2—CITES species

Subdivision A—CITES species and CITES specimens

303CA Listing of CITES species

- (1) The Minister must, by legislative instrument, establish a list of CITES species for the purposes of this Act.
- (2) The Minister must ensure that the list is established on the commencement of this section.

Note: See section 4 of the *Acts Interpretation Act 1901*.
- (3) The list must include all species from time to time included in any of Appendices I, II and III to CITES. The list must not include any other species.
- (4) For each species included in the list, there is to be a notation:
 - (a) describing the specimens belonging to that species that are included in a particular Appendix to CITES; and
 - (b) identifying the Appendix in which the species is included; and
 - (c) identifying the date on which the provisions of CITES first applied to the specimens.
- (5) A description mentioned in paragraph (4)(a):
 - (a) may cover all specimens that belong to the species; or
 - (b) may cover specified kinds of specimens that belong to the species; or
 - (c) may state that the inclusion of a specimen in a particular Appendix to CITES is subject to restrictions or conditions.
- (6) A restriction or condition mentioned in paragraph (5)(c) may:
 - (a) impose a quantitative limit in relation to the export or import of a specimen; or
 - (b) relate to the imposition of a quota in relation to the export or import of specimens; or

- (c) relate to a particular population of a species; or
 - (d) reflect any other restriction or condition set out in the relevant Appendix to CITES.
- (7) Subsection (6) does not limit paragraph (5)(c).
- (8) A notation in the list is to be consistent with CITES.
- (9) The Minister may, by legislative instrument:
- (a) correct an inaccuracy or update the name of a species; or
 - (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3); or
 - (c) amend the list, as necessary, so that the notations in the list are consistent with CITES.
- (11) For the purposes of this section, it is to be assumed that the definition of *specimen* in CITES includes a reference to a thing that is a specimen for the purposes of this Act.

Note: See also section 303CB.

303CB Stricter domestic measures

- (1) The Minister may, by legislative instrument, declare that the list referred to in section 303CA has effect as if it were modified as set out in the declaration.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Minister must not make a declaration under subsection (1) unless:
- (a) the modification has the effect of treating a specified specimen that is included in Appendix II to CITES as if the specimen were included in Appendix I to CITES; or
 - (b) the modification has the effect of broadening the range of specimens included in a specified Appendix to CITES in relation to a specified species; or
 - (c) the modification has the effect of decreasing a quantitative limit in relation to the export or import of a specimen; or

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- (d) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix I to CITES; or
 - (e) the modification has the effect of treating a specified specimen that is not included in Appendix I, II or III to CITES as if the specimen were included in Appendix II to CITES.
- (5) A reference in this Act to the *list referred to in section 303CA* is a reference to that list as modified under this section.

Subdivision B—Offences and permit system

303CC Exports of CITES specimens

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

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

Authorised export—permit

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

Authorised export—CITES exemptions

- (3) Subsection (1) does not apply if the export of the specimen is an export that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.
- (4) Subsection (1) does not apply if the Minister issues a certificate under subsection (5) in relation to the specimen.

- (5) If the Minister is satisfied that a specimen was acquired before the provisions of CITES applied to the specimen, the Minister may issue a certificate to that effect.
- (6) Subsection (1) does not apply if the export of the specimen is an export that, under the regulations, is taken to be an export of a personal or household effect.

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

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

303CD Imports of CITES specimens

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

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

Authorised import—permit

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

Authorised import—CITES exemptions

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

Note: See paragraph 3 of Article VII of CITES.

- (4) Subsection (1) does not apply if:
- the specimen is a CITES II specimen; and
 - the specimen is not a live specimen; and

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- (c) the specimen belongs to a species that is not specified in the regulations; and
 - (d) in a case where a quantitative limit is applicable to the specimen under a notation in the list referred to in section 303CA—the quantity of the specimen does not exceed that limit; and
 - (e) the specimen is within the personal baggage of a person entering Australia or an external Territory; and
 - (f) the specimen is not intended for sale or for any other commercial purpose; and
 - (g) both:
 - (i) the country from which the specimen is proposed to be imported has a relevant CITES authority; and
 - (ii) permission to export the specimen from that country has been given by a relevant CITES authority of that country.
- (5) Subsection (1) does not apply if the import of the specimen is an import that, in accordance with a determination made by the Minister under the regulations, is taken to be part of a registered, non-commercial exchange of scientific specimens between scientific organisations.
- (6) Subsection (1) does not apply if:
- (a) the country from which the specimen is proposed to be imported has a relevant CITES authority; and
 - (b) a relevant CITES authority of that country has issued a certificate under paragraph 2 of Article VII of CITES in respect of the specimen.

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

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

303CE Applications for permits

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

303CF Further information

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

303CG Minister may issue permits

- (1) The Minister may, on application made by a person under section 303CE, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303CC, 303CD, 303DD or 303EK.
- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 6 months after that date.
- (3) The Minister must not issue a permit unless the Minister is satisfied that:
 - (a) the action or actions specified in the permit will not be detrimental to, or contribute to trade which is detrimental to:

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- (i) the survival of any taxon to which the specimen belongs; or
- (ii) the recovery in nature of any taxon to which the specimen belongs; or
- (iii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
- (b) the specimen was not obtained in contravention of, and the action or actions specified in the permit would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
- (c) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
- (d) if any restriction or condition is applicable to the specimen under a notation in the list referred to in section 303CA—that restriction or condition has been, or is likely to be, complied with; and
- (e) if the permit authorises the export of a CITES specimen:
 - (i) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
 - (ii) the relevant conditions set out in the table in section 303CH have been met; and
- (f) if the permit authorises the import of a CITES specimen:
 - (i) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB); or
 - (ii) the relevant conditions set out in the table in section 303CH have been met; and
- (g) if:
 - (i) the permit authorises the import of a CITES II specimen; and
 - (ii) the proposed import would be an eligible non-commercial purpose import (within the meaning of section 303FB);

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

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

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

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

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Part 13A International movement of wildlife specimens
Division 2 CITES species

Section 303CH

Specific conditions

Item	Category of specimen	Action	Specific conditions
1	CITES I	Import	(a) the proposed import would be an import from an approved CITES-registered captive breeding program in accordance with section 303FK; or (b) the specimen is, or is derived from, a plant that was artificially propagated (section 527C).
2	CITES I	Export	(a) the specimen is not a live native mammal, a live native amphibian, a live native reptile or a live native bird; and (b) the country to which the specimen is proposed to be exported has a relevant CITES authority, and permission to import that specimen into that country has been given by a relevant CITES authority of that country; and (c) the proposed export would be an export from: (i) an approved CITES-registered captive breeding program in accordance with section 303FK; or (ii) an approved artificial propagation program in accordance with section 303FL.

Section 303CH

Specific conditions

Item	Category of specimen	Action	Specific conditions
3	CITES II	Import	(a) for any specimen—the country from which the specimen is proposed to be imported has a relevant CITES authority and permission to export the specimen from that country has been given by a relevant CITES authority of that country; and (b) for a specimen that: (i) is specified by the Minister under subsection (2) as a declared specimen; and (ii) is not, or is not derived from, an animal that was bred in captivity (section 527B); and (iii) is not, or is not derived from, a plant that was artificially propagated (section 527C); the proposed import of the specimen would be an import from an approved commercial import program in accordance with section 303FU.

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

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Specific conditions

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

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

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

303CI Time limit for making permit decision

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

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

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

303CJ Duration of permits

A permit under section 303CG:

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

303CK Register of applications and decisions

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

Subdivision C—Application of CITES

303CL Application of CITES—Management Authority and Scientific Authority

For the purposes of the application of CITES to Australia:

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

(b) the Secretary is the Scientific Authority.

303CM Interpretation of CITES provisions

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

303CN Resolutions of the Conference of the Parties to CITES

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

Division 3—Exports of regulated native specimens

Subdivision A—Regulated native specimens

303DA Regulated native specimens

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

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

303DB Listing of exempt native specimens

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

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

303DC Minister may amend list

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

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

Subdivision B—Offence and permit system

303DD Exports of regulated native specimens

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

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

Exemption—permit

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

Exemption—accredited wildlife trade management plan

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

Section 303DE

Exemption—exchange of scientific specimens

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

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

303DE Applications for permits

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

303DF Further information

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

303DG Minister may issue permits

- (1) The Minister may, on application made by a person under section 303DE, issue a permit to the person. This subsection has effect subject to subsections (3) to (4A).
- (2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303DD.

- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so specified must start on the date of issue of the permit and end not later than 3 years after that date.
- (3) The Minister must not issue a permit authorising the export of a live native mammal, a live native reptile, a live native amphibian or a live native bird unless the Minister is satisfied that the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA).
- (3A) The Minister must not issue a permit authorising the export of a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of paragraph 303DD(3)(ba) unless the Minister is satisfied that:
- (a) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or
 - (b) the proposed export would be an export from an approved aquaculture program in accordance with section 303FM.
- (4) The Minister must not issue a permit unless the Minister is satisfied that:
- (a) the export of the specimen will not be detrimental to, or contribute to trade which is detrimental to:
 - (i) the survival of any taxon to which the specimen belongs; or
 - (ii) any relevant ecosystem (for example, detriment to habitat or biodiversity); and
 - (b) if the specimen is a live specimen that belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with; and
 - (c) the specimen was not obtained in contravention of, and the export would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
 - (d) if the specimen belongs to an eligible listed threatened species—the export of the specimen is covered by

Section 303DG

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

Eligible listed threatened species

- (7) This subsection covers the export of a specimen if:
- (a) the export of the specimen would be an export from an approved captive breeding program in accordance with section 303FK; or
 - (b) the export of the specimen would be an export from an approved artificial propagation program in accordance with section 303FL; or
 - (ba) the export of the specimen would be an export from an approved cultivation program in accordance with section 303FLA; or

- (c) the export of the specimen would be an export from an approved aquaculture program in accordance with section 303FM;

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

Note: See also subsection (3).

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

Section has effect subject to section 303GA

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

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

303DH Time limit for making permit decision

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

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

Section 303DI

303DI Duration of permits

A permit under section 303DG:

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

303DJ Register of applications and decisions

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

Division 4—Imports of regulated live specimens

Subdivision A—Regulated live specimens

303EA Regulated live specimens

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

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

303EB Listing of specimens suitable for live import

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

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

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

303EC Minister may amend list

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

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

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

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

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

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

303EE Application for amendment of list

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

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

303EF Requirement for assessments

- (1) The assessment under subsection 303ED(2) or 303EE(3) must provide for:
- (a) if the Minister determines that this paragraph applies—the preparation of terms of reference for a report on the relevant impacts; or
 - (b) if the Minister determines that this paragraph applies—all of the following:
 - (i) the preparation of draft terms of reference for a report on the relevant impacts;
 - (ii) the publication of the draft terms of reference for public comment for a period of at least 10 business days that is specified by the Minister;
 - (iii) the finalisation of the terms of reference, to the Minister’s satisfaction, taking into account the comments (if any) received on the draft terms of reference.
- (2) The assessment must also provide for:
- (a) the preparation of a draft of a report on the relevant impacts; and
 - (b) the publication of the draft report for public comment for a period of at least 20 business days that is specified by the Minister; and

Section 303EG

- (c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and
 - (d) any other matter prescribed by the regulations.
- (3) A determination made under paragraph (1)(a) or (b) is not a legislative instrument.

303EG Timing of decision about proposed amendment

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

Notice of extension of time

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

303EH Requesting further information

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

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

303EI Notice of refusal of proposed amendment

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

303EJ Reviews

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

Subdivision C—Offence and permit system

303EK Imports of regulated live specimens

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

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

Exemption—permit

- (2) Subsection (1) does not apply if:
- (a) the specimen is included in Part 2 of the list referred to in section 303EB; and
 - (b) the specimen is imported in accordance with a permit that was issued under section 303CG, 303EN, 303GB or 303GC and is in force.

Section 303EL

Exemption—testing permit

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

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

303EL Applications for permits

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

303EM Further information

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

303EN Minister may issue permits

- (1) The Minister may, on application made by a person under section 303EL, issue a permit to the person. This subsection has effect subject to subsection (3).
- (2) A permit authorises its holder to take the action or actions specified in the permit, in the permitted period, without breaching section 303EK.
- (2A) For the purpose of subsection (2), the *permitted period* is the period specified in the permit as the period during which the action or actions specified in the permit may be taken. The period so

specified must start on the date of issue of the permit and end not later than 3 years after that date.

- (3) The Minister must not issue a permit unless the Minister is satisfied that:
- (a) the proposed import would not be:
 - (i) likely to threaten the conservation status of a species or ecological community; or
 - (ii) likely to threaten biodiversity; and
 - (b) the specimen is included in Part 2 of the list referred to in section 303EB; and
 - (c) if any restriction or condition is applicable to the specimen under a notation in Part 2 of the list referred to in section 303EB—that restriction or condition has been, or is likely to be, complied with; and
 - (d) the specimen was not obtained in contravention of, and the import would not involve the contravention of, any law of the Commonwealth, of a State or of a Territory; and
 - (e) if the specimen belongs to a taxon specified in the regulations—the conditions that, under the regulations, are applicable to the welfare of the specimen have been, or are likely to be, complied with.
- (4) This section has effect subject to section 303GA.

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

303EO Time limit for making permit decision

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

- (a) the day on which the application is made;
- (b) if a request for further information in relation to the application is made under section 303EM—the day on which the applicant complies with the request;

Section 303EP

- (c) if section 303GA applies to the application—the day that is applicable under subsection 303GA(2).

303EP Duration of permits

A permit under section 303EN:

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

303EQ Register of applications and decisions

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

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

303ER Object

The object of this Subdivision is:

- (a) to comply with Australia's obligations under:
(i) the Biodiversity Convention; and
(ii) CITES; and

(b) otherwise to further the protection and conservation of the wild fauna and flora of Australia and of other countries; by requiring the marking of certain live specimens for the purposes of identification.

Note: See Article 8 of the Biodiversity Convention.

303ES Specimens to which Subdivision applies

This Subdivision applies to a regulated live specimen if:

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

303ET Extended meaning of *marking*

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

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

Section 303EU

303EU Secretary may make determinations about marking of specimens

Determinations

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

Matters that may be covered by determination

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

Marking of animals not to involve undue pain etc.

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

Marking of plants not to involve undue risk of death

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

303EV Offences

Owner to ensure specimens marked etc.

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

Person not to remove or interfere with mark etc.

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

Offence

- (3) A person who contravenes subsection (1) or (2) commits an offence punishable on conviction by a fine not exceeding 120 penalty units.
- (4) Subsection (2) does not apply if the person engages in the conduct in accordance with a determination under section 303EU.

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

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

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

Chapter 5 Conservation of biodiversity and heritage
Part 13A International movement of wildlife specimens
Division 4 Imports of regulated live specimens

Section 303EW

303EW This Subdivision does not limit conditions of permits

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

Division 5—Concepts relating to permit criteria

Subdivision A—Non-commercial purpose exports and imports

303FA Eligible non-commercial purpose exports

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

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

303FB Eligible non-commercial purpose imports

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

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

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

303FC Export or import for the purposes of research

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

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

303FD Export or import for the purposes of education

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

303FE Export or import for the purposes of exhibition

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

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

303FF Export or import for conservation breeding or propagation

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

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

303FG Export or import of household pets

Export of live native animals

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

Export of live CITES specimens

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

Import of live animals

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

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

Listing of native household pet animals

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

303FH Export or import of personal items

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

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

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

Subdivision B—Commercial purpose exports and imports

303FJ Eligible commercial purpose exports

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

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

Section 303FK

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

303FK Export or import from an approved captive breeding program

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

303FL Export from an approved artificial propagation program

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

303FLA Export from an approved cultivation program

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

303FM Export from an approved aquaculture program

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

303FN Approved wildlife trade operation

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

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- (a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and
 - (b) the effectiveness of the management arrangements for the operation (including monitoring procedures).
- (5) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:
 - (a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and
 - (b) whether the legislation applies throughout the State or Territory concerned; and
 - (c) whether, in the opinion of the Minister, the legislation is effective.
- (6) A declaration under subsection (2) ceases to be in force at the beginning of the third anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 3 years is specified in the declaration in accordance with subsection 303FT(4).
- (7) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).
- (8) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.
- (9) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.
- (10) For the purposes of this section, an operation is a **wildlife trade operation** if, and only if, the operation is an operation for the taking of specimens and:
 - (a) the operation is an operation that, under the regulations, is taken to be a market-testing operation; or
 - (b) the operation is an operation that, under the regulations, is taken to be a small-scale operation; or

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

Section 303FO

303FO Approved wildlife trade management plan

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

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

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

303FP Accredited wildlife trade management plan

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

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

303FQ Consultation with State and Territory agencies

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

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303FR Public consultation

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

303FRA Assessments

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

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

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

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

303FS Register of declarations

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

303FT Additional provisions relating to declarations

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

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

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

303FU Approved commercial import program

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

Division 6—Miscellaneous

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

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

Deferral of decision

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

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

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

Refusal of permit

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

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

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

Related action

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

303GB Exceptional circumstances permit

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

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

Duration of permit

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

Section 303GC

Further information

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

Public consultation

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

303GC Permit authorising the Secretary to export or import specimens

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

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

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

303GD Testing permit—section 303EE assessments

Applications for permits

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

Further information

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

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

Minister may issue permits

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

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

Duration of permit

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

Investigations

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

303GE Conditions of permits

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

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

303GF Contravening conditions of a permit

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

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- (b) the person engages in conduct; and
- (c) the conduct results in a contravention of a condition of the permit.

Penalty: 300 penalty units.

- (3) The holder of a permit commits an offence if:
- (a) the person is:
 - (i) the holder of a permit; or
 - (ii) a person to whom an authority under section 303GG has been given by the holder of a permit; and
 - (b) the person engages in conduct; and
 - (c) the conduct results in a contravention of a condition of the permit; and
 - (d) the condition relates to:
 - (i) the sale or other disposal of a live animal or a live plant; or
 - (ii) the sale or other disposal of the progeny of a live animal or a live plant; or
 - (iii) the release from captivity of a live animal; or
 - (iv) the release from captivity of the progeny of a live animal; or
 - (v) the escape of a live plant.

Penalty: 600 penalty units.

- (4) For the purposes of subsection (3), a person is taken to have released an animal from captivity if:
- (a) that animal has escaped from captivity; and
 - (b) either:
 - (i) the person allowed the animal to escape; or
 - (ii) the person failed to take all reasonable measures to prevent the animal from escaping.
- (4A) For the purposes of subsection (3), a person is taken to have allowed a plant to escape if:
- (a) the plant has grown or propagated in the wild; and

- (b) either:
- (i) the person allowed the plant to escape; or
 - (ii) the person failed to take all reasonable measures to prevent the plant from growing or propagating in the wild.
- (5) In subsections (2) and (3), strict liability applies to the circumstance that the person was given an authority under section 303GG.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

303GG Authorities under permits

- (1) This section applies to a permit issued under this Part.
- (2) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (3) Subject to subsection (4), the holder of a permit may give a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (4) The holder of a permit must not give an authority unless:
 - (a) the permit contains a condition permitting the holder to do so; and
 - (b) the authority is given in accordance with any requirements set out in the condition.
- (5) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (6) The giving of an authority does not prevent the taking of any action by the holder of the permit.

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- (7) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

303GH Transfer of permits

- (1) This section applies to a permit issued under this Part.
- (2) On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.
- (3) In deciding whether to transfer the permit to another person, the Minister must consider whether the transferee is a suitable person to hold the permit, having regard to the matters set out in the regulations.

303GI Suspension or cancellation of permits

- (1) This section applies to a permit issued under this Part.
- (2) The Minister may, in accordance with the regulations:
- (a) suspend a permit for a specified period; or
 - (b) cancel a permit.

303GJ Review of decisions

- (1) Subject to subsection (2), an application may be made to the Administrative 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; or
 - (f) to issue or refuse a certificate under subsection 303CC(5); or
 - (g) of the Secretary under a determination in force under section 303EU; or
 - (h) to make or refuse a declaration under section 303FN, 303FO or 303FP; or

- (i) to vary or revoke a declaration under section 303FN, 303FO or 303FP.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
- (3) In this section:
permit means a permit under this Part.

303GK Permit to be produced

Export permit

- (1) For the purposes of this Part, if the holder of a permit to export a specimen exports that specimen, he or she is not to be taken to have exported that specimen in accordance with that permit unless, before exporting the specimen, he or she:
 - (a) produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
 - (b) received written notice from the Secretary authorising the export of the specimen without the production of the permit.
- (2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
 - (a) is satisfied that the production of the permit is impracticable; and
 - (b) endorses a copy of the permit to show that the notice is being given; and
 - (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

Import permit

- (3) For the purposes of this Part, if the holder of a permit to import a specimen imports that specimen, he or she is not to be taken to have imported that specimen in accordance with that permit unless,

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before or within a reasonable time after importing the specimen, he or she produced the permit, or caused the permit to be produced, to an authorised officer doing duty in relation to the import of the specimen.

Authorities under section 303GG

- (4) If a person is given an authority under section 303GG by the holder of a permit, this section applies to the person in a corresponding way to the way in which it applies to the holder of the permit.

303GL Pre-CITES certificate to be produced

Export certificate

- (1) If a person exports a specimen and wishes to rely on a certificate issued under subsection 303CC(5), he or she is not entitled to rely on that certificate unless, before exporting the specimen, he or she:
- (a) produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the export of the specimen; or
 - (b) received written notice from the Secretary authorising the export of the specimen without the production of the certificate.
- (2) The Secretary must not give the notice referred to in paragraph (1)(b) unless he or she:
- (a) is satisfied that the production of the certificate is impracticable; and
 - (b) endorses a copy of the certificate to show that the notice is being given; and
 - (c) makes that copy available to an authorised officer doing duty in relation to the export of the specimen.

Import certificate

- (3) If a person imports a specimen and wishes to rely on a certificate referred to in paragraph 303CD(6)(b), he or she is not entitled to

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rely on the certificate unless, before or within a reasonable time after importing the specimen, he or she produced the certificate, or caused the certificate to be produced, to an authorised officer doing duty in relation to the import of the specimen.

303GM Fees

- (1) This section applies to a permit under this Part.
- (2) Such fees (if any) as are prescribed are payable in respect of the following:
 - (a) the issue or the transfer of a permit;
 - (b) the variation or revocation of a condition of a permit;
 - (c) the imposition of a further condition of a permit.

303GN Possession of illegally imported specimens

Object

- (1) The object of this section is:
 - (a) to comply with Australia's obligations under:
 - (i) the Biodiversity Convention; and
 - (ii) CITES; and
 - (b) to otherwise further the objects of this Part;by prohibiting the possession of illegally imported specimens and the progeny of such specimens.

Note: See Article 8 of the Biodiversity Convention.

Possession of CITES specimens and unlisted regulated live specimens

- (2) A person commits an offence if:
 - (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
 - (b) the specimen is:
 - (i) a CITES specimen; or

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- (ii) a regulated live specimen that is not included in the list referred to in section 303EB;
and the person is reckless as to that fact; and
- (c) the specimen does not belong to a native species.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

- (3) Subsection (2) does not apply if:
- (a) the specimen was lawfully imported; or
 - (b) the specimen was not imported, but all of the specimens of which it is the progeny were lawfully imported.

Note 1: For *lawfully imported*, see section 303GY.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) does not apply if the specimen was neither imported, nor the progeny of any other specimen that was imported.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (2) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Possession of listed regulated live specimens

- (6) A person commits an offence if:
- (a) the person has in the person's possession, in the Australian jurisdiction, a specimen; and
 - (b) the specimen is a regulated live specimen that is included in Part 2 of the list referred to in section 303EB, and the person is reckless as to that fact; and
 - (c) the specimen does not belong to a native species; and
 - (d) either:
 - (i) the specimen was unlawfully imported; or

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- (ii) the specimen was not imported, but any of the specimens of which it is the progeny was unlawfully imported.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

- (7) Subsection (6) does not apply if the defendant has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

Unlawfully imported

- (8) For the purposes of this section, a specimen is ***unlawfully imported*** if, and only if, it was imported, but was not lawfully imported (section 303GY).

303GO Regulations relating to welfare

- (1) This section applies to regulations made for the purposes of paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).
- (2) The conditions specified in those regulations in relation to a live animal may:
- (a) deal with the welfare of the animal:
- (i) when the animal is taken; or
- (ii) when the animal is being held after it has been taken; or
- (iii) when the animal is being prepared or shipped; or
- (iv) when the animal is under the control of the proposed recipient; and
- (b) may deal with eliminating or minimising the risk of:
- (i) injury to the animal; or
- (ii) adverse effects on the health of the animal; or
- (iii) cruel treatment of the animal.
- (3) The conditions specified in those regulations in relation to a live plant may:

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- (a) deal with the welfare of the plant:
 - (i) when the plant is taken; or
 - (ii) when the plant is being held after it has been taken; or
 - (iii) when the plant is being prepared or shipped; or
 - (iv) when the plant is under the control of the proposed recipient; and
 - (b) may deal with eliminating or minimising the risk of:
 - (i) injury to the plant; or
 - (ii) adverse effects on the health of the plant.
- (4) Subsections (2) and (3) do not limit paragraph 303CG(3)(c), 303DG(4)(b), 303EN(3)(e), 303FN(3)(c) or 303FO(3)(f).

303GP Cruelty—export or import of animals

- (1) A person commits an offence if:
- (a) the person exports or imports a live animal in a manner that subjects the animal to cruel treatment; and
 - (b) the person knows that, or is reckless as to whether, the export or import subjects the animal to cruel treatment; and
 - (c) the animal is a CITES specimen; and
 - (d) the person contravenes section 303CC or 303CD in relation to the export or import of the animal.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person exports a live animal in a manner that subjects the animal to cruel treatment; and
 - (b) the person knows that, or is reckless as to whether, the export subjects the animal to cruel treatment; and
 - (c) the animal is a regulated native specimen; and
 - (d) the person contravenes section 303DD in relation to the export of the animal.

Penalty: Imprisonment for 2 years.

- (3) A person commits an offence if:
- (a) the person imports a live animal in a manner that subjects the animal to cruel treatment; and
 - (b) the person knows that, or is reckless as to whether, the import subjects the animal to cruel treatment; and
 - (c) the animal is a regulated live specimen; and
 - (d) the person contravenes section 303EK in relation to the import of the animal.

Penalty: Imprisonment for 2 years.

- (4) This section does not limit section 303GE.

303GQ Imports of specimens contrary to the laws of a foreign country

- (1) A person must not intentionally import a specimen if the person knows that:
- (a) the specimen was exported from a foreign country; and
 - (b) at the time the specimen was exported, the export of the specimen was prohibited by a law of the foreign country that corresponds to this Part.

Penalty: Imprisonment for 5 years.

- (2) A prosecution must not be instituted for an offence against this section unless a relevant CITES authority of the foreign country has requested:
- (a) the investigation of the offence; or
 - (b) assistance in relation to a class of offences in which the offence is included.

303GR Evidence

- (1) In any proceedings for an offence against this Part:
- (a) any record kept in accordance with the regulations or another law of the Commonwealth or a law of a State or Territory is

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- admissible as prima facie evidence of the facts stated in the record; and
- (b) a copy of an entry in such a record, being a copy certified by the person by whom the record is kept to be a true copy of the entry, is admissible as prima facie evidence of the facts stated in the entry; and
 - (c) a document purporting to be a record kept in accordance with the regulations or another law of the Commonwealth, or a law of a State or Territory, or purporting to be such a certified copy as is referred to in paragraph (b), is taken, unless the contrary is established, to be such a record or certified copy, as the case may be.
- (2) If, in any proceedings for an offence against this Part, a record referred to in paragraph (1)(a) is tendered as prima facie evidence of a fact stated in the record, the person alleged to have committed the offence may require the person who kept that record to be called as a witness for the prosecution in the proceedings.

303GS Evidence of examiner

- (1) The Minister may, by writing, appoint appropriately qualified persons to be examiners for the purposes of this Part.
- (2) Subject to subsection (4), a certificate signed by an examiner appointed under subsection (1) setting out, in relation to a substance, matter, specimen or thing, one or more of the following:
 - (a) that he or she is appointed as the examiner under subsection (1);
 - (b) when and from whom the substance, matter, specimen or thing was received;
 - (c) what labels or other means of identification accompanied the substance, matter, specimen or thing when it was received;
 - (d) what container held the substance, matter, specimen or thing when it was received;
 - (e) a description, including the weight, of the substance, matter, specimen or thing when it was received;

- (f) the name of any method used to analyse the substance, matter, specimen or thing or any portion of it;
 - (g) the results of any such analysis;
 - (h) how the substance, matter, specimen or thing was dealt with after handling by the examiner, including details of:
 - (i) the quantity of the substance, matter, specimen or thing retained after analysis; and
 - (ii) names of any persons to whom any of the substance, matter, specimen or thing was given after analysis; and
 - (iii) measures taken to secure any retained quantity of the substance, matter, specimen or thing after analysis;
- is admissible in any proceeding for an offence against this Part as prima facie evidence of the matters in the certificate and the correctness of the results of the analysis.
- (3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate unless the contrary is established.
 - (4) A certificate is not to be admitted in evidence in accordance with subsection (2) in proceedings for an offence against this Part unless:
 - (a) the person charged with the offence; or
 - (b) a solicitor who has appeared for the person in those proceedings;has, at least 14 days before the certificate is sought to be admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.
 - (5) Subject to subsection (6), if, under subsection (2), a certificate is admitted in evidence in proceedings for an offence against this Part, the person charged with the offence may require the person giving the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.

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- (6) Subsection (5) does not entitle the person charged to require the person giving a certificate to be called as a witness for the prosecution unless:
- (a) the prosecutor has been given at least 4 days notice of the person's intention to require the examiner to be so called; or
 - (b) the court, by order, allows the person charged to require the person giving the certificate to be so called.
- (7) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under subsection (2) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

303GT Protection of witness

- (1) A witness for the prosecution in any proceedings for an offence against this Part is not to be compelled to disclose:
- (a) the fact that the witness received any information; or
 - (b) the nature of any information received by the witness; or
 - (c) the name of the person who gave the witness any information.
- (2) An authorised officer who is a witness in any proceedings for an offence against this Part is not to be compelled to produce any report:
- (a) that was made or received by the authorised officer in confidence in his or her capacity as an authorised officer; or
 - (b) that contains information received by the authorised officer in confidence.
- (3) Subsections (1) and (2) are to be disregarded in determining the compellability of witnesses in proceedings for an offence against a provision of this Act other than this Part.

303GU Forms and declarations—persons arriving in Australia or an external Territory

The regulations may provide for forms to be completed, or declarations to be made, in relation to specimens by persons arriving in Australia or an external Territory.

303GV Saving of other laws

- (1) This Part is in addition to the following laws:
 - (a) the *Customs Act 1901*;
 - (b) the *Biosecurity Act 2015*;
 - (c) any other law of the Commonwealth or of an external Territory, whether passed or made before or after the commencement of this Part.
- (2) The holder of a permit under this Part authorising the export or import of a specimen is not, by reason only of being the holder of the permit, exempt from compliance with any law referred to in paragraph (1)(a), (b) or (c) that applies in relation to that specimen.
- (3) Without limiting subsection (1), this Part, and regulations made for the purposes of this Part, do not authorise or permit the doing of any act in contravention of the *Biosecurity Act 2015* or of a law of an external Territory relating to quarantine.

303GW Part not to apply to certain specimens

Transshipment

- (1) For the purposes of this Part, if a specimen is brought into Australia from a country:
 - (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;that specimen:
 - (c) is taken not to have been imported into Australia; and
 - (d) when it leaves Australia, is taken not to be exported from Australia.

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- (2) For the purposes of this Part, if a specimen is brought into an external Territory:
- (a) for the purpose of transshipment to another country; or
 - (b) as part of an aircraft's stores or ship's stores;
- that specimen:
- (c) is taken not to have been imported into that Territory; and
 - (d) when it leaves that Territory, is taken not to be exported from that Territory.
- (3) For the purposes of subsection (1), a specimen is to be taken to be brought into Australia for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into Australia in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving Australia will be due solely to the arrangements for its transport; and
 - (c) it will be under customs control under the *Customs Act 1901* all the time that it is in Australia.
- (4) For the purposes of subsection (2), a specimen is taken to be brought into an external Territory for the purpose of transshipment to another country if, and only if:
- (a) the specimen is brought into that Territory in the course of being transported to an identified person in the other country; and
 - (b) any delay in its leaving that Territory will be due solely to the arrangements for its transport; and
 - (c) it will be under the control of an authorised officer all the time that it is in that Territory.

Emergency

- (5) For the purposes of this Part, if:
- (a) the Minister, the Director of Biosecurity, a prescribed person or a prescribed organisation is satisfied that, in order to meet an emergency involving danger to the life or health of a human or an animal, it is necessary or desirable that a

specimen that could be used in treating that person or animal should be sent out of, or brought into, Australia or an external Territory; and

- (b) that specimen is sent out of, or brought into, Australia or that Territory, as the case requires, to meet that emergency; that specimen is taken not to have been exported or imported, as the case may be.

Quarantine

- (6) Subject to subsections (1), (2) and (5), if, in accordance with the *Biosecurity Act 2015* or a law of an external Territory relating to quarantine, a person exercising powers under that Act or law imports a specimen that is subject to biosecurity control under the *Biosecurity Act 2015* or subject to quarantine, then, for the purposes of this Part, that specimen is taken to have been imported by:
- (a) if a person holds a permit to import that specimen—the holder of that permit; or
- (b) in any other case—a person whose identity is not known; but this subsection does not affect the commission of any offence committed before the importation of that specimen.

Definitions

- (7) In this section:

aircraft's stores and *ship's stores* have the same meanings respectively as they have in Part VII of the *Customs Act 1901*.

303GX Part not to apply to certain specimens used by traditional inhabitants

- (1) In this section:

area in the vicinity of the Protected Zone means an area in respect of which a notice is in force under subsection (2).

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Australian place means a place in Australia that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

Papua New Guinea place means a place in Papua New Guinea that is in the Protected Zone or in an area in the vicinity of the Protected Zone.

prescribed specimen means a specimen of a kind specified in a notice in force under subsection (3).

Protected Zone means the zone established under Article 10 of the Torres Strait Treaty, being the area bounded by the line described in Annex 9 to that treaty.

Torres Strait Treaty means the Treaty between Australia and the Independent State of Papua New Guinea that was signed at Sydney on 18 December 1978.

traditional activities has the same meaning as in the Torres Strait Treaty.

traditional inhabitants has the same meaning as in the *Torres Strait Fisheries Act 1984*.

- (2) The Minister may, by notifiable instrument, declare an area adjacent to the Protected Zone to be an area in the vicinity of the Protected Zone for the purposes of this section.
- (3) The Minister may, by notifiable instrument, declare that a specimen of a kind specified in the notice is a prescribed specimen for the purposes of this section.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunseting under that Act.

- (4) For the purposes of this Part, if a prescribed specimen that is owned by, or is under the control of, a traditional inhabitant and that has been used, is being used or is intended to be used by him or her in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone, is:

- (a) brought to an Australian place from a Papua New Guinea place; or
 - (b) taken from an Australian place to a Papua New Guinea place;
- then, subject to subsection (5), that specimen:
- (c) in the case where the specimen is brought into Australia as mentioned in paragraph (a)—is taken not to have been imported into Australia; and
 - (d) in the case where the specimen is taken from Australia as mentioned in paragraph (b)—is taken not to have been exported from Australia.
- (5) If:
- (a) a prescribed specimen that has been brought into Australia is, under subsection (4), taken not to have been imported into Australia; and
 - (b) that prescribed specimen is brought to a place in Australia that is not in the Protected Zone or in an area in the vicinity of the Protected Zone;
- the prescribed specimen is taken to have been imported into Australia upon being brought to the place referred to in paragraph (b).

303GY When a specimen is *lawfully imported*

For the purposes of this Part, a specimen is *lawfully imported* if, and only if, it was imported and:

- (a) in a case where the specimen was imported after the commencement of this Part—it was not imported in contravention of this Part; or
- (b) in a case where the specimen was imported when the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* was in force—it was not imported in contravention of that Act; or
- (c) in a case where the specimen was imported before the commencement of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*—it was not imported in contravention of:
 - (i) the Customs (Endangered Species) Regulations; or

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(ii) the Customs (Prohibited Imports) Regulations.

Part 14—Conservation agreements

304 Object of this Part

- (1) The object of this Part is to provide for:
- (a) conservation agreements between the Commonwealth and persons related to the protection and conservation of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of declared World Heritage properties;
 - (iii) the National Heritage values of National Heritage places;
 - (iv) the Commonwealth Heritage values of Commonwealth Heritage places;
 - (v) the ecological character of a declared Ramsar wetland;
 - (vi) the environment, in respect of the impact of a nuclear action;
 - (vii) the environment in a Commonwealth marine area;
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;
 - (ix) the environment on Commonwealth land; and
 - (b) the effect of conservation agreements; and
 - (c) the publication of conservation agreements.
- (2) Conservation agreements are agreements whose primary object is to enhance the conservation of matters referred to in paragraph (1)(a). They may relate to private or public land, or to marine areas.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

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305 Minister may enter into conservation agreements

- (1) The Minister may, on behalf of the Commonwealth, enter into an agreement (a *conservation agreement*) with a person for the protection and conservation of all or any of the following:
- (a) biodiversity in the Australian jurisdiction;
 - (b) the world heritage values of a declared World Heritage property in the Australian jurisdiction;
 - (c) the National Heritage values of a National Heritage place;
 - (d) the Commonwealth Heritage values of a Commonwealth Heritage place (whether inside or outside the Australian jurisdiction);
 - (e) the ecological character of a declared Ramsar wetland in the Australian jurisdiction;
 - (f) the environment, in respect of the impact of a nuclear action in the Australian jurisdiction;
 - (g) the environment in a Commonwealth marine area in the Australian jurisdiction;
 - (ga) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development in the Australian jurisdiction;
 - (h) the environment on Commonwealth land in the Australian jurisdiction.

Note: Conservation agreements cannot cover all or part of a Commonwealth reserve (see subsection 305(4)).

- (1A) The protection and conservation of the matters in subsection (1) include all or any of the following:
- (a) the protection, conservation and management of any listed species or ecological communities, or their habitats;
 - (b) the management of things in a way necessary for the protection and conservation of:
 - (i) the world heritage values of a declared World Heritage property; or
 - (ii) the National Heritage values of a National Heritage place; or

- (iii) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (iv) the ecological character of a declared Ramsar wetland; or
 - (v) the environment, in respect of the impact of a nuclear action; or
 - (vi) the environment in a Commonwealth marine area; or
 - (via) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or
 - (vii) the environment on Commonwealth land;
- (c) the abatement of processes, and the mitigation or avoidance of actions, that might adversely affect:
- (i) biodiversity; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (v) the ecological character of a declared Ramsar wetland; or
 - (vi) the environment, in respect of the impact of a nuclear action; or
 - (vii) the environment in a Commonwealth marine area; or
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or
 - (viii) the environment on Commonwealth land.

Note: When the Minister is considering entering into a conservation agreement, the Minister must take into account any responsibilities of other Commonwealth Ministers that may be affected by the agreement.

- (2) However, the Minister must not enter into a conservation agreement unless satisfied that:

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- (a) in the case of a proposed agreement wholly or partly for the protection and conservation of biodiversity—the agreement:
 - (i) will result in a net benefit to the conservation of biodiversity; and
 - (ii) is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan; and
- (b) in the case of a proposed agreement wholly or partly for the protection and conservation of heritage values—the agreement:
 - (i) will result in a net benefit to the conservation of those heritage values; and
 - (ii) is not inconsistent with at least one of the Australian World Heritage management principles, the National Heritage management principles and the Commonwealth Heritage management principles; and
- (c) in the case of a proposed agreement wholly or partly for the protection and conservation of the ecological character of a declared Ramsar wetland—the agreement:
 - (i) will result in a net benefit to the conservation of that ecological character; and
 - (ii) is not inconsistent with the Australian Ramsar management principles; and
- (d) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment, in respect of the impact nuclear actions—the agreement does not relate to the construction or operation of any of the following nuclear installations:
 - (i) a nuclear fuel fabrication plant;
 - (ii) a nuclear power plant;
 - (iii) an enrichment plant;
 - (iv) a reprocessing facility; and
- (e) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment in a Commonwealth marine area—the agreement will result in a net benefit to the conservation of the environment in that area; and

- (ea) in the case of a proposed agreement wholly or partly for the protection and conservation of a water resource, in respect of the impacts of actions involving coal seam gas development or large coal mining development—the agreement will result in a net benefit to the conservation of the water resource; and
 - (f) in the case of a proposed agreement wholly or partly for the protection and conservation of the environment on Commonwealth land—the agreement will result in a net benefit to the conservation of the environment on that land.
- (3) For the purposes of subsection (2), in deciding whether a proposed agreement will result in a net benefit to the conservation as mentioned in paragraph (2)(a), (b), (c), (e) or (f), the Minister must have regard to the matters (if any) prescribed by the regulations.
- (3A) If:
- (a) the Minister is considering whether to enter into a proposed conservation agreement that is wholly or partly for the protection and conservation of biodiversity; and
 - (b) the agreement would or could affect a particular listed threatened species or listed threatened ecological community;
- the Minister must, in deciding whether to enter into the agreement, have regard to any approved conservation advice for the species or community.
- (4) A conservation agreement must not cover all or part of a Commonwealth reserve.
- (5) Under subsection (1), the Minister may enter into a conservation agreement covering land with one of the following persons who has a usage right relating to the land:
- (a) an indigenous person;
 - (b) a body corporate wholly owned by indigenous persons;
 - (c) a body corporate established by or under an Act for the purposes of holding for the benefit of indigenous persons land vested in it by or under that Act;
 - (d) the trustee of a trust that holds land for the benefit of indigenous persons.

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This does not limit subsection (1).

- (6) The Minister must take account of the following when entering into a conservation agreement that is wholly or partly for the protection and conservation of biodiversity as described in subsection (5):
- (a) paragraph (j) of Article 8 of the Biodiversity Convention;
 - (b) paragraph (c) of Article 10 of the Biodiversity Convention;
 - (c) paragraph 4 of Article 18 of the Biodiversity Convention;
 - (d) objective 1.8.2 of the National Strategy for the Conservation of Australia's Biological Diversity, published by the Commonwealth in 1996.

306 Content of conservation agreements

- (1) Without limiting section 305, a conservation agreement may provide, for example, for all or any of the following:
- (a) activities that promote the protection and conservation of all or any of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of a declared World Heritage property;
 - (iii) the National Heritage values of a National Heritage place;
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
 - (v) the ecological character of a declared Ramsar wetland;
 - (vi) the environment, in respect of the impact of a nuclear action;
 - (vii) the environment in a Commonwealth marine area;
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;
 - (ix) the environment on Commonwealth land;
 - (b) controlling or prohibiting, in any place covered by the agreement, actions or processes that might adversely affect:

- (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (v) the ecological character of a declared Ramsar wetland; or
 - (vi) the environment, in respect of the impact of a nuclear action; or
 - (vii) the environment in a Commonwealth marine area; or
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or
 - (ix) the environment on Commonwealth land;
 - (c) requiring a person bound by the agreement not to obstruct access by a person authorised under the agreement to places covered by the agreement for the purpose of monitoring compliance with the agreement;
 - (d) requiring a person bound by the agreement to give such an authorised person information requested by the authorised person that is in the first-mentioned person's control and is relevant to compliance with the agreement;
 - (e) requiring the Commonwealth to provide financial, technical or other assistance to a person bound by the agreement;
 - (g) the commencement and duration of the agreement.
- (2) Without limiting section 305 or subsection (1) of this section, a conservation agreement entered into with the owner of a place may provide, for example, for all or any of the following:
- (a) requiring the owner to carry out specified activities, or to do specified things, that promote the conservation of all or any of the following:
 - (i) biodiversity;

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- (ii) the world heritage values of a declared World Heritage property;
 - (iii) the National Heritage values of a National Heritage place;
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
 - (v) the ecological character of a declared Ramsar wetland;
 - (vi) the environment, in respect of the impact of a nuclear action;
 - (vii) the environment in a Commonwealth marine area;
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;
 - (ix) the environment on Commonwealth land;
- (b) restricting the use of the place, or requiring the owner to refrain from, control or refuse to permit, actions or processes that may adversely affect:
- (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place; or
 - (v) the ecological character of a declared Ramsar wetland; or
 - (vi) the environment, in respect of the impact of a nuclear action; or
 - (vii) the environment in a Commonwealth marine area; or
 - (viii) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or
 - (ix) the environment on Commonwealth land;

- (c) requiring the owner to permit access to the place by specified persons;
- (d) requiring the owner to contribute towards costs incurred in implementing the agreement;
- (e) specifying the manner in which any money paid to the owner under the agreement is to be applied by the owner;
- (f) requiring the owner to repay to the Commonwealth any money paid to the owner under the agreement if the owner commits a specified breach of the agreement or in other specified circumstances;
- (g) providing for any other matter relating to the conservation or enhancement of the place, including the preparation and implementation of a plan of management for the place.

306A Conservation agreement may include declaration that actions do not need approval under Part 9

- (1) A conservation agreement may include a declaration to the effect that actions in a specified class do not need approval under Part 9 for the purposes of a specified provision of Part 3. The declaration may specify conditions relating to the taking of actions in the class.
- (2) The Minister must not enter into a conservation agreement that contains a declaration under subsection (1) unless the Minister is satisfied that the actions to which the declaration relates are not likely to have a significant impact on the matter protected by the provision of Part 3 proposed to be specified in the declaration.

307 Conservation agreements to be legally binding

A conservation agreement is legally binding on:

- (a) the Commonwealth; and
- (b) the person or persons with whom the Minister entered into the agreement on behalf of the Commonwealth; and
- (c) anyone else who is a successor to the whole or any part of any interest that a person mentioned in paragraph (b) had,

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when the agreement was entered into, in any place covered by the agreement.

307A Conservation agreements may deal with remediation or mitigation measures

When this section applies

- (1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened, or may have contravened, a provision of Part 3.

Conservation agreements may provide for measures to repair or mitigate damage

- (2) The Minister may enter into a conservation agreement with the person that provides for the protection and conservation of a matter referred to in section 305 by providing for the taking of measures to repair or mitigate damage to the matter protected by the provision of Part 3 (whether or not the damage may or will be, or has been, caused by the action).
- (3) The conservation agreement may state that specified provisions of the agreement, being provisions for the taking of measures as mentioned in subsection (2), are provisions that may be enforced in the Federal Court under this section. A provision of the agreement to which such a statement applies is a **remediation provision**.
- (4) If the conservation agreement contains a statement as mentioned in subsection (3), that statement must specify the provision of Part 3 referred to in subsection (1).

Federal Court may order compliance with remediation provision

- (5) If the Minister considers that the person has contravened a remediation provision, the Minister may apply to the Federal Court for an order under subsection (6).

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- (6) If the Federal Court is satisfied that the person has contravened a remediation provision, the Court may make one or more of the following orders:
- (a) an order directing the person to comply with the remediation provision;
 - (b) any other order that the Court considers appropriate.

Civil penalty for contravention of remediation provision

- (7) The person must not contravene a remediation provision.
- (8) Subsection (7) is a civil penalty provision. Under section 481, the Federal Court may order the person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the provision of Part 3 referred to in subsection (1).

This section does not limit sections 305, 306 and 307

- (9) This section does not limit anything in sections 305, 306 and 307.

308 Variation and termination of conservation agreements

- (1) A conservation agreement may be varied by a variation agreement entered into by the Minister, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c).
- (2) Sections 305 and 306 apply in relation to variation agreements in the same way as they apply in relation to conservation agreements.
- (3) A conservation agreement may be terminated:
- (a) by agreement between the Minister, on behalf of the Commonwealth, and the person or persons bound by the conservation agreement under paragraph 307(b) or (c); or
 - (b) in such other manner, or in such circumstances (if any), as the agreement specifies.

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- (4) If the Minister is satisfied that a conservation agreement is not capable of achieving its purpose, the Minister may, by order published in the *Gazette*, terminate the agreement or vary it in any way the Minister thinks necessary to ensure it becomes capable of achieving its purpose.
- (5) The Minister may make an order under subsection (4) in relation to a conservation agreement without the agreement of the person or persons bound by the conservation agreement under paragraph 307(b) or (c).
- (6) The Minister must cause a copy of an order to be laid before each House of the Parliament within the prescribed period after the publication of the order.
- (7) If a conservation agreement is varied by an order, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) may, by written notice given to the Minister, terminate the agreement.
- (8) If a conservation agreement is terminated or varied by an order, the person or persons bound by the conservation agreement under paragraph 307(b) or (c) are not entitled to any compensation in respect of the termination or variation.

Note: See Parts 17 and 18 for remedies for breach of conservation agreements.

309 Publication of conservation agreements

- (1) As soon as practicable after a conservation agreement has been entered into or varied, other than by an order under subsection 308(4), the Minister must:
 - (a) take reasonable steps to ensure that copies of the agreement or variation are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory; and
 - (b) cause a notice of the agreement or variation to be published:
 - (i) in the *Gazette*; and
 - (ii) in any other way required by the regulations.

- (2) The notice must:
- (a) state that the agreement or variation has been entered into or made; and
 - (b) specify the places where copies of the agreement or variation may be purchased.
- (3) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would result in harm being done to:
- (a) components of biodiversity; or
 - (b) the world heritage values of a declared World Heritage property; or
 - (c) the National Heritage values of a National Heritage place; or
 - (d) the Commonwealth Heritage values of a Commonwealth Heritage place.
- (4) Subsection (1) does not apply in relation to a conservation agreement, or a variation of such an agreement, or any part of such an agreement or variation, if the Minister is satisfied that disclosure of the agreement or variation, or the part of the agreement or variation, as the case may be, would disclose matters that the Minister is satisfied are commercial-in-confidence.
- (5) The Minister must not be satisfied that matter is commercial-in-confidence unless a person demonstrates to the Minister that:
- (a) release of information under subsection (1) about the matter would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.

Section 310

310 List of conservation agreements

The Minister must:

- (a) maintain an up-to-date list of conservation agreements that are in force; and
- (b) take reasonable steps to ensure that copies of the list are available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

311 Commonwealth, State and Territory laws

- (1) A provision of a conservation agreement has no effect to the extent (if any) to which it is inconsistent with a law of the Commonwealth, or of a State or Territory.
- (2) For the purposes of subsection (1), a provision of a conservation agreement is not taken to be inconsistent with a law of the Commonwealth, or of a State or Territory, if both the provision and the law are capable of being complied with.

312 Minister must not give preference

The Minister must not, in exercising powers on behalf of the Commonwealth under this Part, give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

Part 15—Protected areas

Division 1—Managing World Heritage properties

Subdivision A—Simplified outline of this Division

313 Simplified outline of this Division

The following is a simplified outline of this Division:

The Commonwealth may submit a property for inclusion in the World Heritage List only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing properties on the World Heritage List that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other properties on the World Heritage List, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to World Heritage properties in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared World Heritage properties.

Note: Section 12 prohibits an action that has a significant impact on the world heritage values of a declared World Heritage property, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

Subdivision B—Seeking agreement on World Heritage listing

314 Special provisions relating to World Heritage nominations

- (1) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:
 - (a) the proposed submission of the property (so far as it relates to the area); and
 - (b) management arrangements for the property (so far as they relate to the area).
- (2) The Commonwealth may submit to the World Heritage Committee for inclusion in the World Heritage List a property in a State or self-governing Territory only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
 - (a) the proposed submission of the property; and
 - (b) management arrangements for the property.
- (3) A failure to comply with this section does not affect the submission of a property to the World Heritage Committee for inclusion in the World Heritage List or the status of a property as a declared World Heritage property.

Subdivision C—Notice of submission of property for listing

315 Minister must give notice of submission of property for listing etc.

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
 - (a) the Commonwealth submits a property to the World Heritage Committee for inclusion in the World Heritage List;

- (b) the Commonwealth extends the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;
 - (c) the Commonwealth restricts the boundaries of a property submitted to the World Heritage Committee for inclusion in the World Heritage List;
 - (d) the Commonwealth withdraws the submission of a property for inclusion in the World Heritage List;
 - (e) a property submitted by the Commonwealth is included in the World Heritage List;
 - (f) all or part of a property is removed from the World Heritage List.
- (2) The notice must specify the area included in, or excluded or deleted from, the submission or World Heritage List as a result of the event.
- (3) A failure to comply with this section does not affect the status of an area as a declared World Heritage property.

Subdivision D—Plans for listed World Heritage properties in Commonwealth areas

316 Making plans

Minister must make plan

- (1) The Minister must make a written plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the property:
- (a) is included in the World Heritage List; or
 - (b) becomes entirely within one or more Commonwealth areas.

Amending and replacing plan

- (2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

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Requirements for plan

- (3) A plan must not be inconsistent with:
- (a) Australia's obligations under the World Heritage Convention; or
 - (b) the Australian World Heritage management principles.

Note: Section 323 explains what Australian World Heritage management principles are.

Ensuring plans reflect current management principles

- (4) If the Australian World Heritage management principles change so that a plan (the **earlier plan**) is inconsistent with them, the Minister must make another plan:
- (a) amending the earlier plan so it is not inconsistent with them; or
 - (b) revoking and replacing the earlier plan.

Plan may be in same document as another plan

- (5) To avoid doubt, a plan under this section for a property may be in the same document as:
- (a) a plan under this section for another property; or
 - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

Commonwealth reserves

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the World Heritage Convention.

317 Notice of plans

The Minister must give notice of the making of a plan under section 316, in accordance with the regulations.

318 Commonwealth compliance with plans

- (1) The Commonwealth or a Commonwealth agency must not:
 - (a) contravene a plan made under section 316; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 316 for a particular property described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the property are not inconsistent with the Australian World Heritage management principles.

319 Review of plans every 5 years

- (1) The Minister must cause a review of a plan made under section 316 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian World Heritage management principles in force at the time.

Note: Section 323 explains what Australian World Heritage management principles are.

Subdivision E—Managing World Heritage properties in States and self-governing Territories

320 Application

This Subdivision applies in relation to a property that:

- (a) is:
 - (i) in a State; or
 - (ii) in a self-governing Territory; or

Section 321

(iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and

(b) is not entirely within one or more Commonwealth areas.

321 Co-operating to prepare and implement plans

- (1) This section applies in relation to a property that is included in the World Heritage List.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

- (3) Subsection (2) does not apply in relation to so much of a property as is in the Great Barrier Reef Marine Park.

Note: A zoning plan must be prepared under the *Great Barrier Reef Marine Park Act 1975* for areas that are part of the Great Barrier Reef Marine Park. In preparing a zoning plan, regard must be had to the Australian World Heritage management principles.

322 Commonwealth responsibilities

- (1) This section applies in relation to a property that is a declared World Heritage property.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the property in a way that is not inconsistent with:
 - (a) the World Heritage Convention; and
 - (b) the Australian World Heritage management principles; and

- (c) if the property is on the World Heritage List and a plan for managing the property has been prepared as described in section 321—that plan.

Subdivision F—Australian World Heritage management principles

323 Australian World Heritage management principles

- (1) The regulations must prescribe principles for the management of natural heritage and cultural heritage. The principles prescribed are the *Australian World Heritage management principles*.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the World Heritage Convention.
- (3) In this section:

cultural heritage has the meaning given by the World Heritage Convention.

natural heritage has the meaning given by the World Heritage Convention.

Subdivision G—Assistance for protecting World Heritage properties

324 Commonwealth assistance for protecting declared World Heritage properties

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared World Heritage property to:
 - (a) a State or self-governing Territory in which the property occurs; or
 - (b) any other person.

Chapter 5 Conservation of biodiversity and heritage

Part 15 Protected areas

Division 1 Managing World Heritage properties

Section 324

- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Division 1A—Managing National Heritage places

Subdivision A—Preliminary

324A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the National Heritage List if the Minister is satisfied that the place has one or more National Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's National Heritage values and may invite public comments on the proposed inclusion of the place in the National Heritage List.

The Minister must make plans to protect and manage the National Heritage values of National Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

The Commonwealth must try to prepare and implement plans for managing other National Heritage places, in co-operation with the States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to National Heritage places in States and Territories.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of National Heritage places.

Note: Section 15B prohibits an action that has a significant impact on the National Heritage values of a National Heritage place, unless the person taking the action has the approval of the Minister or certain other requirements are met.

Subdivision B—The National Heritage List

324C The National Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the *National Heritage List*.
- (2) A place may be included in the National Heritage List only if:
 - (a) the place is within the Australian jurisdiction; and
 - (b) the Minister is satisfied that the place has one or more National Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the National Heritage List is called a *National Heritage place*.
- (4) The National Heritage List is not a legislative instrument.

324D Meaning of *National Heritage values*

- (1) A place has a *National Heritage value* if and only if the place meets one of the criteria (the *National Heritage criteria*) prescribed by the regulations for the purposes of this section. The *National Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *National Heritage values* of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.The regulations may prescribe criteria for other heritage values of places.

- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
- (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

Subdivision BA—Inclusion of places in the National Heritage List: usual process

324E Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the National Heritage List.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 324G).

The usual process involves the following steps for each assessment period:

- (a) the Minister may determine heritage themes (this step is optional) (see section 324H);
- (b) the Minister invites people to nominate places for inclusion in the National Heritage List, and gives the nominations to the Australian Heritage Council (see sections 324J and 324JA);
- (c) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it

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thinks should be assessed (see sections 324JB, 324JC and 324JD);

- (d) the Minister finalises the list of places that are to be assessed (see sections 324JE and 324JF);
- (e) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 324JG);
- (f) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 324JH and 324JI);
- (g) the Minister decides whether a place that has been assessed should be included in the National Heritage List (see section 324JJ).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

324F Definitions

In this Subdivision:

assessment period has the meaning given by subsection 324G(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 324JB(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 324JE(4).

proposed priority assessment list for an assessment period has the meaning given by subsection 324JB(1).

324G Meaning of *assessment period*

- (1) For the purposes of this Subdivision, each of the following is an *assessment period*:
 - (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;
 - (b) each period of 12 months starting on an anniversary of the day so determined.
- (2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.
- (3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

324H Minister may determine heritage themes for an assessment period

- (1) Before the Minister invites nominations for an assessment period under section 324J, the Minister may determine one or more heritage themes that the Minister considers should be given priority in relation to the assessment period.
- (2) The Minister may request advice from the Australian Heritage Council for the purpose of making a determination under subsection (1), and may have regard to any advice the Council provides in response to the request.
- (3) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

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324J Minister to invite nominations for each assessment period

- (1) Before the start of each assessment period, the Minister must publish a notice inviting people to nominate places for inclusion in the National Heritage List.
- (2) A notice under subsection (1):
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must invite people to nominate, to the Minister, places for inclusion in the National Heritage List; and
 - (c) must identify the assessment period to which the notice relates; and
 - (d) must specify a date (the *cut-off date*) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
 - (f) may also include:
 - (i) information related to any heritage themes that the Minister has determined under section 324H should be given priority in relation to the assessment period; and
 - (ii) any other information that the Minister considers appropriate.
- (3) The regulations must provide for the following:
 - (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making nominations;
 - (c) what information is to be included in a nomination.

324JA Minister to give nominations to Australian Heritage Council

Nominations in relation to first assessment period

- (1) Within 30 business days after the cut-off date specified in the notice under subsection 324J(1) for the first assessment period, the Minister must give the Australian Heritage Council the nominations that the Minister:
 - (a) had received before the end of that cut-off date; and
 - (b) had not already requested the Australian Heritage Council, under section 324E (as in force before the commencement of this section), to assess; and
 - (c) had not already rejected under section 324E (as in force before the commencement of this section); and
 - (d) does not reject under subsection (4).
- (2) Subsection (1) does not apply to a nomination of a place if:
 - (a) the place is outside the Australian jurisdiction; or
 - (b) the Minister had, before the commencement of this section, included the place in the National Heritage List under section 324F (as in force before the commencement of this section).

Nominations in relation to later assessment periods

- (3) Within 30 business days after the cut-off date (the **current cut-off date**) specified in the notice under subsection 324J(1) for an assessment period (other than the first), the Minister must give the Australian Heritage Council the nominations that were received by the Minister in the period:
 - (a) starting immediately after the end of the cut-off date specified in the notice under subsection 324J(1) for the immediately preceding assessment period; and
 - (b) ending at the end of the current cut-off date;other than any such nominations that the Minister rejects under subsection (4).

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Minister may reject nominations

- (4) The Minister may, in writing, reject a nomination if the Minister considers that:
- (a) the nomination is vexatious, frivolous or not made in good faith; or
 - (b) the Minister considers that regulations referred to in paragraph 324J(3)(b) or (c) have not been complied with in relation to the nomination.
- (5) If a nomination is rejected under paragraph (4)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

- (6) In this section:

nomination means a nomination of a place for inclusion in the National Heritage List.

324JB Australian Heritage Council to prepare proposed priority assessment list

- (1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 324JA(1) in relation to an assessment period, the Council must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period.
- (2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration in relation to the assessment period as the Australian Heritage Council considers it appropriate to include in the list, having regard to:
- (a) any heritage themes determined by the Minister under section 324H in relation to the assessment period; and
 - (b) the Council's own views about what should be given priority in relation to the assessment period; and

- (c) the Council's capacity to make assessments under this Division while still performing its other functions; and
 - (d) any other matters that the Council considers appropriate.
- (3) A place is ***eligible for assessment consideration*** in relation to the assessment period if:
- (a) the place has been nominated by a nomination referred to in subsection (1); or
 - (b) the Council itself wishes to nominate the place for inclusion in the National Heritage List; or
 - (c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or
 - (d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies.
- (4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any National Heritage values. For this purpose, the Council is not required to have regard to any information beyond the information that was included in the nomination.
- (5) The proposed priority assessment list is not a legislative instrument.

324JC Matters to be included in proposed priority assessment list

- (1) The proposed priority assessment list for an assessment period is to include, for each place in the list:
- (a) a description of the place; and
 - (b) an assessment completion time; and
 - (c) any other information required by the regulations.

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- (2) The assessment completion time for a place must be either:
 - (a) a time that is at or before the end of the assessment period to which the list relates; or
 - (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period).

324JD Statement to be given to Minister with proposed priority assessment list

- (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to:
 - (a) for each place that is included in the list—why the Council included the place in the list; and
 - (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 324JB(3)(a) or (c)—why the Council did not include the place in the list.
- (2) The statement must also identify, as places nominated by the Australian Heritage Council:
 - (a) any places that are included in the list because the Council itself wishes to nominate them (see paragraph 324JB(3)(b)); and
 - (b) any places that are included in the list because of paragraph 324JB(3)(d) that consist of one or more places to which paragraph 324JB(3)(b) applies.

324JE The finalised priority assessment list

- (1) Within 20 business days after the Minister, under section 324JB, receives the proposed priority assessment list for an assessment period, the Minister may, in writing, make changes to the list as mentioned in subsection (2).

- (2) The changes the Minister may make are as follows:
 - (a) including a place in the list (and also including the matters referred to in subsection 324JC(1));
 - (b) omitting a place from the list (and also omitting the matters referred to in subsection 324JC(1));
 - (c) changing the assessment completion time for a place in the list;
 - (d) any other changes of a kind permitted by the regulations.
- (3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.
- (4) At the end of the period of 20 business days referred to in subsection (1), the list, as changed (if at all) by the Minister, becomes the ***finalised priority assessment list*** for the assessment period.
- (5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.
- (6) The finalised priority assessment list is not a legislative instrument.

324JF Publication of finalised priority assessment list

- (1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the internet.
- (2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

324JG Australian Heritage Council to invite comments on places in finalised priority assessment list

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.

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- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
- (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
 - (b) must identify the place or places to which the notice relates; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place or places meet any of the National Heritage criteria; and
 - (ii) whether the place or places should be included in the National Heritage List; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
 - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
 - (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

324JH Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 324JI):
 - (a) make a written assessment whether the place meets any of the National Heritage criteria; and
 - (b) give to the Minister:
 - (i) the written assessment (or a copy of it); and
 - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).
- (2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):
 - (a) must take into account the comments the Council receives in response to the notice under subsection 324JG(1) in relation to the place; and
 - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
 - (c) may seek, and have regard to, information or advice from any source.
- (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:
 - (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 324JG(1) in relation to the place; or
 - (b) the Council considers that regulations referred to in paragraph 324JG(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the National Heritage criteria.

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- (5) If, in making an assessment, the Australian Heritage Council considers that a place might have one or more National Heritage values, the Council must:
- (a) take all practicable steps:
 - (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
 - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and
 - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the National Heritage List.
- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.
- (7) If:
- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
 - (b) there are Indigenous persons who:
 - (i) have rights or interests in all or part of the place; and
 - (ii) are neither owners nor occupiers of all or part of the place; and
 - (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent

those Indigenous persons in relation to those rights and interests;

the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

324JI Time by which assessments to be provided to Minister

- (1) Subsection 324JH(1) must be complied with, in relation to a place included in the finalised priority assessment list for an assessment period, by the assessment completion time specified in the list for the place, or by that time as extended under this section.
- (2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council considers that it needs more time to make the assessment.
- (3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.
- (4) An extension under subsection (3) must be made in writing.
- (5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

324JJ Decision about inclusion of a place in the National Heritage List

Minister to decide whether or not to include place

- (1) After receiving from the Australian Heritage Council an assessment under section 324JH whether a place (the *assessed*

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place) meets any of the National Heritage criteria, the Minister must:

- (a) by instrument published in the *Gazette*, include in the National Heritage List:
 - (i) the assessed place or a part of the assessed place; and
 - (ii) the National Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
- (b) in writing, decide not to include the assessed place in the National Heritage List.

Note: The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).

- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by the regulations.
- (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
 - (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the National Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include place

- (6) If the Minister includes the assessed place, or a part of the assessed place (the ***listed part of the assessed place***), in the National Heritage List, he or she must, within a reasonable time:
- (a) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
 - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 324J(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
 - (c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and
 - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.
- (7) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of paragraph (6)(a) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the assessed place;
 - (c) displays in public buildings at or near the assessed place.

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Additional requirements if Minister decides not to include place

- (8) If the Minister decides not to include the assessed place in the National Heritage List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the internet; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 324J(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (8) applies in a case where the Minister decides that none of the assessed place is to be included in the National Heritage List.

Subdivision BB—Inclusion of places in the National Heritage List: emergency process

324JK Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the emergency process for the inclusion of places in the National Heritage List.

The emergency process involves the following steps:

- (a) the Minister may include a place in the National Heritage List if it is under threat (see section 324JL);
- (b) the Minister asks the Australian Heritage Council to assess the place (see section 324JM);

- (c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 324JN);
- (d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 324JO and 324JP);
- (e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 324JQ).

324JL Minister may include place in National Heritage List if under threat

- (1) If the Minister believes that:
 - (a) a place has or may have one or more National Heritage values; and
 - (b) any of those values is under threat of a significant adverse impact; and
 - (c) that threat is both likely and imminent;the Minister may, by instrument published in the *Gazette*, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have.
- (2) If:
 - (a) the place is included in the National Heritage List under subsection (1); and
 - (b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;that process ceases to apply to the place when it is included in the List under subsection (1).

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Part 15 Protected areas

Division 1A Managing National Heritage places

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Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 324JQ(1) or (4) and a person subsequently nominates the place under that Subdivision.

- (3) If the place is included in the National Heritage List under subsection (1), the Minister must:
- (a) within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):
 - (i) on the internet; and
 - (ii) in accordance with any other requirements specified in the regulations; and
 - (b) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the National Heritage List.
- (4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.

324JM Minister to ask Australian Heritage Council for assessment

- (1) If the Minister includes a place in the National Heritage List under section 324JL, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the National Heritage criteria.
- (2) The request must specify the assessment completion time for the assessment.

Note: When specifying an assessment completion time, the 12-month period referred to in subsection 324JQ(1) should be considered.

324JN Publication of listing of place and inviting comments

- (1) If the Australian Heritage Council receives a request under subsection 324JM(1) in relation to a place that has been included in the National Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.
- (2) A notice under subsection (1) in relation to a place:
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must contain the following:
 - (i) a description of the place;
 - (ii) a statement that the place has been included in the National Heritage List, and that specifies the National Heritage values that have been included in the List in relation to the place;
 - (iii) the date on which the place was so included; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place meets any of the National Heritage criteria; and
 - (ii) whether the place should continue to be included in the National Heritage List; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.
- (3) The regulations may provide for either or both of the following:
 - (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

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324JO Australian Heritage Council to assess place and give assessment to Minister

- (1) Section 324JH applies in relation to a request under subsection 324JM(1) as if:
 - (a) a reference in section 324JH to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
 - (b) a reference in section 324JH to the notice under subsection 324JG(1) in relation to the place were a reference to the notice under subsection 324JN(1) in relation to the place; and
 - (c) a reference in section 324JH to regulations referred to in paragraph 324JG(4)(b) were a reference to regulations referred to in paragraph 324JN(3)(b); and
 - (d) a reference in section 324JH to whether the place should be included in the National Heritage List were a reference to whether the place should continue to be included in the National Heritage List.
- (2) A reference in another provision of this Act to section 324JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

324JP Time by which assessments to be provided to Minister

- (1) Section 324JI applies in relation to a request under subsection 324JM(1) as if:
 - (a) a reference in section 324JI to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
 - (b) a reference in section 324JI to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.
- (2) A reference in another provision of this Act to section 324JI, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

324JQ Decision about place remaining in the National Heritage List

Minister to decide whether place should remain listed

- (1) Within 12 months after the inclusion of a place in the National Heritage List under section 324JL, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):
 - (a) do one of the following:
 - (i) state that the place remains in the National Heritage List with its boundary unaltered;
 - (ii) alter the boundary of the place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
 - (iii) remove from the National Heritage List the place and its National Heritage values; and
 - (b) if the place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:
 - (i) state that specified National Heritage values included in the List under section 324JL for the place remain in the List for the place;
 - (ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324JL for the place;
 - (iii) remove from the List for the place specified National Heritage values that were included in the List under section 324JL for the place.
- (2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 324JH in relation to the place.
- (3) The Minister must not take action under subsection (1) that results in the place remaining in the National Heritage List (whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more National Heritage values.

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Listing lapses automatically if action not taken within 12 months of listing

- (4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed National Heritage values, are automatically removed from the National Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

Matters to be considered

- (5) For the purpose of deciding what action to take under subsection (1) in relation to the place:
- (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Disapplying section 324L

- (6) Section 324L does not apply to:
- (a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the National Heritage List; or
 - (b) the removal of the place and its National Heritage values under subparagraph (1)(a)(iii) of this section; or
 - (c) the removal of a National Heritage value of the place under subparagraph (1)(b)(iii) of this section.

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Minister to publish copy or summary of subsection (1) notice

- (7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

Additional requirements if place etc. is removed under subsection (1)

- (8) If, under subsection (1), the Minister removes from the National Heritage List the place or a National Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:
- (a) publish a copy of the instrument referred to in subsection (1) on the internet; and
 - (b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

Requirements if place is removed under subsection (4)

- (9) If, under subsection (4), the place, and its listed National Heritage values, are removed from the National Heritage List, the Minister must, within 10 business days after the removal:
- (a) publish notice of the removal on the internet; and
 - (b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

Alternative methods of notifying owners and occupiers

- (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Minister may

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satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
- (c) displays in public buildings at or near the place.

Subdivision BC—Other provisions relating to the National Heritage List

324JR Co-ordination with Scientific Committee—Council undertaking assessment

- (1) This section applies if:
 - (a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) before giving the assessment to the Minister, the Council becomes aware that:
 - (i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; and
 - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).
- (4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:

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- (a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and
 - (b) invite the Scientific Committee to give the Council its comments in relation to that matter; and
 - (c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.
- (5) If the Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a), the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.
- (6) If:
- (a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and
 - (b) the Australian Heritage Council has been given a copy of that assessment;
- the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.
- (7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 324R.

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324JS Co-ordination with Scientific Committee—Council given assessment to Minister

- (1) This section applies if:
 - (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) the Council is aware that:
 - (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and
 - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
 - (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
 - (b) give the Scientific Committee a copy of the assessment.
- (3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (4) Subsections (2) and (3) have effect despite section 324R.

324K Listing process not affected by changing boundaries of a place

- (1) This section is about compliance with a provision of Subdivision BA or BB that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of that Subdivision.
- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.
- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

324L Removal of places or National Heritage values from the National Heritage List

- (1) The Minister may remove all or part of a place from the National Heritage List only if the Minister is satisfied that:
- (a) ignoring subsection 324D(2), the place no longer has any National Heritage values or the part no longer contributes to any of the National Heritage values of the place; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place or part of a place may also be removed from the National Heritage List under subsection 324JQ(1).

- (2) The Minister may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Minister is satisfied that:
- (a) ignoring subsection 324D(2), the place no longer has the National Heritage value or values; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.

- (3) The Minister may remove all or part of a place, or a National Heritage value of a place, only by an instrument including a statement of the reasons for the removal.

Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

Note 2: For requirements relating to the instrument under the *Legislation Act 2003*, see subsections (5) and (6) of this section.

- (4) The instrument must deal with only one of the following kinds of removal:
- (a) removal (***removal for loss of value***) of a place, part or National Heritage value because of paragraph (1)(a) or (2)(a);
 - (b) removal of a place, part or National Heritage value because of paragraph (1)(b) or (2)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

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- (5) If the instrument deals only with removal for loss of value:
- (a) it is a legislative instrument; and
 - (b) it takes effect on the first day it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.
- (6) If subsection (5) does not apply to the instrument, it is a notifiable instrument.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunseting under that Act.

324M Minister must consider advice of the Australian Heritage Council and public comments

- (1) Before the Minister removes from the National Heritage List under section 324L all or part of a place or one or more of a place's National Heritage values in a removal for loss of value, the Minister must:
- (a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed removal; and
 - (b) publish, on the internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:
 - (i) describing the proposed removal; and
 - (ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed removal.
- The Minister must publish the notice within 20 business days of giving the request.
- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.
- (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.

- (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the National Heritage values of the place concerned.
- (5) The Minister must:
- (a) decide whether to remove from the National Heritage List the place or part concerned, or the National Heritage value or values of the place concerned; and
 - (b) if the Minister decides to remove the place or part, or the National Heritage value or values of the place—ensure that an instrument removing the place, part or National Heritage value or values is made under subsection 324L(3);
- within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.

324N Specifying one or more additional National Heritage values for a National Heritage place

- (1) The regulations may make provision for, or in relation to, the specification in the National Heritage List of additional National Heritage values in relation to National Heritage places.
- (2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:
- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
 - (b) widen, or have the effect of widening, the scope of any offence.

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324P National Heritage List must be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the National Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the National Heritage List is available on the internet.

Note: The copies of the National Heritage List made publicly available may not contain certain information kept confidential under section 324Q.

324Q Certain information may be kept confidential

- (1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:
 - (a) the place's precise location;
 - (b) the place's heritage values;
 - (c) any other information about the place.
- (2) It is sufficient compliance with this Act if only a general description of the place, its location or its National Heritage values is included in:
 - (a) the National Heritage List as made publicly available; or
 - (b) an instrument or other document created for the purposes of this Act.

324R Disclosure of Australian Heritage Council's assessments and advice

- (1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:
 - (a) an assessment under section 324JH whether a place meets any of the National Heritage criteria, any information relating

- to the assessment or any information about the nomination (if any) that led to the making of the assessment;
- (b) advice under section 324M concerning a place or any information relating to the advice.
- (2) However:
- (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
- (i) publication in the *Gazette* of an instrument under paragraph 324JJ(1)(a) or subsection 324JQ(1) in relation to the place; or
- (ii) the Minister decides under paragraph 324JJ(1)(b) not to include the place in the National Heritage List; and
- (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:
- (i) registration under the *Legislation Act 2003* of a legislative instrument under section 324L relating to the place; or
- (ii) the Minister decides under section 324M not to remove the place or a part of the place, or one or more of the place's National Heritage values, from the National Heritage List.
- (2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:
- (a) a place being, or not being, included in the National Heritage List; or
- (b) National Heritage values of a place being, or not being, included in the List; or
- (c) a place or part of a place, or one or more National Heritage values of a place, being removed from the List.
- (2B) Subsection (1) does not apply to a disclosure of particular information if:
- (a) the Chair of the Australian Heritage Council requests the Minister to give permission to disclose that information to a

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- particular person (or persons within a particular group of persons); and
- (b) the Minister gives that permission; and
 - (c) the disclosure is made to that person (or a person within that group).
- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 324JH whether a place meets the National Heritage criteria; or
 - (b) advice under section 324M concerning a place;
- the member must give a copy of the assessment or advice to anyone who asks for it.
- (4) If:
- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
 - (b) the member is aware that, under section 324Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its National Heritage values;
- the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

Subdivision C—Management plans for National Heritage places in Commonwealth areas

324S Management plans for National Heritage places in Commonwealth areas

- (1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place that is entirely within one or more Commonwealth areas. The Minister

must do so as soon as practicable after the first time the place satisfies both of the following paragraphs:

- (a) the place is included in the National Heritage List;
- (b) the place is entirely within one or more Commonwealth areas.

Note: However, section 324T precludes the Minister from making plans for managing certain places.

- (2) The Minister may, in writing, amend a plan or revoke and replace a plan.
- (3) The Minister must give notice, in accordance with the regulations, if the Minister:
 - (a) makes a plan for a National Heritage place; or
 - (b) amends such a plan; or
 - (c) revokes and replaces such a plan.
- (4) A plan must:
 - (a) address the matters prescribed by the regulations; and
 - (b) not be inconsistent with the National Heritage management principles (see Subdivision E).
- (5) If the National Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the Minister must as soon as practicable make a written instrument:
 - (a) amending the earlier plan to make it consistent with the principles; or
 - (b) revoking and replacing the earlier plan.
- (6) Before making, amending or revoking and replacing a plan, the Minister must:
 - (a) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment; and
 - (b) seek and consider comments from the Australian Heritage Council about those matters.

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- (7) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

324T Restriction on ability to make plans

Despite section 324S, the Minister must not make a plan for managing so much of a National Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

324U Compliance with plans by the Commonwealth and Commonwealth agencies

- (1) The Commonwealth or a Commonwealth agency must not:
- (a) contravene a plan made under section 324S; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 324S for a particular National Heritage place described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the National Heritage management principles.

324V Multiple plans in the same document

To avoid doubt, a plan for managing a National Heritage place may be in the same document as:

- (a) one or more other plans for managing National Heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

324W Review of plans at least every 5 years

- (1) At least once in every 5 year period after a plan for managing a National Heritage place is made under section 324S, the Minister must cause a review of the plan to be carried out.
- (2) The review must:
 - (a) assess whether the plan is consistent with the National Heritage management principles in force at the time; and
 - (b) assess whether the plan is effective in protecting and conserving the National Heritage values of the place; and
 - (c) make recommendations for the improved protection of the National Heritage values of the place.
- (3) The person carrying out the review must publish, on the internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:
 - (a) whether the plan is consistent with the National Heritage management principles; and
 - (b) the effectiveness of the plan in protecting and conserving the National Heritage values of the place.
- (4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

Subdivision D—Management of National Heritage places in States and self-governing Territories

324X Plans and Commonwealth responsibilities

- (1) This section applies to a National Heritage place that is not entirely within one or more Commonwealth areas and is:
 - (a) in a State; or
 - (b) in a self-governing Territory; or
 - (c) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*.

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(2) The Commonwealth must use its best endeavours to ensure a plan for managing the place, that is not inconsistent with the National Heritage management principles, is prepared and implemented in co-operation with the State or Territory.

(2A) Subsection (2) does not apply in relation to so much of a place as is in the Great Barrier Reef Marine Park.

Note: A zoning plan must be prepared under the *Great Barrier Reef Marine Park Act 1975* for areas that are part of the Great Barrier Reef Marine Park. In preparing a zoning plan, regard must be had to the National Heritage management principles.

(3) The Commonwealth, and each Commonwealth agency, must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the place in a way that is not inconsistent with:

- (a) the National Heritage management principles; or
- (b) the plan for managing the place, if one has been prepared under subsection (2).

Subdivision E—The National Heritage management principles

324Y National Heritage management principles

(1) The regulations must prescribe principles for managing National Heritage places. The principles prescribed are the *National Heritage management principles*.

(2) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles if the obligations relate to:

- (a) a constitutional corporation, the Commonwealth or a Commonwealth agency; or
- (b) trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; or

- (c) either or both of the following:
 - (i) a Commonwealth area;
 - (ii) a Territory; or
 - (d) the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; or
 - (e) the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.
- (4) Paragraph (2)(e) applies only to a prescribed obligation that is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.

Subdivision F—Obligations of Commonwealth agencies

324Z Obligation to assist the Minister and the Australian Heritage Council

- (1) A Commonwealth agency that owns or controls a place that has, or might have, one or more National Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's National Heritage values.
- (2) A Commonwealth agency that owns or controls all or part of a National Heritage place must take all reasonable steps to assist the Minister to make a plan under section 324S for the place.

324ZA Protecting National Heritage values of places sold or leased

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a National Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.

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- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the National Heritage values of the place, unless the agency is satisfied that:
- (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
 - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
- (a) such a covenant:
 - (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
 - (ii) could be insufficient to ensure the ongoing protection of the National Heritage values of the place; or
 - (b) the agency is satisfied as described in subsection (2).
- The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).
- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:
- (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the National Heritage values of the place; or
 - (b) advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.
- (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to

ensure the ongoing protection of the National Heritage values of the place.

- (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the National Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

Subdivision G—Assistance for protecting National Heritage places

324ZB Commonwealth assistance for protecting National Heritage places

- (1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a National Heritage place to:
 - (a) a State or self-governing Territory in which the place or part of the place is located; or
 - (b) any other person.
- (2) The Commonwealth may give the assistance subject to conditions.

Subdivision H—Reviewing and reporting on the National Heritage List

324ZC Reviewing and reporting on the National Heritage List

- (1) At least once in every 5 year period after the National Heritage List is established, the Minister must ensure that:
 - (a) a review of the National Heritage List is carried out; and
 - (b) a report of that review is tabled in each House of the Parliament.
- (2) The report must include details of:
 - (a) the number of places included in the National Heritage List; and

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- (b) any significant damage or threat to the National Heritage values of those places; and
- (c) how many plans under Subdivisions C and D for managing National Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
- (d) the operation of any conservation agreements under Part 14 that affect National Heritage places; and
- (e) all nominations, assessments and changes to the National Heritage List under this Division during the period of review; and
- (f) compliance with this Act in relation to National Heritage places; and
- (g) any other matters that the Minister considers relevant.

Division 2—Managing wetlands of international importance

Subdivision A—Simplified outline of this Division

325 Simplified outline of this Division

The following is a simplified outline of this Division:

The Commonwealth may designate a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing wetlands listed under the Ramsar Convention that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other wetlands listed under the Ramsar Convention, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to declared Ramsar wetlands in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared Ramsar wetlands.

Note: Section 16 prohibits an action that has a significant impact on an internationally important wetland, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

Subdivision B—Seeking agreement on Ramsar designation

326 Commonwealth must seek agreement before designation

- (1) The Commonwealth may designate for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention a wetland containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:
 - (a) the proposed designation of the wetland (so far as it relates to the area); and
 - (b) management arrangements for the wetland (so far as they relate to the area).
- (2) The Commonwealth may designate a wetland in a State or self-governing Territory for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
 - (a) the proposed submission of the wetland; and
 - (b) management arrangements for the wetland.
- (3) A failure to comply with this section does not affect the designation of a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention or the status of a wetland as a declared Ramsar wetland.

Subdivision C—Notice of designation of wetland

327 Minister must give notice of designation of wetland etc.

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
 - (a) the Commonwealth designates a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention;

- (b) the Commonwealth extends the boundaries of a wetland it has included in the List;
 - (c) the Commonwealth restricts the boundaries of a wetland it has included in the List;
 - (d) the Commonwealth deletes from the List a wetland it previously included in the List.
- (2) The notice must specify the area included in, or excluded or deleted from, the List as a result of the event.
- (3) A failure to comply with this section does not affect the status of an area as a declared Ramsar wetland.

Subdivision D—Plans for listed wetlands in Commonwealth areas

328 Making plans

Minister must make plan

- (1) The Minister must make a written plan for managing a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the wetland:
- (a) is included in the List; or
 - (b) becomes entirely within one or more Commonwealth areas.

Amending and replacing plan

- (2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

Requirements for plan

- (3) A plan must not be inconsistent with:
- (a) Australia's obligations under the Ramsar Convention; or
 - (b) the Australian Ramsar management principles.

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Note: Section 335 explains what Australian Ramsar management principles are.

Ensuring plans reflect current management principles

- (4) If the Australian Ramsar management principles change so that a plan (the **earlier plan**) is inconsistent with them, the Minister must make another plan:
- (a) amending the earlier plan so it is not inconsistent with them; or
 - (b) revoking and replacing the earlier plan.

Plan may be in same document as another plan

- (5) To avoid doubt, a plan under this section for a wetland may be in the same document as:
- (a) a plan under this section for another wetland; or
 - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

Commonwealth reserves

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a wetland as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the Ramsar Convention.

329 Notice of plans

The Minister must give notice of the making of a plan under section 328, in accordance with the regulations.

330 Commonwealth compliance with plans

- (1) The Commonwealth or a Commonwealth agency must not:
- (a) contravene a plan made under section 328; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or

the Commonwealth agency (as appropriate), would contravene such a plan.

- (2) If there is no plan in force under section 328 for a particular wetland described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the wetland are not inconsistent with the Australian Ramsar management principles.

331 Review of plans every 5 years

- (1) The Minister must cause a review of a plan made under section 328 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian Ramsar management principles in force at the time.

Note: Section 335 explains what Australian Ramsar management principles are.

Subdivision E—Management of wetlands in States and self-governing Territories

332 Application

This Subdivision applies in relation to a wetland that:

- (a) is:
- (i) in a State; or
 - (ii) in a self-governing Territory; or
 - (iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and
- (b) is not entirely within one or more Commonwealth areas.

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333 Co-operating to prepare and implement plans

- (1) This section applies in relation to a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the wetland in a way that is not inconsistent with Australia's obligations under the Ramsar Convention or the Australian Ramsar management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

334 Commonwealth responsibilities

- (1) This section applies in relation to a wetland that is a declared Ramsar wetland.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the wetland in a way that is not inconsistent with:
 - (a) the Ramsar Convention; and
 - (b) the Australian Ramsar management principles; and
 - (c) if the wetland is included in the List of Wetlands of International Importance kept under the Ramsar Convention and a plan for managing the property has been prepared as described in section 333—that plan.

Subdivision F—Australian Ramsar management principles

335 Australian Ramsar management principles

- (1) The regulations must prescribe principles for the management of wetlands included in the List of Wetlands of International Importance kept under the Ramsar Convention. The principles prescribed are the *Australian Ramsar management principles*.

- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the Ramsar Convention.

Subdivision G—Assistance for protecting wetlands

336 Commonwealth assistance for protecting declared Ramsar wetlands

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared Ramsar wetland to:
- (a) a State or self-governing Territory in which the wetland occurs; or
 - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Division 3—Managing Biosphere reserves

337 Definition of *Biosphere reserve*

A *Biosphere reserve* is an area designated for inclusion in the World Network of Biosphere Reserves by the International Co-ordinating Council of the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

338 Planning for management of Biosphere reserves

- (1) The Minister may make and implement a written plan for managing a Biosphere reserve, or a part of a Biosphere reserve, entirely within one or more Commonwealth areas. The plan must not be inconsistent with the Australian Biosphere reserve management principles.
- (2) The Commonwealth may co-operate with a State or self-governing Territory to prepare and implement a plan for managing a Biosphere reserve in the State or Territory. The plan must not be inconsistent with the Australian Biosphere reserve management principles.

339 Commonwealth activities in Biosphere reserves

The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that it exercises its powers and performs its functions in relation to a Biosphere reserve in a way that is not inconsistent with:

- (a) the Australian Biosphere reserve management principles; or
- (b) a plan prepared as described in section 338 for managing the Biosphere reserve.

340 Australian Biosphere reserve management principles

- (1) The regulations must prescribe principles for the management of Biosphere reserves. The principles prescribed are the *Australian Biosphere reserve management principles*.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with the Statutory Framework of the World Network of Biosphere Reserves established under the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

341 Commonwealth assistance for protecting Biosphere reserves

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a Biosphere reserve to:
 - (a) a State or self-governing Territory in which the reserve or part of the reserve occurs; or
 - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Division 3A—Managing Commonwealth Heritage places

Subdivision A—Preliminary

341A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the Commonwealth Heritage List if the place is in a Commonwealth area, or is owned or leased by the Commonwealth or a Commonwealth agency outside the Australian jurisdiction, and the Minister is satisfied that the place has one or more Commonwealth Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's Commonwealth Heritage values and may invite public comments on the proposed inclusion of the place in the Commonwealth Heritage List.

Commonwealth agencies must make plans to protect and manage the Commonwealth Heritage values of Commonwealth Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

Commonwealth agencies also have other obligations.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of Commonwealth Heritage places.

341B Extension to places etc. outside the Australian jurisdiction

This Division extends to places, acts and omissions outside the Australian jurisdiction, except so far as the contrary intention appears.

Subdivision B—The Commonwealth Heritage List

341C The Commonwealth Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the *Commonwealth Heritage List*.
- (2) A place may be included in the Commonwealth Heritage List only if:
 - (a) the place either:
 - (i) is entirely within a Commonwealth area; or
 - (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth Authority; and
 - (b) the Minister is satisfied that the place has one or more Commonwealth Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the Commonwealth Heritage List is called a *Commonwealth Heritage place*.
- (4) The Commonwealth Heritage List is not a legislative instrument.

341D Meaning of *Commonwealth Heritage values*

- (1) A place has a *Commonwealth Heritage value* if and only if the place meets one of the criteria (the *Commonwealth Heritage criteria*) prescribed by the regulations for the purposes of this section. The *Commonwealth Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *Commonwealth Heritage values* of a Commonwealth Heritage place are the Commonwealth Heritage values of the place included in the Commonwealth Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;

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- (b) indigenous heritage values of places;
- (c) historic heritage values of places.

The regulations may prescribe criteria for other heritage values of places.

- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

Subdivision BA—Inclusion of places in the Commonwealth Heritage List: usual process

341E Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G).

The usual process involves the following steps for each assessment period:

- (a) the Minister invites people to nominate places for inclusion in the Commonwealth Heritage List, and gives the nominations to the Australian Heritage Council (see sections 341H and 341J);
- (b) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will

mostly be places that have been nominated) that it thinks should be assessed (see sections 341JA, 341JB and 341JC);

- (c) the Minister finalises the list of places that are to be assessed (see sections 341JD and 341JE);
- (d) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 341JF);
- (e) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 341JG and 341JH);
- (f) the Minister decides whether a place that has been assessed should be included in the Commonwealth Heritage List (see section 341JI).

The steps mentioned in paragraphs (a) to (c) will generally be completed before the start of the assessment period.

341F Definitions

In this Subdivision:

assessment period has the meaning given by subsection 341G(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 341JA(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 341JD(4).

proposed priority assessment list for an assessment period has the meaning given by subsection 341JA(1).

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341G Meaning of *assessment period*

- (1) For the purposes of this Subdivision, each of the following is an *assessment period*:
 - (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;
 - (b) each period of 12 months starting on an anniversary of the day so determined.
- (2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.
- (3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

341H Minister to invite nominations for each assessment period

- (1) Before the start of each assessment period, the Minister must publish a notice inviting people to nominate places for inclusion in the Commonwealth Heritage List.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(2).
- (2) A notice under subsection (1):
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must invite people to nominate, to the Minister, places for inclusion in the Commonwealth Heritage List; and
 - (c) must identify the assessment period to which the notice relates; and
 - (d) must specify a date (the *cut-off date*) by which nominations must be received, which must be at least 40 business days

- after the notice has been published as required by paragraph (a); and
- (e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
 - (f) may also include any other information that the Minister considers appropriate.
- (3) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making nominations;
 - (c) what information is to be included in a nomination.

341J Minister to give nominations to Australian Heritage Council

Nominations in relation to first assessment period

- (1) Within 30 business days after the cut-off date specified in the notice under subsection 341H(1) for the first assessment period, the Minister must give the Australian Heritage Council the nominations that the Minister:
- (a) had received before the end of that cut-off date; and
 - (b) had not already requested the Australian Heritage Council, under section 341E (as in force before the commencement of this section), to assess; and
 - (c) had not already rejected under section 341E (as in force before the commencement of this section); and
 - (d) does not reject under subsection (4).
- (2) Subsection (1) does not apply to a nomination of a place if the Minister had, before the commencement of this section, included the place in the Commonwealth Heritage List under section 341F (as in force before the commencement of this section).

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Nominations in relation to later assessment periods

- (3) Within 30 business days after the cut-off date (the **current cut-off date**) specified in the notice under subsection 341H(1) for an assessment period (other than the first), the Minister must give the Australian Heritage Council the nominations that were received by the Minister in the period:
- (a) starting immediately after the end of the cut-off date specified in the notice under subsection 341H(1) for the immediately preceding assessment period; and
 - (b) ending at the end of the current cut-off date;
- other than any such nominations that the Minister has rejected under subsection (4).

Minister may reject nominations

- (4) The Minister may, in writing, reject a nomination if the Minister considers that:
- (a) the nomination is vexatious, frivolous or not made in good faith; or
 - (b) the Minister considers that regulations referred to in paragraph 341H(3)(b) or (c) have not been complied with in relation to the nomination.
- (5) If a nomination is rejected under paragraph (4)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

- (6) In this section:

nomination means a nomination of a place for inclusion in the Commonwealth Heritage List.

341JA Australian Heritage Council to prepare proposed priority assessment list

- (1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 341J(1) in relation to an assessment period, the Council must prepare and give to the Minister a list (the *proposed priority assessment list*) for the assessment period.
- (2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration in relation to the assessment period as the Australian Heritage Council considers it appropriate to include in the list, having regard to:
 - (a) the Council's own views about what should be given priority in relation to the assessment period; and
 - (b) the Council's capacity to make assessments under this Division while still performing its other functions; and
 - (c) any other matters that the Council considers appropriate.
- (3) A place is *eligible for assessment consideration* in relation to the assessment period if:
 - (a) the place has been nominated by a nomination referred to in subsection (1); or
 - (b) the Council itself wishes to nominate the place for inclusion in the Commonwealth Heritage List; or
 - (c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or
 - (d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies.
- (4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that

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the place has any Commonwealth Heritage values. For this purpose, the Council is not required to have regard to any information beyond the information that was included in the nomination.

- (5) The proposed priority assessment list is not a legislative instrument.

341JB Matters to be included in proposed priority assessment list

- (1) The proposed priority assessment list for an assessment period is to include, for each place in the list:
- (a) a description of the place; and
 - (b) an assessment completion time; and
 - (c) any other information required by the regulations.
- (2) The assessment completion time for a place must be either:
- (a) a time that is at or before the end of the assessment period to which the list relates; or
 - (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period).

341JC Statement to be given to Minister with proposed priority assessment list

- (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to:
- (a) for each place that is included in the list—why the Council included the place in the list; and
 - (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 341JA(3)(a) or (c)—why the Council did not include the place in the list.

- (2) The statement must also identify, as places nominated by the Australian Heritage Council:
- (a) any places that are included in the list because the Council itself wishes to nominate them (see paragraph 341JA(3)(b)); and
 - (b) any places that are included in the list because of paragraph 341JA(3)(d) that consist of one or more places to which paragraph 341JA(3)(b) applies.

341JD The finalised priority assessment list

- (1) Within 20 business days after the Minister, under section 341JA, receives the proposed priority assessment list for an assessment period, the Minister may, in writing, make changes to the list as mentioned in subsection (2).
- (2) The changes the Minister may make are as follows:
- (a) including a place in the list (and also including the matters referred to in subsection 341JA(1));
 - (b) omitting a place from the list (and also omitting the matters referred to in subsection 341JA(1));
 - (c) changing the assessment completion time for a place in the list;
 - (d) any other changes of a kind permitted by the regulations.
- (3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.
- (4) At the end of the period of 20 business days referred to in subsection (1), the list, as changed (if at all) by the Minister, becomes the ***finalised priority assessment list*** for the assessment period.
- (5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.
- (6) The finalised priority assessment list is not a legislative instrument.

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341JE Publication of finalised priority assessment list

- (1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the internet.
- (2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

341JF Australian Heritage Council to invite comments on places in finalised priority assessment list

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.
- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
 - (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
 - (b) must identify the place or places to which the notice relates; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place or places meet any of the Commonwealth Heritage criteria; and
 - (ii) whether the place or places should be included in the Commonwealth Heritage List; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and

- (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
 - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
 - (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
- (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

341JG Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 341JH):
- (a) make a written assessment whether the place meets any of the Commonwealth Heritage criteria; and
 - (b) give to the Minister:
 - (i) the written assessment (or a copy of it); and
 - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).
- (2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):
- (a) must take into account the comments the Council receives in response to the notice under subsection 341JF(1) in relation to the place; and
 - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
 - (c) may seek, and have regard to, information or advice from any source.

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- (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:
- (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 341JF(1) in relation to the place; or
 - (b) the Council considers that regulations referred to in paragraph 341JF(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the Commonwealth Heritage criteria.
- (5) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more Commonwealth Heritage values, the Council must:
- (a) take all practicable steps:
 - (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
 - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the Commonwealth Heritage criteria; and
 - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the Commonwealth Heritage List.
- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.
- (7) If:
- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
 - (b) there are Indigenous persons who:
 - (i) have rights or interests in all or part of the place; and
 - (ii) are neither owners nor occupiers of all or part of the place; and
 - (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent those Indigenous persons in relation to those rights and interests;

the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

341JH Time by which assessments to be provided to Minister

- (1) Subsection 341JG(1) must be complied with, in relation to a place included in the finalised priority assessment list for an assessment period, by the assessment completion time specified in the list for the place, or by that time as extended under this section.
- (2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council considers that it needs more time to make the assessment.
- (3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.

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- (4) An extension under subsection (3) must be made in writing.
- (5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

341JI Decision about inclusion of a place in the Commonwealth Heritage List

Minister to decide whether or not to include place

- (1) After receiving from the Australian Heritage Council an assessment under section 341JG whether a place (the **assessed place**) meets any of the Commonwealth Heritage criteria, the Minister must:
 - (a) by instrument published in the *Gazette*, include in the Commonwealth Heritage List:
 - (i) the assessed place or a part of the assessed place; and
 - (ii) the Commonwealth Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
 - (b) in writing, decide not to include the assessed place in the Commonwealth Heritage List.
- Note: The Minister may include a place in the Commonwealth Heritage List only if the Minister is satisfied that the place has one or more Commonwealth Heritage values (see subsection 341C(2)).
- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
 - (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
 - (4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by regulations.

- (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
- (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the Commonwealth Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 341JG(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include place

- (6) If the Minister includes the assessed place, or a part of the assessed place (the **listed part of the assessed place**), in the Commonwealth Heritage List, he or she must, within a reasonable time:
- (a) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
 - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the Commonwealth Heritage List; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 341H(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the Commonwealth Heritage List; and
 - (c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and
 - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.

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- (7) Paragraph (6)(a) does not apply unless the assessed place is within the Australian jurisdiction.
- (8) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the assessed place;
 - (c) displays in public buildings at or near the assessed place.

Additional requirements if Minister decides not to include place

- (9) If the Minister decides not to include the assessed place in the Commonwealth Heritage List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the internet; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 341H(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (9) applies in a case where the Minister decides that none of the assessed place is to be included in the Commonwealth Heritage List.

**Subdivision BB—Inclusion of places in the Commonwealth
Heritage List: emergency process**

341JJ Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the emergency process for the inclusion of places in the Commonwealth Heritage List.

The emergency process involves the following steps:

- (a) the Minister may include a place in the Commonwealth Heritage List if it is under threat (see section 341JK);
- (b) the Minister asks the Australian Heritage Council to assess the place (see section 341JL);
- (c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 341JM);
- (d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 341JN and 341JO);
- (e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 341JP).

**341JK Minister may include place in Commonwealth Heritage List
if under threat**

- (1) If the Minister believes:

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- (a) a place has or may have one or more Commonwealth Heritage values; and
- (b) any of those values is under threat of a significant adverse impact; and
- (c) that threat is both likely and imminent;

the Minister may, by instrument published in the *Gazette*, include in the Commonwealth Heritage List the place and the Commonwealth Heritage values the Minister believes the place has or may have.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(2).

(2) If:

- (a) the place is included in the Commonwealth Heritage List under subsection (1); and
- (b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;

that process ceases to apply to the place when it is included in the List under subsection (1).

Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 341JP(1) or (4) and a person subsequently nominates the place under that Subdivision.

(3) If the place is included in the Commonwealth Heritage List under subsection (1), the Minister must:

- (a) in any case—within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):
 - (i) on the internet; and
 - (ii) in accordance with any other requirements specified in the regulations; and
- (b) if the place is within the Australian jurisdiction—take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and

- (ii) advise each person identified that the place has been included in the Commonwealth Heritage List.
- (4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
 - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.

341JL Minister to ask Australian Heritage Council for assessment

- (1) If the Minister includes a place in the Commonwealth Heritage List under section 341JK, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the Commonwealth Heritage criteria.
- (2) The request must specify the assessment completion time for the assessment.

Note: When specifying an assessment completion time, the 12-month period referred to in subsection 341JP(1) should be considered.

341JM Publication of listing of place and inviting comments

- (1) If the Australian Heritage Council receives a request under subsection 341JL(1) in relation to a place that has been included in the Commonwealth Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.
- (2) A notice under subsection (1) in relation to a place:
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must contain the following:

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- (i) a description of the place;
 - (ii) a statement that the place has been included in the Commonwealth Heritage List, and that specifies the Commonwealth Heritage values that have been included in the List in relation to the place;
 - (iii) the date on which the place was so included; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place meets any of the Commonwealth Heritage criteria; and
 - (ii) whether the place should continue to be included in the Commonwealth Heritage List; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.
- (3) The regulations may provide for either or both of the following:
- (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

341JN Australian Heritage Council to assess place and give assessment to Minister

- (1) Section 341JG applies in relation to a request under subsection 341JL(1) as if:
- (a) a reference in section 341JG to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
 - (b) a reference in section 341JG to the notice under subsection 341JF(1) in relation to the place were a reference to the notice under subsection 341JM(1) in relation to the place; and

- (c) a reference in section 341JG to regulations referred to in paragraph 341JF(4)(b) were a reference to regulations referred to in paragraph 341JM(3)(b); and
 - (d) a reference in section 341JG to whether the place should be included in the Commonwealth Heritage List were a reference to whether the place should continue to be included in the Commonwealth Heritage List.
- (2) A reference in another provision of this Act to section 341JG, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

341JO Time by which assessments to be provided to Minister

- (1) Section 341JH applies in relation to a request under subsection 341JL(1) as if:
- (a) a reference in section 341JH to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
 - (b) a reference in section 341JH to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.
- (2) A reference in another provision of this Act to section 341JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

341JP Decision about place remaining in the Commonwealth Heritage List

Minister to decide whether place should remain listed

- (1) Within 12 months after the inclusion of a place in the Commonwealth Heritage List under section 341JK, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):
- (a) do one of the following:

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- (i) state that the place remains in the Commonwealth Heritage List with its boundary unaltered;
 - (ii) alter the boundary of the place described in the Commonwealth Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
 - (iii) remove from the Commonwealth Heritage List the place and its Commonwealth Heritage values; and
- (b) if the place is not removed from the Commonwealth Heritage List under subparagraph (a)(iii)—do all or any of the following:
- (i) state that specified Commonwealth Heritage values included in the List under section 341JK for the place remain in the List for the place;
 - (ii) include in the List for the place specified Commonwealth Heritage values of the place that were not included in the List under section 341JK for the place;
 - (iii) remove from the List for the place specified Commonwealth Heritage values that were included in the List under section 341JK for the place.
- (2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 341JG in relation to the place.
- (3) The Minister must not take action under subsection (1) that results in the place remaining in the Commonwealth Heritage List (whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more Commonwealth Heritage values.

Listing lapses automatically if action not taken within 12 months of listing

- (4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed Commonwealth Heritage values, are automatically removed from

the Commonwealth Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

Matters to be considered

- (5) For the purpose of deciding what action to take under subsection (1) in relation to the place:
- (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the place meets any of the Commonwealth Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 341JG(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Disapplying section 341L

- (6) Section 341L does not apply to:
- (a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the Commonwealth Heritage List; or
 - (b) the removal of the place and its Commonwealth Heritage values under subparagraph (1)(a)(iii) of this section; or
 - (c) the removal of a Commonwealth Heritage value of the place under subparagraph (1)(b)(iii) of this section.

Minister to publish copy or summary of subsection (1) notice

- (7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

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Additional requirements if place etc. is removed under subsection (1)

- (8) If, under subsection (1), the Minister removes from the Commonwealth Heritage List the place or a Commonwealth Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:
- (a) in any case—publish a copy of the instrument referred to in subsection (1) on the internet; and
 - (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 341JK(3).

Requirements if place is removed under subsection (4)

- (9) If, under subsection (4), the place, and its listed Commonwealth Heritage values, are removed from the Commonwealth Heritage List, the Minister must, within 10 business days after the removal:
- (a) in any case—publish notice of the removal on the internet; and
 - (b) if the place is within the Australian jurisdiction—advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

Note: For the obligation to identify owners or occupiers, see subsection 341JK(3).

Alternative methods of notifying owners and occupiers

- (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Council may satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;

- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
- (c) displays in public buildings at or near the place.

Subdivision BC—Other provisions relating to the Commonwealth Heritage List

341JQ Co-ordination with Scientific Committee—Council undertaking assessment

- (1) This section applies if:
 - (a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) before giving the assessment to the Minister, the Council becomes aware that:
 - (i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; and
 - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).
- (4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:
 - (a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and
 - (b) invite the Scientific Committee to give the Council its comments in relation to that matter; and

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- (c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.
- (5) If the Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a), the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.
- (6) If:
 - (a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and
 - (b) the Australian Heritage Council has been given a copy of that assessment;the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.
- (7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 341R.

341JR Co-ordination with Scientific Committee—Council given assessment to Minister

- (1) This section applies if:
 - (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and

- (b) the Council is aware that:
 - (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and
 - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
 - (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
 - (b) give the Scientific Committee a copy of the assessment.
- (3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (4) Subsections (2) and (3) have effect despite section 341R.

341K Listing process not affected by changing boundaries of a place

- (1) This section is about compliance with a provision of Subdivision BA or BB that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of that Subdivision.
- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.
- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

341L Removal of places or Commonwealth Heritage values from the Commonwealth Heritage List

- (1) The Minister must remove all or part of a place from the Commonwealth Heritage List as soon as practicable after the Minister becomes aware that:

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- (a) the place or part is no longer in a Commonwealth area; or
 - (b) the place or part is no longer owned or leased by the Commonwealth or a Commonwealth agency, if the place or part is outside the Australian jurisdiction.
- (2) The Minister may remove all or part of a place from the Commonwealth Heritage List only if the Minister is satisfied that:
- (a) ignoring subsection 341D(2), the place no longer has any Commonwealth Heritage values or the part no longer contributes to any of the Commonwealth Heritage values of the place; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.
- Note: A place or part of a place may also be removed from the Commonwealth Heritage List under subsection 341JP(1).
- (3) The Minister may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Minister is satisfied that:
- (a) ignoring subsection 341D(2), the place no longer has the Commonwealth Heritage value or values; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.
- (4) The Minister may remove all or part of a place, or a Commonwealth Heritage value of a place, only by an instrument including a statement of the reasons for the removal.
- Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).
- Note 2: For requirements relating to the instrument under the *Legislation Act 2003*, see subsections (6) and (7) of this section.
- (5) The instrument must deal with only one of the following kinds of removal:
- (a) removal (***removal for loss of value***) of a place, part or Commonwealth Heritage value because of paragraph (2)(a) or (3)(a);

(b) removal of a place, part or Commonwealth Heritage value because of subsection (1) or paragraph (2)(b) or (3)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

- (6) If the instrument deals only with removal for loss of value:
- (a) it is a legislative instrument; and
 - (b) it takes effect on the first day it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.
- (7) If subsection (6) does not apply to the instrument, it is a notifiable instrument.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunseting under that Act.

341M Minister must consider advice of the Australian Heritage Council and public comments

- (1) Before the Minister removes from the Commonwealth Heritage List under section 341L all or part of a place or one or more of a place's Commonwealth Heritage values in a removal for loss of value, the Minister must:
- (a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed removal; and
 - (b) publish, on the internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:
 - (i) describing the proposed removal; and
 - (ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed removal.
- The Minister must publish the notice within 20 business days of giving the request.
- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.

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- (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.
- (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the Commonwealth Heritage values of the place concerned.
- (5) The Minister must:
 - (a) decide whether to remove from the Commonwealth Heritage List the place or part concerned, or the Commonwealth Heritage value or values of the place concerned; and
 - (b) if the Minister decides to remove the place or part, or the Commonwealth Heritage value or values of the place—ensure that an instrument removing the place, part or Commonwealth Heritage value or values is made under subsection 341L(4);within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.
- (6) However, the time limit in subsection (5) does not apply if the place is wholly or partly outside the Australian jurisdiction.

341N Specifying one or more additional Commonwealth Heritage values for a Commonwealth Heritage place

- (1) The regulations may make provision for, or in relation to, the specification in the Commonwealth Heritage List of additional Commonwealth Heritage values in relation to Commonwealth Heritage places.
- (2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:
 - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or

- (b) widen, or have the effect of widening, the scope of any offence.

341P Commonwealth Heritage List must be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the Commonwealth Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the Commonwealth Heritage List is available on the internet.

Note: The copies of the Commonwealth Heritage List made publicly available may not contain certain information kept confidential under section 341Q.

341Q Certain information may be kept confidential

- (1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:
 - (a) the place's precise location;
 - (b) the place's heritage values;
 - (c) any other information about the place.
- (2) It is sufficient compliance with this Act if only a general description of the place, its location or its Commonwealth Heritage values is included in:
 - (a) the Commonwealth Heritage List as made publicly available; or
 - (b) an instrument or other document created for the purposes of this Act.

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341R Disclosure of Australian Heritage Council's assessments and advice

- (1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:
- (a) an assessment under section 341JG whether a place meets any of the Commonwealth Heritage criteria, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;
 - (b) advice under section 341M concerning a place or any information relating to the advice.
- (2) However:
- (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
 - (i) publication in the *Gazette* of an instrument under paragraph 341JI(1)(a) or subsection 341JP(1) in relation to the place; or
 - (ii) the Minister decides under paragraph 341JI(1)(b) not to include the place in the Commonwealth Heritage List; and
 - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:
 - (i) registration under the *Legislation Act 2003* of an instrument under section 341L relating to the place; or
 - (ii) the Minister decides under section 341M not to remove the place or a part of the place, or one or more of the place's Commonwealth Heritage values, from the Commonwealth Heritage List.
- (2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:
- (a) a place being, or not being, included in the Commonwealth Heritage List; or

- (b) Commonwealth Heritage values of a place being, or not being, included in the List; or
 - (c) a place or part of a place, or one or more Commonwealth Heritage values of a place, being removed from the List.
- (2B) Subsection (1) does not apply to a disclosure of particular information if:
- (a) the Chair of the Australian Heritage Council requests the Minister to give permission to disclose that information to a particular person (or persons within a particular group of persons); and
 - (b) the Minister gives that permission; and
 - (c) the disclosure is made to that person (or a person within that group).
- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 341JG whether a place meets the Commonwealth Heritage criteria; or
 - (b) advice under section 341M concerning a place;
- the member must give a copy of the assessment or advice to anyone who asks for it.
- (4) If:
- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
 - (b) the member is aware that, under section 341Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its Commonwealth Heritage values;
- the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

Section 341S

Subdivision C—Management plans for Commonwealth Heritage places

341S Management plans for Commonwealth Heritage places

- (1) A Commonwealth agency must make a written plan to protect and manage the Commonwealth Heritage values of a Commonwealth Heritage place it owns or controls. The agency must do so within the period mentioned either:
 - (a) at the time the agency starts owning or controlling the place, in the agency's heritage strategy under section 341ZA; or
 - (b) after that time, in the agency's first such strategy.

Note: However, a Commonwealth agency must not make plans for managing certain places (see section 341U).

- (2) The Commonwealth agency may, in writing, amend the plan or revoke and replace the plan.
- (3) A Commonwealth agency must give notice, in accordance with the regulations, if the agency:
 - (a) makes a plan for a Commonwealth Heritage place; or
 - (b) amends such a plan; or
 - (c) revokes and replaces such a plan.

Note: Subdivision E imposes other obligations on Commonwealth agencies.

- (4) A plan must:
 - (a) address the matters prescribed by the regulations; and
 - (b) not be inconsistent with the Commonwealth Heritage management principles (see Subdivision D).
- (5) If the Commonwealth Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the agency concerned must as soon as practicable make a written instrument:
 - (a) amending the earlier plan to make it consistent with the principles; or
 - (b) revoking and replacing the earlier plan.

- (6) Before making, amending or revoking and replacing a plan, the agency concerned must:
 - (a) ask the Minister for advice on the proposed plan or amendment and must take account of any such advice received from the Minister; and
 - (b) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment.
- (7) The Minister must consult with the Australian Heritage Council in preparing an advice for the purposes of this section.
- (8) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

341T Endorsing management plans for Commonwealth Heritage places

- (1) A Commonwealth agency that makes a plan for managing a Commonwealth Heritage place may ask the Minister to endorse the plan. If the Commonwealth agency does so, it must give the Minister a copy of the plan.
 - (1A) The Minister must decide within 60 business days of being given the copy of the plan whether or not to endorse the plan.
 - (1B) Within 10 business days of making the decision, the Minister must inform the Commonwealth agency in writing of the decision and publish on the internet a notice of the decision.
- (2) The Minister:
 - (a) may only endorse a plan that the Minister is satisfied provides for the conservation of the Commonwealth Heritage values of the place concerned; and
 - (b) must not endorse a plan that the Minister considers is inconsistent with the Commonwealth Heritage management principles (see Subdivision D).

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- (3) The Minister may, at any time, revoke an endorsement of a plan if the Minister considers it appropriate to do so.

341U Restriction on ability to make plans

Despite section 341S, a Commonwealth agency must not make a plan for managing so much of a Commonwealth Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

341V Compliance with plans by the Commonwealth and Commonwealth agencies

- (1) The Commonwealth or a Commonwealth agency must not:
- (a) contravene a plan made under section 341S; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 341S for a particular Commonwealth Heritage place, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the Commonwealth Heritage management principles.

341W Multiple plans in the same document

To avoid doubt, a plan for managing a Commonwealth Heritage place may be in the same document as:

- (a) one or more other plans for managing Commonwealth Heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

341X Review of plans at least every 5 years

- (1) At least once in every 5 year period after a plan for managing a Commonwealth Heritage place is made under section 341S, the Commonwealth agency concerned must cause a review of the plan to be carried out.
- (2) The review must:
 - (a) assess whether the plan is consistent with the Commonwealth Heritage management principles in force at the time; and
 - (b) assess whether the plan is effective in protecting and conserving the Commonwealth Heritage values of the place; and
 - (c) make recommendations for the improved protection of the Commonwealth Heritage values of the place.
- (3) The person carrying out the review must publish, on the internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:
 - (a) whether the plan is consistent with the Commonwealth Heritage management principles; and
 - (b) the effectiveness of the plan in protecting and conserving the Commonwealth Heritage values of the place.
- (4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

Subdivision D—The Commonwealth Heritage management principles

341Y Commonwealth Heritage management principles

- (1) The regulations must prescribe principles for managing Commonwealth Heritage places. The principles prescribed are the *Commonwealth Heritage management principles*.

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- (2) The regulations may prescribe obligations to implement or give effect to the Commonwealth Heritage management principles.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.

Subdivision E—Obligations of Commonwealth agencies

341Z Obligation to assist the Minister and the Australian Heritage Council

A Commonwealth agency that owns or controls a place that has, or might have, one or more Commonwealth Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's Commonwealth Heritage values.

341ZA Heritage strategies

- (1) If a Commonwealth agency owns or controls one or more places, the agency must:
 - (a) prepare a written heritage strategy for managing the places to protect and conserve their Commonwealth Heritage values; and
 - (b) give a copy of the strategy to the Minister;as soon as practicable and in any event within 2 years after the later of:
 - (c) the time the agency first owns or controls a place; and
 - (d) the commencement of this section.

Note: The heritage strategy will apply to every place the agency owns or controls.

- (1A) Before making a heritage strategy, the Commonwealth agency must consult the Australian Heritage Council and take into account any advice the agency receives from the Council.
- (2) The Commonwealth agency may, in writing, amend the heritage strategy or revoke and replace the heritage strategy. The

Commonwealth agency must give the Minister a copy of the amended or replacement strategy within 20 business days of the amendment or replacement.

- (3) A heritage strategy must:
 - (a) mention the period within which the Commonwealth agency must make a plan under section 341S; and
 - (b) mention the period within which the Commonwealth agency must do the things mentioned in subsection 341ZB(1); and
 - (c) address the matters prescribed by the regulations (if any); and
 - (d) not be inconsistent with the Commonwealth Heritage management principles.
- (4) The Minister must advise the Commonwealth agency whether or not the agency's heritage strategy (whether original, amended or replacement) is inconsistent with the Commonwealth Heritage management principles.
- (5) At least once in every 3 year period after a heritage strategy is made, the Commonwealth agency concerned must cause a review of the strategy to be carried out.
- (6) The agency must give the Minister a written report of the review. The report must address the matters prescribed by the regulations (if any).

341ZB Heritage assessments and registers

- (1) A Commonwealth agency must do all of the following within the period mentioned in its heritage strategy:
 - (a) conduct a program to identify Commonwealth Heritage values for each place it owns or controls;
 - (b) produce a register that sets out, for each place it owns or controls, the Commonwealth Heritage values (if any) of that place;
 - (c) give the Minister a written report that includes:
 - (i) details of the program; and
 - (ii) a copy of the register.

Section 341ZC

- (2) The regulations may prescribe all or any of the following:
 - (a) how Commonwealth heritage values may be identified for a place;
 - (b) matters a register must address;
 - (c) matters a report to the Minister must address.
- (3) A Commonwealth agency must keep its register up to date.
- (4) A register may be kept electronically.
- (5) If a report under paragraph (1)(c) indicates that a place owned or controlled by a Commonwealth agency may have one or more Commonwealth Heritage values, information from the report may be used or referred to in a nomination of the place for inclusion in the Commonwealth Heritage List.

341ZC Minimising adverse impact on heritage values

A Commonwealth agency must not take an action that has, will have or is likely to have an adverse impact on the National Heritage values of a National Heritage place or the Commonwealth Heritage values of a Commonwealth Heritage place, unless:

- (a) there is no feasible and prudent alternative to taking the action; and
- (b) all measures that can reasonably be taken to mitigate the impact of the action on those values are taken.

341ZE Protecting Commonwealth Heritage values of places sold or leased

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a Commonwealth Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.

- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the Commonwealth Heritage values of the place, unless the agency is satisfied that:
- (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
 - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
- (a) such a covenant:
 - (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
 - (ii) could be insufficient to ensure the ongoing protection of the Commonwealth Heritage values of the place; or
 - (b) the agency is satisfied as described in subsection (2).
- The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).
- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:
- (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the Commonwealth Heritage values of the place; or
 - (b) advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.
- (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to

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ensure the ongoing protection of the Commonwealth Heritage values of the place.

- (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

Subdivision G—Assistance for protecting Commonwealth Heritage places

341ZG Commonwealth assistance for protecting Commonwealth Heritage places

- (1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a Commonwealth Heritage place to any person.
- (2) The Commonwealth may give the assistance subject to conditions.

Subdivision H—Reviewing and reporting on the Commonwealth Heritage List

341ZH Reviewing and reporting on the Commonwealth Heritage List

- (1) At least once in every 5 year period after the Commonwealth Heritage List is established, the Minister must ensure that:
 - (a) a review of the Commonwealth Heritage List is carried out; and
 - (b) a report of that review is tabled in each House of the Parliament.
- (2) The report must include details of:
 - (a) the number of places included in the Commonwealth Heritage List; and
 - (b) any significant damage or threat to the Commonwealth Heritage values of those places; and

- (c) how many plans under Subdivision C for managing Commonwealth Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
- (d) the operation of any conservation agreements under Part 14 that affect Commonwealth Heritage places; and
- (e) all nominations, assessments and changes to the Commonwealth Heritage List under this Division during the period of review; and
- (f) compliance with this Act in relation to Commonwealth Heritage places; and
- (g) any other matters that the Minister considers relevant.

Division 4—Commonwealth reserves

Subdivision A—Simplified outline of this Division

342 Simplified outline of this Division

The following is a simplified outline of this Division:

Commonwealth reserves can be declared over areas of land or sea:

- (a) that the Commonwealth owns or leases; or
- (b) that are in a Commonwealth marine area; or
- (c) outside Australia that the Commonwealth has international obligations to protect.

A Proclamation must assign the reserve to a particular category, that affects how the reserve is managed and used.

Some activities can be undertaken in a reserve only if a management plan provides for them. Commonwealth agencies must comply with a management plan. Regulations can be made to control a wide range of activities in reserves.

The Minister may approve a management plan prepared by the Director and any Board for a reserve.

In agreement with indigenous people, the Minister can set up a Board for a reserve including land leased from indigenous people.

Subdivision B—Declaring and revoking Commonwealth reserves

343 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Governor-General can proclaim Commonwealth reserves over areas of land or sea:

- (a) that the Commonwealth owns; or
- (b) that the Commonwealth or the Director leases; or
- (c) that are in a Commonwealth marine area; or
- (d) outside Australia that the Commonwealth has international obligations to protect.

A Proclamation must assign the reserve to a particular category that affects how the reserve is managed and used.

Proclamations can be made to alter and revoke reserves.

The Director must consult publicly before some Proclamations are made.

344 Declaring Commonwealth reserves

Declaring a Commonwealth reserve

- (1) The Governor-General may, by Proclamation, declare as a Commonwealth reserve:
 - (a) an area of land:
 - (i) that is owned by the Commonwealth in a Territory; or
 - (ii) that is owned by the Commonwealth outside a Territory; or

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- (iii) that is held under lease by the Commonwealth or the Director in a Territory; or
 - (iv) that is held under lease by the Commonwealth or the Director outside a Territory; or
 - (v) outside Australia and in respect of which Australia has obligations relating to biodiversity or heritage under an agreement with one or more other countries that may appropriately be met by declaring the area a Commonwealth reserve; or
- (b) an area of sea:
- (i) in a Commonwealth marine area; or
 - (ii) outside Australia and in respect of which Australia has obligations relating to biodiversity or heritage under an agreement with one or more other countries that may appropriately be met by declaring the area a Commonwealth reserve; or
- (c) an area of land described in paragraph (a) and sea described in paragraph (b).

Note 1: Section 351 sets out some prerequisites for making Proclamations.

Note 2: A reference to Australia generally includes its coastal sea. See section 15B of the *Acts Interpretation Act 1901*.

Limits on acquiring land for reservation

- (2) If land:
- (a) is in:
 - (i) a State or self-governing Territory (except the Northern Territory); or
 - (ii) the Northern Territory outside both Uluru-Kata Tjuta National Park and the Alligator Rivers Region (as defined by the *Environment Protection (Alligator Rivers Region) Act 1978*); and
 - (b) is dedicated or reserved under a law of the State or Territory for purposes related to nature conservation or the protection of areas of historical, archaeological or geological

importance or of areas having special significance in relation to indigenous persons;
the Commonwealth must not acquire the land for the purposes of declaring it a Commonwealth reserve, without the consent of the State or Territory.

Uluru-Kata Tjuta National Park

- (3) ***Uluru-Kata Tjuta National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Uluru-Kata Tjuta National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

345 Extent of Commonwealth reserve

- (1) A Commonwealth reserve includes:
- (a) land or seabed to the depth stated in the Proclamation declaring the Commonwealth reserve; and
 - (b) the waters and seabed under any sea in the area declared as a Commonwealth reserve.

- (2) In this Act:

land includes subsoil of land and any body of water (whether flowing or not) except the sea.

seabed includes:

- (a) the surface of a coral formation; and
- (b) subsoil of seabed (including coral beneath the surface of a coral formation).

345A Commonwealth usage rights vest in Director

- (1) When a Commonwealth reserve is declared, a usage right that relates to land or seabed in the reserve and is held by the Commonwealth vests in the Director, by force of this subsection.
- (2A) However, subsection (2) does not apply to:

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- (a) a usage right acquired by the Commonwealth in relation to the Jabiru town land (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
 - (b) a usage right acquired by the Commonwealth that is prescribed by the regulations for the purposes of this paragraph.
- (2) If the Commonwealth acquires a usage right relating to land or seabed in a Commonwealth reserve, the usage right vests in the Director.
- (3) This section does not vest in the Director a usage right in respect of minerals, despite subsections (1) and (2).

346 Content of Proclamation declaring Commonwealth reserve

Content of Proclamation

- (1) The Proclamation declaring an area to be a Commonwealth reserve must:
- (a) give a name to the reserve; and
 - (b) state the purposes for which the reserve is declared; and
 - (c) state the depth of any land included in the reserve; and
 - (d) state the depth of the seabed that is under any sea included in the reserve; and
 - (e) assign the reserve to a category (an *IUCN category*) prescribed in regulations made for the purposes of this subsection.

Assigning different zones of a reserve to different IUCN categories

- (2) A Proclamation may also divide a reserve into zones and assign each zone to an IUCN category.

Assigning leasehold land to IUCN categories

- (3) Before the Governor-General makes a Proclamation assigning a Commonwealth reserve or zone including land or seabed held by

the Commonwealth or the Director under lease to a particular IUCN category, the Minister must be satisfied that the category to which it is proposed to assign the reserve or zone is consistent with the terms of the lease.

347 Assigning Commonwealth reserves and zones to IUCN categories

Before the Governor-General makes a Proclamation assigning a Commonwealth reserve, or a zone within a Commonwealth reserve, to a particular IUCN category, the Minister must be satisfied:

- (a) that the reserve or zone:
 - (i) has the characteristics (if any) prescribed by the regulations for the category; and
 - (ii) meets the criteria (if any) prescribed by the regulations for the category; and
- (b) that the reserve or zone should be managed in accordance with the Australian IUCN reserve management principles for the category.

348 Australian IUCN reserve management principles

- (1) The regulations must prescribe principles for each IUCN category. The principles prescribed for an IUCN category are the *Australian IUCN reserve management principles* for the category.
- (2) The principles prescribed for an IUCN category must identify the purpose or purposes for which a Commonwealth reserve, or zone of a Commonwealth reserve, assigned to the category is primarily to be managed.

350 Revocation and alteration of Commonwealth reserves

- (1) The Governor-General may revoke or amend a Proclamation under this Subdivision by another Proclamation.

Note: Section 351 sets out some prerequisites for making Proclamations.

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- (2) Before the Governor-General makes a Proclamation that results in land, sea or seabed ceasing to be included in a Commonwealth reserve, the Minister must be satisfied:
- (a) that the Proclamation, if made, would be in accordance with a resolution passed by each House of Parliament on a motion; and
 - (b) that notice of the motion was given at least 15 sitting days of that House before the motion was moved.
- (3) Subsection (2) does not apply to a Proclamation that results in land, sea or seabed ceasing to be included in one Commonwealth reserve or zone and being included in another Commonwealth reserve or zone.
- (4) If the Director ceases to hold land or seabed in a Commonwealth reserve under lease:
- (a) the land or seabed ceases to be part of the reserve by force of this paragraph; and
 - (b) the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land or seabed in a Commonwealth reserve, to reflect the fact that the land or seabed is no longer part of the reserve.
- (5) Subsection (4) does not apply if the Director ceases to hold the land or seabed under a lease because:
- (a) the Commonwealth becomes the owner of the land or seabed; or
 - (b) the Director surrenders the lease in consideration of the grant to the Director of another lease of that land or seabed.
- (6) Except as described in subsection (4), land, sea or seabed in a Commonwealth reserve does not cease to be within the reserve merely because a usage right relating to the land, sea or seabed is transferred, assigned, surrendered, extinguished or changed in any way.
- (7) A **usage right** is an estate or a legal or equitable charge, power, privilege, authority, licence or permit.

Note: Section 2B of the *Acts Interpretation Act 1901* defines *estate*.

351 Report before making Proclamation

Minister must consider report before Proclamation made

- (1) Before the Governor-General makes a Proclamation under this Subdivision, the Minister must consider a report prepared by the Director on the matter to be dealt with by the Proclamation.

Procedure for preparing report

- (2) In preparing a report, the Director must:
 - (a) publish in the *Gazette* and in accordance with the regulations (if any) a notice:
 - (i) stating the matter to be dealt with by the Proclamation; and
 - (ii) inviting the public to comment on the matter to be dealt with by the Proclamation; and
 - (iii) specifying the address to which comments may be sent; and
 - (iv) specifying the day by which any comments must be sent; and
 - (b) consider any comments made in response to the invitation; and
 - (c) include in the report the comments and the Director's views on the comments.

Content of notice inviting comments

- (3) A notice stating the matter to be dealt with by a Proclamation to declare a Commonwealth reserve must include a statement of:
 - (a) the proposed name of the reserve; and
 - (b) the proposed boundaries of the reserve and of any zones into which the reserve is to be divided; and
 - (c) the purpose for which the reserve is to be declared; and

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- (d) which IUCN category the reserve (and, if applicable, each zone of the reserve) is to be assigned to; and
- (e) the purposes for which it is intended to manage and use the reserve.

Content of notice relating to revocation of Commonwealth reserve

- (4) A notice stating the matter to be dealt with by a Proclamation to cause any land, sea or seabed to cease to be part of a Commonwealth reserve must state the boundaries of that land, sea or seabed.

Time for comment

- (5) The day specified in the notice as the day by which any comments must be sent must be at least 60 days after the last day on which the notice is published in the *Gazette* or in accordance with any regulations.

When this section does not apply

- (6) Subsection (1) does not apply in relation to a Proclamation that:
 - (a) declares an area in the Kakadu region to be a Commonwealth reserve; or
 - (b) has the effect of changing the name of a Commonwealth reserve in the Kakadu region; or
 - (c) results in land, sea or seabed ceasing to be included in one Commonwealth reserve and being included in another Commonwealth reserve without changing the IUCN category to which the land, sea or seabed is assigned.

352 What happens to Director's usage rights when Commonwealth reserve is revoked

- (1) This section applies in relation to land or seabed that ceases to be included in a Commonwealth reserve because of a Proclamation made under section 350, except a Proclamation that causes the land or seabed:

- (a) to cease to be included in one Commonwealth reserve; and
 - (b) to be included in another Commonwealth reserve.
- (2) A usage right relating to the land or seabed that the Director held vests in the Commonwealth, by force of this subsection.
- (3) However, if the usage right is a lease of indigenous people's land, the usage right ceases to exist, by force of this subsection.
- (4) If the land is in a State or Territory:
- (a) the Director may give the officer of the State or Territory responsible for registering land titles a copy of the Proclamation, certified by the Director; and
 - (b) the officer may make an entry in his or her registers and do anything else needed to reflect the effect of this section.

Subdivision C—Activities in Commonwealth reserves

353 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

Many works cannot be carried out in a Commonwealth reserve unless permitted by a management plan.

If there is not a management plan in force for a reserve, it must be managed in a way appropriate for the category it has been assigned to by a Proclamation or an earlier management plan.

Regulations can be made to control activities in reserves.

People who have rights relating to an area that is later included in a reserve can continue to exercise those rights in the reserve.

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354 Activities that may be carried on only under management plan

- (1) A person must not do one of the following acts in a Commonwealth reserve except in accordance with a management plan in operation for the reserve:
- (a) kill, injure, take, trade, keep or move a member of a native species; or
 - (b) damage heritage; or
 - (c) carry on an excavation; or
 - (d) erect a building or other structure; or
 - (e) carry out works; or
 - (f) take an action for commercial purposes.

Civil penalty:

- (a) for an individual—500 penalty units;
 - (b) for a body corporate—5,000 penalty units.
- (1A) Subsection (1) does not apply to an action taken in the course of carrying on mining operations.

Note: Mining operations are covered by sections 355, 355A and 387.

- (2) However, if a management plan is not in operation for a Commonwealth reserve, the Director may do an act described in subsection (1) for:
- (a) preserving or protecting the reserve; or
 - (b) protecting or conserving biodiversity or heritage in the reserve; or
 - (c) controlling authorised scientific research; or
 - (d) protecting persons or property in the reserve; or
 - (e) managing the effects of actions taken under a usage right described in section 359.
- (3) Subsection (2) does not apply in relation to so much of a Commonwealth reserve as is in the Kakadu region, the Uluru region or the Jervis Bay Territory.

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Note: Section 385 sets out what the Director may do in a Commonwealth reserve in the Kakadu region, Uluru region or Jervis Bay Territory when there is not a management plan in operation for the reserve.

- (3A) Subsection (1) does not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:
- (a) a management plan is not in operation for the Commonwealth reserve; and
 - (b) the action is, or is in the class of actions, specified in the approval; and
 - (c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.
- (4) This section has effect despite any other law of the Commonwealth, a State or a Territory, but:
- (a) subsections (1) and (2) are subject to:
 - (i) section 359 (about interests and rights existing before a Commonwealth reserve); and
 - (ii) section 359A (about traditional use of an area in a reserve); and
 - (iii) the *Antarctic Treaty (Environment Protection) Act 1980*; and
 - (b) subsection (1) is also subject to section 385 (about activities in Commonwealth reserves in the Kakadu region, Uluru region or Jervis Bay Territory without management plans).

354A Offences relating to activities that may only be carried on under management plan*Causing death etc to native species or damage to heritage*

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken in a Commonwealth reserve; and
 - (c) the action:

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- (i) results in the death, injury, taking, trade, keeping or moving of a member of a native species in the reserve; or
- (ii) results in damage to heritage in the reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2) Strict liability applies:

- (a) to paragraph (1)(b); and
- (b) to the physical element of circumstance in paragraph (1)(c), that the member of the native species or the heritage is in the reserve.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Erection of buildings etc.

(3) A person commits an offence if:

- (a) the person takes any of the following actions:
 - (i) erecting a building or structure;
 - (ii) carrying on an excavation;
 - (iii) carrying out works; and
- (b) the action is taken in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(4) Strict liability applies to paragraph (3)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Actions taken for commercial purposes

- (5) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the person takes the action for a commercial purpose; and
 - (c) the action is taken in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

- (6) Paragraph (5)(b) states the fault element for paragraph (5)(a).

- (7) Strict liability applies to paragraph (5)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Exception for actions in accordance with a management plan

- (8) Subsections (1), (3) and (5) do not apply to an action if the action is in accordance with a management plan in operation for the Commonwealth reserve in which the action is taken.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for mining operations

- (9) Subsections (1), (3) and (5) do not apply to an action if the action is taken in the course of carrying on mining operations.

Note 1: Mining operations are covered by sections 355, 355A and 387.

Note 2: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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Exception for certain actions taken by the Director—actions in places other than Kakadu, Uluru or Jervis Bay

- (10) Subsections (1), (3) and (5) do not apply to an action taken by the Director if:
- (a) a management plan is not in operation for the Commonwealth reserve in which the action is taken; and
 - (b) the action is not taken in the Kakadu region, the Uluru region or the Jervis Bay Territory; and
 - (c) the Director takes the action for the purpose of:
 - (i) preserving or protecting the reserve; or
 - (ii) protecting or conserving biodiversity or heritage in the reserve; or
 - (iii) controlling authorised scientific research; or
 - (iv) protecting persons or property in the reserve; or
 - (v) managing the effects of actions taken under a usage right described in section 359.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for certain actions taken by the Director—conduct in Kakadu, Uluru or Jervis Bay

- (11) Subsections (1), (3) and (5) do not apply to an action taken by the Director in accordance with section 385.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for prior usage rights

- (12) Subsections (1), (3) and (5) do not apply to an action that is covered by a usage right, or a right arising out of a usage right, to which section 359 applies.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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Note 2: This exception might not apply in relation to actions taken in the Antarctic (see subsection (16)).

Exception for prior traditional use

- (13) Subsections (1), (3) and (5) do not apply to an action that is covered by section 359A.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for actions approved under section 359B

- (14) Subsections (1), (3) and (5) do not apply to an action that is covered by an approval in force under subsection 359B(1). For this purpose, an action is covered by such an approval if:
- (a) a management plan is not in operation for the Commonwealth reserve; and
 - (b) the action is, or is in the class of actions, specified in the approval; and
 - (c) the action is taken in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Actions in the Antarctic

- (15) Subsections (1), (3) and (5) do not apply to an action taken in the Antarctic if:
- (a) taking the action is an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980*; and
 - (b) the person has a defence under that Act in relation to the offence.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

- (16) The exceptions in subsections (8), (10) and (12) of this section do not apply in relation to an action taken in the Antarctic if taking the

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action is an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980*.

Note: Although the exception in subsection (9) can still apply, mining operations in the Antarctic are prohibited in any case under the *Antarctic Treaty (Environment Protection) Act 1980*. The exceptions in subsections (11) and (13) cannot apply to actions taken in the Antarctic.

Sentencing restriction for offences in the exclusive economic zone

- (17) A court must not impose a sentence of imprisonment on a person for an offence under subsection (1) or (5) if:
- (a) fishing (as defined in the *Fisheries Management Act 1991*) constituted a physical element of the offence; and
 - (b) the fishing was done:
 - (i) in the exclusive economic zone; and
 - (ii) otherwise than from an Australian vessel (or a vessel declared to be an Australian boat under subsection 4(2) of the *Fisheries Management Act 1991*); and
 - (c) at the time of the fishing, the person was not an Australian citizen or a person who held a permanent visa under the *Migration Act 1958* and was domiciled in Australia or an external territory.

Section has effect despite other laws

- (18) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.

355 Limits on mining operations in Commonwealth reserves

- (1) A person must not carry on mining operations in a Commonwealth reserve except in accordance with a management plan in operation for the reserve.

Civil penalty:

- (a) for an individual—500 penalty units;
- (b) for a body corporate—5,000 penalty units.

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(1A) Subsection (1) does not apply in relation to the Kakadu National Park or the Antarctic.

Note: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the *Antarctic Treaty (Environment Protection) Act 1980* prohibit mining activities in the Antarctic.

(2) The following are **mining operations**:

- (a) operations or activities connected with, or incidental to, the mining or recovery of minerals or the production of material from minerals, including:
 - (i) prospecting and exploration for minerals; and
 - (ii) milling, refining, treatment and processing of minerals; and
 - (iii) storage and disposal of minerals and materials produced from minerals;
- (b) the construction and use of towns, camps, dams, pipelines power lines or other structures for the purposes of operations or activities described in paragraph (a);
- (c) the performance of any other work for the purposes of operations or activities described in paragraph (a).

(3) A **mineral** is a naturally occurring substance or mixture of substances.

(3A) Subsection (1) does not apply to mining operations that are covered by an approval in force under subsection 359B(2). For this purpose, mining operations are covered by such an approval if:

- (a) a management plan is not in operation for the Commonwealth reserve; and
- (b) the mining operations are, or are in the class of mining operations, specified in the approval; and
- (c) the mining operations are carried on in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

(4) Subsection (1) does not prevent the doing of anything for the purposes of building or construction, or the supply of water, in a

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Commonwealth reserve unless the purposes are connected with, or incidental to, mining operations.

- (5) This section is subject to:
- (a) section 359 (about interests and rights existing before a Commonwealth reserve); and
 - (b) section 359A (about traditional use of an area in a reserve);
- but has effect despite any other law of the Commonwealth, a State or a Territory.

355A Offence relating to mining operations

Offence of carrying on mining operations

- (1) A person commits an offence if:
- (a) the person carries on mining operations; and
 - (b) the mining operations are carried on in a Commonwealth reserve.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) To avoid doubt, subsection (1) does not prevent the doing of anything for the purposes of building or construction, or the supply of water, in a Commonwealth reserve unless the purposes are connected with, or incidental to, mining operations.

Exception for mining operations carried on in accordance with a management plan

- (4) Subsection (1) does not apply to the carrying on of mining operations in accordance with a management plan in operation for the Commonwealth reserve in which the operations are carried on.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception in relation to Kakadu National Park and the Antarctic

- (5) Subsection (1) does not apply to the carrying on of mining operations in the Kakadu National Park or in the Antarctic.

Note 1: Section 387 generally prohibits mining operations in the Kakadu National Park. Sections 19A and 19B of the *Antarctic Treaty (Environment Protection) Act 1980* prohibit mining activities in the Antarctic.

Note 2: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for prior usage rights

- (6) Subsection (1) does not apply to mining operations that are covered by a usage right, or a right arising out of a usage right, to which section 359 applies.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exception for prior traditional use

- (7) Subsection (1) does not apply to an action that is covered by section 359A.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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Exception for mining operations approved under section 359B

- (8) Subsection (1) does not apply to mining operations that are covered by an approval in force under subsection 359B(2). For this purpose, mining operations are covered by such an approval if:
- (a) a management plan is not in operation for the Commonwealth reserve; and
 - (b) the mining operations are, or are in the class of mining operations, specified in the approval; and
 - (c) the mining operations are carried on in accordance with the approval by the person, or a person in the class of persons, specified in the approval in the area specified in the approval.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Section has effect despite other laws

- (9) Except as provided in this section, this section has effect despite any other law of the Commonwealth or of a State or Territory.

356 Regulations controlling activities relating to Commonwealth reserves

- (1) The regulations may:
- (a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:
 - (i) people, biodiversity or heritage in Commonwealth reserves; or
 - (ii) the natural features of Commonwealth reserves; and
 - (b) regulate or prohibit tourism in Commonwealth reserves; and
 - (c) provide for the protection and preservation of Commonwealth reserves and property and things in Commonwealth reserves; and
 - (d) provide for the protection and conservation of biodiversity in Commonwealth reserves; and
 - (e) regulate or prohibit access to all or part of a Commonwealth reserve by persons or classes of persons; and

- (f) provide for the removal of trespassers from Commonwealth reserves; and
- (g) regulate or prohibit camping in Commonwealth reserves; and
- (h) provide for the safety of persons in Commonwealth reserves; and
- (i) regulate or prohibit the use of fire in Commonwealth reserves; and
- (j) regulate the conduct, or prohibit certain kinds of conduct, of persons in Commonwealth reserves; and
- (k) regulate or prohibit the carrying on of any trade or commerce in a Commonwealth reserve; and
- (l) regulate or prohibit the use of vehicles in Commonwealth reserves and provide for signs and road markings for those purposes; and
- (m) provide for:
 - (i) the removal of vehicles, aircraft or vessels from places in Commonwealth reserves where they have been left in contravention of the regulations or have been abandoned; and
 - (ii) the impounding of such vehicles, aircraft or vessels; and
- (n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a Commonwealth reserve is, except as provided otherwise, taken to commit an offence against the provision; and
- (o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and
- (p) regulate or prohibit the use of vessels in, and the passage of vessels through, Commonwealth reserves; and
- (q) regulate or prohibit the landing and use of aircraft in, and the flying of aircraft over, Commonwealth reserves; and

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- (r) provide for the giving of effect to management plans for Commonwealth reserves; and
 - (s) regulate or prohibit the taking of animals or plants into or out of Commonwealth reserves; and
 - (t) provide for the impounding, removal, destruction or disposal of animals found straying in Commonwealth reserves; and
 - (u) regulate or prohibit the taking into Commonwealth reserves, and the use in Commonwealth reserves, of weapons, traps, nets, snares, fishing apparatus and other devices; and
 - (v) regulate or prohibit the laying of baits and the use of explosives and poisons in Commonwealth reserves; and
 - (w) provide for the collection of specimens and the pursuit of research in Commonwealth reserves for scientific purposes; and
 - (x) provide for the issue of licences, permits and authorities relating to activities in Commonwealth reserves, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and
 - (y) provide for any matter incidental to or connected with a matter described in another paragraph.
- (2) A provision of the regulations regulating or prohibiting the flying of aircraft over a Commonwealth reserve does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a provision is not inconsistent with such a law if it can be complied with without contravention of the law.
- (3) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

356A Charges for activities in Commonwealth reserves

Subject to the approval of the Minister, the Director may determine and impose charges for:

- (a) entering or using a Commonwealth reserve or part of a Commonwealth reserve; and
- (b) using services or facilities provided by the Director in or in connection with a Commonwealth reserve; and
- (c) the parking or stopping of vehicles in a Commonwealth reserve; and
- (d) the mooring or landing of vessels in a Commonwealth reserve; and
- (e) the landing of aircraft in a Commonwealth reserve; and
- (f) the use of vehicles and vessels in a Commonwealth reserve.

357 Managing Commonwealth reserves while a management plan is not in operation

- (1) While a management plan is not in operation for a Commonwealth reserve, the Director must exercise the Director's powers and perform the Director's functions in relation to the reserve or to a zone of the reserve so as to manage the reserve in accordance with:
 - (a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
 - (i) a Proclamation made under Subdivision B; or
 - (ii) a management plan that was in operation for the reserve (but is no longer); and
 - (b) if the Director holds land or seabed included in the reserve under lease—the Director's obligations under the lease.
- (2) While a management plan is not in operation for a Commonwealth reserve, the Commonwealth or a Commonwealth agency must not exercise its powers or perform its functions in relation to the reserve or a zone of the reserve inconsistently with either or both of the following:
 - (a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
 - (i) a Proclamation made under Subdivision B; or

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- (ii) a management plan that was in operation for the reserve (but is no longer);
 - (b) if the Director holds land or seabed included in the reserve under lease—the Director’s obligations under the lease.
- (3) If:
 - (a) a zone of a Commonwealth reserve is assigned to an IUCN category at or after the time the reserve was most recently assigned to an IUCN category; and
 - (b) the IUCN category for the zone is different from the IUCN category for the reserve;disregard the IUCN category to which the reserve has been assigned for the purposes of the application of this section in relation to the zone.

358 Restriction on disposal of Director’s interests in Commonwealth reserves

- (1) The Director must not sell or otherwise dispose of a usage right the Director holds in relation to land, sea or seabed in a Commonwealth reserve.
- (2) However, the Director may grant a lease or sub-lease of, or a licence relating to, land or seabed in a Commonwealth reserve, but only in accordance with a management plan in operation for the reserve.
- (3) Despite subsection (1), the Director may surrender a lease of land or seabed within a Commonwealth reserve in consideration of the grant to the Director of a new lease of land or seabed that includes that land or seabed.
- (4) The *Lands Acquisition Act 1989* does not apply to the grant or surrender of a lease or sub-lease under this section.
- (5) This section has effect despite any law of the Commonwealth or of a State or Territory.

359 Prior usage rights relating to Commonwealth reserves continue to have effect

- (1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth or the Director) in relation to land or seabed immediately before the land or seabed was included in a Commonwealth reserve:
 - (a) provisions of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);
 - (b) provisions of the regulations made for the purposes of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);
 - (c) provisions of a management plan for the reserve.
- (2) None of the provisions described in subsection (1) affect the application of a law of a State or Territory in relation to the usage right.
- (3) The usage right may be renewed or have its term extended only:
 - (a) with the Minister's written consent; and
 - (b) subject to any conditions determined by the Minister.This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.
- (4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a Commonwealth reserve as if the usage right were a usage right relating to the land or seabed.
- (5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.
- (6) This section does not apply in relation to:
 - (a) a usage right relating to minerals in Kakadu National Park; or
 - (b) a usage right so far as it relates to mining operations for those minerals.

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359A Traditional use of Commonwealth reserves by indigenous persons

- (1) This Division and regulations made for the purposes of this Division do not prevent an indigenous person from continuing in accordance with law the traditional use of an area in a Commonwealth reserve for:
 - (a) hunting or food-gathering (except for purposes of sale); or
 - (b) ceremonial and religious purposes.
- (2) However, regulations made for the purposes of this Division do affect an indigenous person's traditional use of an area in a Commonwealth reserve if they:
 - (a) are made for the purpose of conserving biodiversity in the area; and
 - (b) expressly affect the traditional use of the area by indigenous persons.

359B Director's approval of actions and mining operations when a management plan is not in operation

Approval of actions (other than mining operations)

- (1) The Director may, in writing, approve the taking of a specified action or a specified class of actions, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
 - (a) the Director is satisfied that:
 - (i) no management plan has yet come into operation for the reserve; and
 - (ii) immediately before the area became included in the reserve, the person, or the persons in the class of persons, held a usage right, or a right arising out of a usage right, that entitled the person or persons to take the action, or the actions in the class of actions, in the area; and

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- (iii) the usage right is not a right in relation to land or seabed to which section 359 applies; or
- (b) the Director is satisfied that:
 - (i) a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation; and
 - (ii) immediately before the management plan ceased to be in operation, the person, or the persons in the class of persons, were taking the action, or the actions in the class of actions, in the area without contravening section 354 or 354A; and
 - (iii) the action or class of actions is not mining operations.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 354 or 354A, the action does not need approval under this subsection.

Approval of mining operations

- (2) The Director may, in writing, approve the carrying on of specified mining operations, or a specified class of mining operations, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
 - (a) the Director is satisfied that no management plan has yet come into operation for the reserve; or
 - (b) the Director is satisfied that a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 355 or 355A, the action does not need approval under this subsection.

Limits on approvals in relation to the Kakadu National Park and the Antarctic

- (3) The Director must not approve:
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- (a) an action in the Antarctic that would be an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980* (whether or not a defence would be available under that Act); or
- (b) mining operations in the Kakadu National Park or the Antarctic.

Approvals may be subject to conditions

- (4) An approval given under subsection (1) or (2) may be expressed to be subject to specified conditions.

When approvals come into force

- (5) An approval given under subsection (1) or (2) comes into force on the day the Director gives the approval, or on a later day specified in the approval.

Variation and revocation of approvals

- (6) The Director may, in writing, vary or revoke an approval:
 - (a) under subsection (1)—if the Director considers that the action, or an action in the class of actions, to which the approval relates is not being taken in accordance with the approval; or
 - (b) under subsection (2)—if the Director considers that the mining operations, or mining operations in the class of mining operations, to which the approval relates are not being carried on in accordance with the approval.
- (7) An approval given under subsection (1) or (2), or a variation or revocation of an approval, is not a legislative instrument.

Subdivision D—Complying with management plans for Commonwealth reserves

361 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Director must manage a Commonwealth reserve to give effect to a management plan for the reserve. If indigenous people think the Director is not doing this for a reserve including their land, they can take the matter up with the Minister.

Commonwealth agencies must act so as not to contravene a management plan.

362 Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve

- (1) The Director must exercise the Director's powers and perform the Director's functions to give effect to a management plan that is in operation for a Commonwealth reserve.
- (2) The Commonwealth or a Commonwealth agency must not perform its functions or exercise its powers in relation to a Commonwealth reserve inconsistently with a management plan that is in operation for the reserve.
- (3) To avoid doubt, if a management plan for a Commonwealth reserve prohibits the exercise of a specified power, or the performance of a specified function, under an Act (including a power or function under an instrument made under an Act), the power or function must not be exercised in or in relation to the reserve while the plan is in operation.

363 Resolving disagreement between land council and Director over implementation of plan

Minister to resolve disagreement

- (1) If the Chair or Chairperson of a land council for indigenous people's land in a jointly managed reserve and the Director disagree about whether the Director is exercising the Director's powers and performing the Director's functions consistently with a management plan in operation for the reserve:
 - (a) the Director must inform the Minister; and

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- (b) the Minister must appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
- (c) the person appointed must inquire into the matter and give the Minister a report and recommendations; and
- (d) the Minister must give the Director any directions the Minister thinks fit; and
- (e) the Director must comply with any direction.

What is a land council?

- (2) The **land council** for indigenous people's land in a Commonwealth reserve is:
 - (a) if the land is in the area of an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*—that Aboriginal Land Council; and
 - (b) if the land is in Jervis Bay Territory—the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; and
 - (c) if the land is elsewhere—a body corporate that:
 - (i) is established by or under an Act; and
 - (ii) has functions relating to the indigenous people's land in the reserve; and
 - (iii) consists of indigenous persons who either live in an area to which one or more of the body's functions relate or are registered as traditional owners of indigenous people's land in an area to which one or more of the body's functions relate.

What is indigenous people's land?

- (3) Land is **indigenous people's land** if:
 - (a) a body corporate holds an estate that allows the body to lease the land to the Commonwealth or the Director; and
 - (b) the body corporate was established by or under an Act for the purpose of holding for the benefit of indigenous persons title to land vested in it by or under that Act.

Who is an indigenous person?

- (4) A person is an **indigenous person** if he or she is:
- (a) a member of the Aboriginal race of Australia; or
 - (b) a descendant of an indigenous inhabitant of the Torres Strait Islands.

What is a jointly managed reserve?

- (5) A Commonwealth reserve is a **jointly managed reserve** if:
- (a) it includes indigenous people's land held under lease by the Director; and
 - (b) a Board is established for the reserve under Subdivision F.

364 Resolving disagreement between Director and Board over implementation of plan

- (1) The Director must inform the Minister if the Director believes that:
- (a) a decision of a Board for a Commonwealth reserve is likely to be substantially detrimental to the good management of the reserve; or
 - (b) a decision of a Board for a Commonwealth reserve is contrary to a management plan in operation for the reserve.
- (2) The Minister must take the steps he or she thinks fit to resolve the matter.
- (3) If the Minister cannot resolve the matter, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.
- (4) The person appointed must inquire into the matter and give the Minister a report and recommendations.
- (5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:
- (a) the directions the Minister thinks appropriate; and
 - (b) a statement of reasons for giving the directions; and
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- (c) a copy of the report and recommendations.
- (6) The Director and the Board must comply with any directions given by the Minister.

Subdivision E—Approving management plans for Commonwealth reserves

365 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Minister may approve a management plan for a Commonwealth reserve prepared by the Director and any Board for the reserve. Before the Minister approves a plan, he or she may modify it.

Before the Director gives a plan to the Minister for approval, there are 2 opportunities for the public and others with an interest in the reserve to comment.

The Minister can resolve any disagreements between the Director and a Board for a reserve over preparation of a plan for the reserve.

366 Obligation to prepare management plans for Commonwealth reserves

Plans required for Commonwealth reserves without Boards

- (1) The Director must prepare management plans for each Commonwealth reserve for which there is not a Board to try to ensure that a management plan for the reserve is in operation:
 - (a) as soon as practicable after the reserve is declared; and
 - (b) at all times after the first plan for managing the reserve takes effect.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Amending or replacing plans for reserves without Boards

- (2) The Director may prepare a management plan for a Commonwealth reserve for which there is not a Board:
- (a) to amend a management plan that is in operation for the reserve; or
 - (b) to revoke and replace a management plan that is in operation for the reserve.

Plans required for Commonwealth reserves with Boards

- (3) A Board for a Commonwealth reserve must prepare management plans for the reserve in conjunction with the Director, to try to ensure that a management plan for the reserve is in operation:
- (a) as soon as practicable after the Board is established; and
 - (b) at all times after a plan for managing the reserve first takes effect after the establishment of the Board.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Amending or replacing plans for reserves with Boards

- (4) The Board for a Commonwealth reserve may prepare a management plan for the reserve in conjunction with the Director:
- (a) to amend a management plan that is in operation for the reserve; or
 - (b) to revoke and replace a management plan that is in operation for the reserve.

367 Content of a management plan for a Commonwealth reserve*Mandatory content*

- (1) A management plan for a Commonwealth reserve must provide for the protection and conservation of the reserve. In particular, the plan must:

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- (a) assign the reserve to an IUCN category (whether or not a Proclamation has assigned the reserve or a zone of the reserve to that IUCN category); and
- (b) state how the reserve, or each zone of the reserve, is to be managed; and
- (c) state how the natural features of the reserve, or of each zone of the reserve, are to be protected and conserved; and
- (d) if the Director holds land or seabed included in the reserve under lease—be consistent with the Director’s obligations under the lease; and
- (e) specify any limitation or prohibition on the exercise of a power, or performance of a function, under an Act in or in relation to the reserve; and
- (f) specify any mining operation, major excavation or other work that may be carried on in the reserve, and the conditions under which it may be carried on; and
- (g) specify any other operation or activity that may be carried on in the reserve; and
- (h) indicate generally the activities that are to be prohibited or regulated in the reserve, and the means of prohibiting or regulating them; and
- (i) indicate how the plan takes account of Australia’s obligations under each agreement with one or more other countries that is relevant to the reserve (including the World Heritage Convention and the Ramsar Convention, if appropriate); and
- (j) if the reserve includes a National Heritage place:
 - (i) not be inconsistent with the National Heritage management principles; and
 - (ii) address the matters prescribed by regulations made for the purposes of paragraph 324S(4)(a); and
- (k) if the reserve includes a Commonwealth Heritage place:
 - (i) not be inconsistent with the Commonwealth Heritage management principles; and
 - (ii) address the matters prescribed by regulations made for the purposes of paragraph 341S(4)(a).

Plan may assign different zones to different IUCN categories

- (2) A management plan for a Commonwealth reserve may divide the reserve into zones and assign each zone to an IUCN category (whether or not a Proclamation has assigned the reserve or each zone of the reserve to that IUCN category). The category to which a zone is assigned may differ from the category to which the reserve is assigned.

Consistency with Australian IUCN reserve management principles

- (3) The provisions of a management plan for a Commonwealth reserve that relate to the reserve or a particular zone of the reserve must not be inconsistent with the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone is assigned by the plan.

If zone is in different category from reserve

- (4) If the management plan for a Commonwealth reserve assigns the reserve to one IUCN category and assigns a zone of the reserve to a different IUCN category, disregard the IUCN category to which the reserve is assigned for the purposes of the application of subsection (3) in relation to the zone.
- (5) A single management plan may be the management plan for more than one Commonwealth reserve.

Plans for proposed extension of reserve

- (6) A management plan for a Commonwealth reserve may include provisions relating to an area that is proposed to be included in the reserve, but they do not have effect until the area is included in the reserve.

368 Steps in preparing management plans for Commonwealth reserves

Overview of process

- (1) Before the Director gives the Minister a management plan for a Commonwealth reserve for approval:
 - (a) the Director must publish under subsection (2) an invitation to comment on the proposal to prepare a draft of the plan; and
 - (b) the Director and the Board (if any) for the reserve must prepare a draft of the plan, taking into account any comments received in response to the invitation; and
 - (c) the Director must publish under subsection (5) an invitation to comment on the draft; and
 - (d) the Director must make publicly available copies of the draft free or for a reasonable fee determined by the Director; and
 - (e) the Director and the Board (if any) must consider any comments received in response to the invitation to comment on the draft and may alter the draft.

Notice inviting comments on proposal to prepare draft

- (2) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):
 - (a) stating that the Director proposes to prepare a draft of a management plan for the Commonwealth reserve; and
 - (b) inviting comments on the proposal from:
 - (i) members of the public; and
 - (ii) the Chair or Chairperson of any land council for indigenous people's land in the reserve; and
 - (iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and

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- (iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and
 - (v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and
 - (c) specifying the address to which comments may be sent; and
 - (d) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

Considerations in preparing a management plan

- (3) In preparing a management plan for a Commonwealth reserve, the Director and the Board (if any) for the reserve must take account of:
 - (a) any report considered by the Minister under section 351 before a Proclamation declaring the reserve was made; and
 - (b) the regulation of the use of the reserve for the purpose for which it was declared; and
 - (c) the interests of:
 - (i) any owner of any land or seabed in the reserve; and
 - (ii) the traditional owners of any indigenous people's land in the reserve; and
 - (iii) any other indigenous persons interested in the reserve; and
 - (iv) any person who has a usage right relating to land, sea or seabed in the reserve that existed (or is derived from a usage right that existed) immediately before the reserve was declared; and
 - (d) the protection of the special features of the reserve, including objects and sites of biological, historical, palaeontological, archaeological, geological and geographical interest; and
 - (e) the protection, conservation and management of biodiversity and heritage within the reserve; and

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- (f) the protection of the reserve against damage; and
- (g) Australia's obligations under agreements between Australia and one or more other countries relevant to the protection and conservation of biodiversity and heritage.

Who are the traditional owners of indigenous people's land?

- (4) The **traditional owners** of indigenous people's land are:
 - (a) a local descent group of indigenous persons who:
 - (i) have common spiritual affiliations to a site on the land under a primary spiritual responsibility for that site and for the land; and
 - (ii) are entitled by indigenous tradition to forage as of right over the land; or
 - (b) if the land is in the Jervis Bay Territory—the members of the Wreck Bay Aboriginal Community Council.

Notice inviting comment on draft

- (5) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):
 - (a) stating that the Director has prepared a draft of a management plan for the Commonwealth reserve; and
 - (b) stating how the draft can be obtained; and
 - (c) inviting comments on the draft from:
 - (i) members of the public; and
 - (ii) the Chair or Chairperson of any land council for any indigenous people's land in the reserve; and
 - (iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and
 - (iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and

- (v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and
- (d) specifying the address to which comments may be sent; and
- (e) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

369 Resolving disagreements between Director and Board in planning process

- (1) The Director and the Board for a Commonwealth reserve must inform the Minister if they cannot agree on:
 - (a) the content of a management plan they are preparing for the reserve; or
 - (b) any changes to be made following comment made in response to an invitation to comment on a draft management plan for the reserve; or
 - (c) whether the Director should give a management plan for the reserve to the Minister for approval (either initially or after the Minister has given the plan back to the Director with suggestions under paragraph 370(3)(b)).
- (2) If the Minister is advised by the Director and a Board of a disagreement, the Minister must take the steps the Minister thinks fit to resolve the disagreement.
- (3) If the Minister cannot resolve the disagreement, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.
- (4) The appointed arbitrator must inquire into the matter and give the Minister a report and recommendations.
- (5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:

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- (a) the directions the Minister thinks appropriate; and
 - (b) a statement of reasons for giving the directions; and
 - (c) a copy of the report and recommendations.
- (6) The Director and the Board must comply with any directions given by the Minister.

370 Approval of management plans for Commonwealth reserves

Giving management plan to Minister for approval

- (1) The Director must give the Minister a management plan for a Commonwealth reserve for approval, but only if the Board (if any) for the reserve agrees. The Director must do so as soon as practicable after considering under paragraph 368(1)(e) the comments (if any) on a draft of the management plan.

Things to be given to Minister with management plan

- (2) When the Director gives the plan to the Minister, the Director must also give the Minister:
- (a) any comments received in response to the invitation to comment on a draft of the plan; and
 - (b) the views of the Director and any Board for the reserve on the comments.

Minister's decision

- (3) Within 60 days of the Director giving the plan, the Minister:
- (a) must consider the plan and any comments and views given to the Minister under subsection (2); and
 - (b) must either:
 - (i) approve the plan; or
 - (ii) give the plan back to the Director with suggestions for consideration by the Director and any Board for the reserve.

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Note: There are some extra rules about giving back to the Director a management plan for a Commonwealth reserve in the Kakadu region, the Uluru region or Jervis Bay Territory. See section 390.

Procedure if Minister gives plan back

- (4) If the Minister gives the plan back to the Director with suggestions:
- (a) the Director and any Board for the Commonwealth reserve to which the plan relates must consider the suggestions; and
 - (b) the Director must give the Minister an identical or altered version of the plan, but only if any Board for the reserve agrees; and
 - (c) the Director must give the Minister, with the plan, the Director's views on the Minister's suggestions.

Minister's decision on re-submitted plan

- (5) As soon as practicable after the Director has given the Minister a version of the plan under subsection (4), the Minister:
- (a) must consider it and the views given to the Minister under subsection (4); and
 - (b) must approve the plan with any modifications the Minister considers appropriate.

Considerations for Minister assigning reserve to IUCN category

- (6) When approving a management plan for a Commonwealth reserve to assign the reserve, or a zone of a reserve, to a particular IUCN category, the Minister must be satisfied of the matters specified in section 347 that he or she would have to be satisfied of before the Governor-General could make a Proclamation to assign the reserve or zone to that IUCN category.

371 Approved management plans are legislative instruments

- (1) A management plan for a Commonwealth reserve prepared by the Director, and the Board (if any) for the reserve, and approved by the Minister, is a legislative instrument made by the Minister on the day the plan is approved.

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- (3) When the management plan is laid before each House of the Parliament, there must also be laid before the House copies of any comments, views, report or recommendations given to the Minister under this Division in relation to the plan that have not been given effect to in the plan.

372 Amendment and revocation of management plans for Commonwealth reserves

A management plan for a Commonwealth reserve may amend or revoke and replace an earlier management plan for the reserve.

373 Expiry of management plans for Commonwealth reserves

A management plan for a Commonwealth reserve ceases to have effect 10 years after it took effect (unless it has already been revoked).

Subdivision F—Boards for Commonwealth reserves on indigenous people’s land

374 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Minister must establish a Board for a Commonwealth reserve that is wholly or partly on indigenous people’s land, if the land council for that land (or traditional owners) and the Minister agree that there should be a Board for the reserve.

The Board’s role is to make decisions and plans for management of the reserve, in conjunction with the Director.

A majority of Board members must be indigenous people nominated by traditional owners if the reserve is wholly or mostly on indigenous people’s land.

375 Application

This Subdivision provides for Boards for Commonwealth reserves that consist of, or include, indigenous people's land held under lease by the Director.

376 Functions of a Board for a Commonwealth reserve

- (1) The functions of a Board established for a Commonwealth reserve are:
 - (a) to make decisions relating to the management of the reserve that are consistent with the management plan in operation for the reserve; and
 - (b) in conjunction with the Director, to:
 - (i) prepare management plans for the reserve; and
 - (ii) monitor the management of the reserve; and
 - (iii) advise the Minister on all aspects of the future development of the reserve.
- (2) When performing its functions, a Board must comply with a direction given by the Minister to the Board under:
 - (a) section 364 (Resolving disagreement between Director and Board over implementation of plan); or
 - (b) section 369 (Resolving disagreements between Director and Board in planning process).

377 Minister must establish Board if land council or traditional owners agree

- (1) The Minister must establish a Board for a specified Commonwealth reserve by notice published in the *Gazette* and in the way (if any) prescribed by the regulations if he or she agrees on the matters set out in subsection (2) with:
 - (a) the land council for the indigenous people's land in the reserve that the Director holds under lease; or

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- (b) if there is not such a land council—the traditional owners of the indigenous people’s land in the reserve that the Director holds under lease.
- (2) The matters to be agreed on are:
- (a) that a Board should be established for the reserve; and
 - (b) the name of the Board; and
 - (c) the number of positions of member of the Board; and
 - (d) the qualifications for appointment to each position of member of the Board.
- (3) The notice must specify each of the matters described in paragraphs (2)(b), (c) and (d).

Note: The notice may specify different qualifications for different positions. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (4) If the reserve consists wholly or mostly of indigenous people’s land held by the Director under lease, a majority of the members of the Board must be indigenous persons nominated by the traditional owners of the indigenous people’s land.
- (5) If the reserve is in a State or self-governing Territory, at least one member of the Board must be a person nominated by the State or Territory.

Note: By agreement between the Minister and the land council or traditional owners, more than one member of a Board may be a person nominated by the State or Territory.

378 Altering the constitution of a Board or abolishing a Board

Revoking and amending notice establishing Board

- (1) The Minister may, by notice in the *Gazette*:
- (a) revoke a notice under section 377 relating to the Board for the reserve; or
 - (b) amend a notice under section 377 relating to the Board for the reserve so as to:

- (i) change the specification of the name by which the Board is to be known; or
- (ii) increase the number of members of the Board and specify the qualifications for appointment to each of the extra positions of member; or
- (iii) decrease the number of positions of member of the Board and specify which positions are abolished; or
- (iv) change the qualifications for appointment to a position of member of the Board.

Note: The Minister may exercise the power of amendment from time to time. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Limits on changing composition of Board

- (2) Paragraph (1)(b) has effect subject to subsections 377(4) and (5).

Note 1: Subsection 377(4) requires a majority of the members of the Board of a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease to be indigenous persons nominated by the traditional owners of the land.

Note 2: Subsection 377(5) requires at least one member of a Board for a reserve in a State or self-governing Territory to be a nominee of the State or Territory.

Prerequisite to revoking or amending notice

- (3) The Minister may revoke or amend a notice under section 377 relating to a Commonwealth reserve only if the Minister agrees on the revocation or amendment with:
- (a) the land council for indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the land council; or
 - (b) the traditional owners of indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the traditional owners.

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Board's identity not affected by name change

- (4) If the Minister amends a notice published under section 377 so as to alter a Board's name or constitution, section 25B of the *Acts Interpretation Act 1901* applies in relation to the alteration as if it had been made by an Act.

Note: This ensures that the Board's identity and functions are not affected by the alteration, and that certain references to the Board under its old name are treated as references to the Board under its new name.

379 Appointment of Board members

Appointment of persons

- (1) The Minister may, in writing, appoint a person on a part-time basis to a position of member of a Board if:
- (a) the person is qualified for appointment to the position; and
 - (b) the Minister is satisfied that the person is a fit and proper person to be a member of the Board (see section 379A).

Note: Subsection (1) is subject to section 390A, which deals with the appointment of a Northern Territory nominee as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.

Replacement appointments

- (2) As soon as practicable after a position of member of a Board becomes vacant, the Minister must appoint a person to the position under subsection (1).

Validity of appointments

- (3) A deficiency or irregularity relating to the nomination, selection or appointment of a member of a Board does not invalidate the member's appointment.

379A Fit and proper person

In determining for the purposes of this Subdivision whether a person is a fit and proper person to be a member of a Board, the Minister may have regard to the matters specified in regulations made for the purposes of this section. The Minister may also have regard to any other matter the Minister considers appropriate.

Note: The question whether a person is a fit and proper person is relevant to subsection 379(1) (which is about appointments to Boards), and subsection 382(1A) (which is about termination of appointments).

380 Terms and conditions*Term of office*

- (1) A member of a Board holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Section 382 sets out the circumstances in which a member's appointment may be (or must be) terminated.

Avoiding doubt—future terms of office

- (1A) To avoid doubt, subsection (1) does not prevent a person from being appointed as a member of a Board again. This subsection does not affect the operation of section 33AA of the *Acts Interpretation Act 1901* in relation to this Act.

Resignation

- (2) A member of a Board may resign his or her appointment by giving the Minister a written resignation.

Other terms and conditions

- (3) A member of a Board holds office on the terms and conditions (if any) that are determined by the Minister in relation to matters not covered by this Act or the regulations.

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381 Remuneration

- (1) A member of a Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member of a Board is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

382 Termination of appointments of Board members

Termination when person stops being qualified for appointment

- (1) The appointment of a person to a position of member of a Board is terminated when the person ceases to be qualified for appointment to the position.

Termination if person is not fit and proper

- (1A) The Minister must terminate the appointment of a member of a Board if the Minister is satisfied that the member is not a fit and proper person to be a member of the Board. For this purpose, in having regard to matters as mentioned in section 379A, the Minister may consider things that happened either before or after the member's appointment.

Termination for misbehaviour or incapacity

- (2) The Minister may terminate the appointment of a member of a Board for misbehaviour or physical or mental incapacity.

Termination for failure to attend Board meetings

- (3) The Minister may terminate the appointment of a member of a Board if the member is absent, except on leave of absence, from 3

consecutive meetings of the Board of which the member has had notice.

Termination for engaging in conflicting work

- (4) The Minister may terminate the appointment of a member of a Board if the member engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of the member.

Termination for conduct inimical to Board

- (4A) The Minister may terminate the appointment of a member of a Board for a reserve if the Minister is satisfied that the person has acted in a way that is not in the interest of the Board as a whole. However, the Minister may not terminate under this subsection the appointment of a member nominated by traditional owners of indigenous people's land in the reserve.

Termination for failure to disclose interests

- (5) The Minister must terminate the appointment of a member of a Board if:
- (a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the member has in a matter being considered or about to be considered by the Board; and
 - (b) the member does not have a reasonable excuse for not complying.

Termination on request by nominator

- (6) The Minister must terminate the appointment of a member of a Board if:
- (a) the member was appointed on the nomination of a particular person, body or group of persons; and
 - (b) the person, body or group gives the Minister a written request to terminate the appointment.

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Termination for bankruptcy or insolvency

- (7) The Minister may terminate the appointment of a member of the Board if the member:
- (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

383 Procedure of a Board

- (1) The regulations may provide for:
- (a) matters relating to the operation of a Board, including:
 - (i) procedures for convening meetings of the Board; and
 - (ii) procedures for determining who is to preside at a meeting of the Board; and
 - (iii) determining who may attend a meeting of the Board; and
 - (iv) the constitution of a quorum for a meeting of the Board; and
 - (v) procedures relating to a member's interest in matters being dealt with by the Board; and
 - (vi) the way in which matters are to be resolved by the Board; and
 - (b) the appointment and rights of a deputy of a member of a Board.
- (2) The regulations may allow a Board to determine a matter relating to the operation of the Board for which the regulations may provide.
- (3) If there are no regulations in force, a Board may operate in the way it determines.

- (4) A meeting of a Board for a Commonwealth reserve consisting wholly of indigenous people's land:
- (a) must not start; and
 - (b) must not continue;
- unless the majority of the members of the Board present are persons nominated by the traditional owners of the indigenous people's land for appointment as members.
- (5) Subsection (4) has effect despite subsections (1), (2) and (3).

Subdivision G—Special rules for some Commonwealth reserves in the Northern Territory or Jervis Bay Territory

384 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

Special rules apply to Commonwealth reserves in the Kakadu region, Uluru region and Jervis Bay Territory, affecting the activities that can be carried on in those reserves.

Special procedures apply to planning for management of reserves in the Kakadu region, Uluru region and Jervis Bay Territory. These provide for extra involvement of indigenous people in the planning process.

385 Activities in Commonwealth reserve without management plan

When a management plan is not in operation for a particular Commonwealth reserve wholly or partly in the Kakadu region, Uluru region or Jervis Bay Territory, the Director may perform the Director's functions and exercise the Director's powers in and in relation to a part of the reserve in the region, subject to any directions of the Minister.

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386 What are the *Kakadu region* and the *Uluru region*?

- (1) The ***Kakadu region*** is the part of the Alligator Rivers Region (as defined in the *Environment Protection (Alligator Rivers Region) Act 1978*) that excludes:
 - (a) the area shown as the Arnhem Land Aboriginal Reserve on the map mentioned in that definition; and
 - (b) the areas that are pastoral leases and are described on that map as Mount Bunday and Eva Valley.
- (2) The ***Uluru region*** is the area of land described under the heading “Uluru” in Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Act 1976*.

387 No mining operations in Kakadu National Park

- (1) A person must not carry out mining operations in Kakadu National Park.
- (2) Subsection (1) does not prevent:
 - (a) the use, development or reconstruction of the township known as Jabiru; or
 - (b) the transportation of anything in Kakadu National Park along routes (including air routes) prescribed by the regulations for the purposes of this paragraph; or
 - (c) the construction and use of pipelines and power lines in Kakadu National Park along routes prescribed by the regulations for the purposes of this paragraph; or
 - (d) the doing of anything for the purposes of building or construction, or the supply of water, in Kakadu National Park as long as the purposes are not connected with, or incidental to, mining operations; and
 - (e) prescribed activities carried on in Kakadu National Park in connection with, or incidental to, mining operations carried on outside Kakadu National Park.
- (3) ***Kakadu National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Kakadu National Park was

given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

388 Establishment and development of townships in the Kakadu region and Uluru region

- (1) A person may use or develop a township in a part of a Commonwealth reserve, but only if:
 - (a) the part is in the Kakadu region or the Uluru region; and
 - (b) the person does so in accordance with:
 - (i) subsection (2); and
 - (ii) the management plan for the reserve; and
 - (iii) a town plan prepared and approved in accordance with the regulations.
- (2) A person (other than the Director) may use or develop a township only on land that the person holds under lease or sub-lease from:
 - (a) the Commonwealth; or
 - (b) the Director; or
 - (c) the Kakadu Aboriginal Land Trust (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
 - (d) the Northern Territory; or
 - (e) an approved entity (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*).

389 Planning for townships

Management plan provisions

- (1) The provisions of a management plan for a Commonwealth reserve that relate to a township must include provisions for and in relation to the use and development of the township.

Town plan provisions

- (2) A town plan must make detailed provision in relation to the use and development of the township, including, in particular, the

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provision (if any) to be made for any matters that are specified for the purposes of this subsection by:

- (a) the management plan for the Commonwealth reserve containing the township; or
- (b) the regulations.

Town plans may adopt, apply or incorporate other instruments

- (3) For the purposes of subsection (2), a town plan may apply, adopt or incorporate, with or without modification:
 - (a) the provisions of any law of the Northern Territory (or a part of the Territory), as in force at a specified time or as in force from time to time; or
 - (b) any matter contained in any instrument or writing as in force or existing at a specified time.

Revocation and variation of town plans

- (5) A town plan may be revoked or amended in the manner provided by the regulations.

Note: Town plans are to be prepared and approved in accordance with the regulations. See subparagraph 388(1)(b)(iii).

390 Special rules to protect Aboriginal interests in planning process

- (1) This section sets out some extra rules about the process of preparing management plans for a Commonwealth reserve wholly or partly within the Kakadu region, the Uluru region or Jervis Bay Territory.
- (2) The Minister must give a management plan for a Commonwealth reserve back to the Director with suggestions under paragraph 370(3)(b) if the Minister is satisfied that there is a substantial difference of opinion between:
 - (a) the Chair or Chairperson of a land council for indigenous people's land in the reserve, on the one hand; and
 - (b) the Director, or the Director and the Board for the reserve (if it is a jointly managed reserve), on the other hand.

- (3) If the Minister gives the plan back to the Director with suggestions under paragraph 370(3)(b) (whether because of subsection (2) or not), the Minister must:
- (a) give a copy of the suggestions to:
 - (i) the Chair or Chairperson of each land council for indigenous people's land in the reserve; and
 - (ii) the Parks and Wildlife Commission of the Northern Territory, if the plan is for a Commonwealth reserve wholly or partly in the Territory; and
 - (b) invite each person to whom the Minister gave a copy of the suggestions to give the Director comments on the suggestions within 14 days.
- (4) When considering the Minister's suggestions as required by paragraph 370(4)(a), the Director and any Board for the reserve must also consider any comments made in response to the Minister's invitation.
- (5) When the Director gives the Minister an identical or altered version of the plan under paragraph 370(4)(b), the Director must also:
- (a) give the Minister a copy of the comments (if any) made in response to the Minister's invitation, and the Director's views on those comments; and
 - (b) give the Chair or Chairperson of each land council for indigenous people's land in the reserve a copy of the version of the plan given to the Minister and of the comments and views (if any) being given to the Minister under paragraph (a).
- (6) The Chair or Chairperson of a land council for indigenous people's land in the reserve may make comments to the Minister relating to the version of the plan within 14 days of receiving the copy of it.
- (7) If the Minister receives comments from the Chair or Chairperson of a land council for indigenous people's land in the reserve and the Minister is satisfied that there is a substantial difference of opinion between the Chair or Chairperson and the Director over the plan:

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- (a) the Minister may appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
 - (b) the person appointed must inquire into the matter and give the Minister a report and recommendations.
- (8) The Minister:
- (a) must also consider:
 - (i) the comments (if any) made to the Minister by the Chair or Chairperson under subsection (6); and
 - (ii) the report and recommendations (if any) given to the Minister under subsection (7);when considering under subsection 370(5) the version of the plan given to the Minister under paragraph 370(4)(b); and
 - (b) must not approve the plan before the end of the period described in subsection (6).

390A Appointment of Northern Territory nominee to Board

- (1) This section makes special provision for the appointment of a person nominated by the Northern Territory as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.
- (2) Despite subsection 379(1), the Minister must not appoint the person unless:
 - (a) the members of the Board nominated by the traditional owners of the land consent to the appointment; or
 - (b) the appointment has been recommended under subsection (5).
- (3) The Northern Territory may inform the Minister if it believes that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment.

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- (4) If the Northern Territory informs the Minister, he or she must refer the matter to the person (the ***Ombudsman***) holding the office of Commonwealth Ombudsman under the *Ombudsman Act 1976*.
- (5) If the Ombudsman is satisfied that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment, the Ombudsman must recommend to the Minister that the Minister make the appointment.

Division 5—Conservation zones

390B Simplified outline of this Division

The following is a simplified outline of this Division:

The Governor-General can proclaim a Commonwealth area to be a conservation zone, to protect biodiversity in the area while it is being assessed for inclusion in a Commonwealth reserve.

Regulations can be made to regulate a wide range of activities in a conservation zone.

People who have rights relating to an area that is later included in a conservation zone can continue to exercise those rights in the zone.

A conservation zone can be revoked if the Minister is satisfied the area concerned should not be included in a Commonwealth reserve. It is revoked automatically if it is included in a Commonwealth reserve.

390C Object of this Division

The object of this Division is to provide for the protection of biodiversity, other natural features and heritage in Commonwealth areas while they are being assessed for inclusion in a Commonwealth reserve.

390D Proclamation of conservation zones

- (1) The Governor-General may, by Proclamation, declare a Commonwealth area outside a Commonwealth reserve to be a conservation zone.
- (2) Before the Governor-General makes a Proclamation declaring a Commonwealth area to be a conservation zone, the Minister must be satisfied that the area should be assessed to determine whether

the biodiversity, other natural features and heritage in the area should be protected by including the area in a Commonwealth reserve.

390E Regulating activities generally

- (1) The regulations may:
 - (a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:
 - (i) people, biodiversity or heritage in conservation zones;
or
 - (ii) the natural features of conservation zones; and
 - (b) regulate tourism in conservation zones; and
 - (c) provide for the protection and preservation of conservation zones and property and things in conservation zones; and
 - (d) provide for the protection and conservation of biodiversity in conservation zones; and
 - (e) regulate or prohibit access to all or part of a conservation zone by persons or classes of persons; and
 - (f) provide for the removal of trespassers from conservation zones; and
 - (g) regulate camping in conservation zones; and
 - (h) provide for the safety of persons in conservation zones; and
 - (i) regulate the use of fire in conservation zones; and
 - (j) regulate the conduct of persons in conservation zones; and
 - (k) regulate the carrying on of any trade or commerce in a conservation zone; and
 - (l) regulate the use of vehicles in conservation zones and provide for signs and road markings for those purposes; and
 - (m) provide for:
 - (i) the removal of vehicles, aircraft or vessels from places in conservation zones where they have been left in contravention of the regulations or have been abandoned; and
 - (ii) the impounding of such vehicles, aircraft or vessels; and

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- (n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a conservation zone is, except as provided otherwise, taken to commit an offence against the provision; and
 - (o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and
 - (p) regulate the use of vessels in, and the passage of vessels through, conservation zones; and
 - (q) regulate the landing and use of aircraft in, and the flying of aircraft over, conservation zones; and
 - (r) regulate or prohibit the taking of animals or plants into or out of conservation zones; and
 - (s) provide for the impounding, removal, destruction or disposal of animals found straying in conservation zones; and
 - (t) regulate or prohibit the taking into conservation zones, and the use in conservation zones, of weapons, traps, nets, snares, fishing apparatus and other devices; and
 - (u) regulate or prohibit the laying of baits and the use of explosives and poisons in conservation zones; and
 - (v) provide for the collection of specimens and the pursuit of research in conservation zones for scientific purposes; and
 - (w) provide for the issue of licences, permits and authorities relating to activities in conservation zones, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and
 - (x) provide for any matter incidental to or connected with a matter described in another paragraph.
- (2) Regulations relating to conservation zones may also:

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- (a) regulate the carrying on of mining operations, fishing, pastoral or agricultural activities for commercial purposes; and
 - (b) regulate the construction or alteration of buildings and structures; and
 - (c) regulate the construction or establishment of bridges, railways, roads, tracks, port facilities and air-strips and the carrying out of any other works; and
 - (d) regulate the felling or taking of timber; and
 - (e) provide for and in relation to the powers to be exercised, and the functions and duties to be performed, in and in relation to conservation zones by wardens, by rangers and by other persons included in specified classes of persons; and
 - (f) provide for and in relation to the giving of securities for compliance with regulations made for the purposes of this section by persons doing, or proposing to do, anything to which those regulations relate.
- (3) Regulations made for the purposes of this section have no effect to the extent that they are inconsistent with the terms and conditions of a right (however described) to explore for minerals, or to mine for or recover minerals, granted under section 124 of the *Lands Acquisition Act 1989*.

390F Charges for activities in conservation zones

Subject to the approval of the Minister, the Director may determine and impose charges for using services or facilities provided by the Director in or in connection with a conservation zone.

390G Other laws and regulations made for this Division

Regulations regulating aircraft subject to other Commonwealth laws

- (1) A provision of the regulations regulating the flying of aircraft over a conservation zone does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a

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provision is not inconsistent with such a law if it can be complied with without contravention of the law.

Territory laws subject to regulations

- (2) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations made for the purposes of this Division and having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

390H Prior usage rights relating to conservation zones continue to have effect

- (1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth) in relation to land or seabed immediately before the land or seabed was included in a conservation zone:
- (a) provisions of this Division that relate to the zone (whether or not they also relate to another conservation zone);
 - (b) provisions of the regulations made for the purposes of this Division that relate to the zone (whether or not they also relate to another conservation zone).
- (2) None of the provisions covered by subsection (1) affect the application of a law of a State or Territory in relation to the usage right.
- (3) The usage right may be renewed or have its term extended only:
- (a) with the Minister's written consent; and
 - (b) subject to any conditions determined by the Minister.
- This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.
- (4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a conservation zone as if the usage right were a usage right relating to the land or seabed.

- (5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.

390J Revoking and altering conservation zones

Proclamations to revoke or amend declaring Proclamation

- (1) The Governor-General may, by Proclamation, revoke or amend a Proclamation made under section 390D (declaring a Commonwealth area to be a conservation zone).

Limit on making Proclamations

- (2) Before the Governor-General makes a Proclamation under subsection (1) causing a Commonwealth area to cease to be within a conservation zone, the Minister must be satisfied that the area should not be included in a Commonwealth reserve.

Declaration of Commonwealth reserve revokes conservation zone

- (3) A Commonwealth area ceases to be a conservation zone by force of this subsection if the area becomes or is included in a Commonwealth reserve.

Conservation zone ends if it ceases to be in Commonwealth area

- (4) If land, waters, seabed or airspace in a conservation zone cease to be a Commonwealth area, the land, waters, seabed or airspace cease to be (or be in) a conservation zone by force of this subsection.

Proclamation to reflect cessation of conservation zone

- (5) If land, waters, seabed or airspace cease to be a conservation zone by force of subsection (3) or (4), the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land, waters, seabed or airspace in a conservation zone, to reflect the fact that the land, waters, seabed or airspace are no longer part of the conservation zone.

Chapter 5A—The List of Overseas Places of Historic Significance to Australia

Part 15A—The List of Overseas Places of Historic Significance to Australia

390K The List of Overseas Places of Historic Significance to Australia

- (1) The Minister must keep a written record of places in accordance with this Part. The record is called the *List of Overseas Places of Historic Significance to Australia*.
- (2) The List of Overseas Places of Historic Significance to Australia is not a legislative instrument.

390L Inclusion of places in the List of Overseas Places of Historic Significance to Australia

- (1) The Minister may, by notice published in the *Gazette*, include a place, and a statement of its historic significance to Australia, in the List of Overseas Places of Historic Significance to Australia if, and only if:
 - (a) the place is outside the Australian jurisdiction; and
 - (b) the Minister is satisfied that the place is of outstanding historic significance to Australia.
- (2) The regulations may specify matters the Minister is to have regard to in considering whether he or she is satisfied as mentioned in paragraph (1)(b).

390M Removal of places from the List of Overseas Places of Historic Significance to Australia or variation of statement of historic significance

- (1) The Minister may, by notice published in the *Gazette*, do either of the following in relation to a place that is included in the List of Overseas Places of Historic Significance to Australia:
 - (a) remove the place, and the statement of its historic significance to Australia, from the List;
 - (b) vary the statement of the place's historic significance to Australia.
- (2) The regulations may specify matters the Minister is to have regard to in considering whether to take action under subsection (1).

390N Inviting comments from other Ministers before taking action

- (1) Before taking action in relation to a place under section 390L or 390M, the Minister (the *Environment Minister*) must:
 - (a) inform the following other Ministers of the action the Environment Minister proposes to take:
 - (i) the Minister for Foreign Affairs;
 - (ii) any other Minister whom the Environment Minister believes should be informed; and
 - (b) invite those other Ministers to give the Environment Minister comments on the proposed action; and
 - (c) take any comments from those other Ministers into account.
- (2) In this section:

Minister for Foreign Affairs means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

390P Minister may ask Australian Heritage Council for advice etc.

- (1) The Minister may ask the Australian Heritage Council for advice relating to action that the Minister is considering taking under section 390L or 390M in relation to a place, and may take that

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advice into account in deciding what action (if any) to take under that section in relation to the place.

- (2) The Minister may also seek, and have regard to, information or advice from any other source.

390Q List of Overseas Places of Historic Significance to Australia to be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the List of Overseas Places of Historic Significance to Australia are available for free to the public on request; and
(b) an up-to-date copy of the List is available on the internet.

390R Disclosure of Australian Heritage Council's assessments and advice

- (1) A member of the Australian Heritage Council has a duty not to disclose advice under section 390P to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council.
- (2) However, the duty not to disclose the advice does not exist after the Minister has decided whether to take the action to which the advice relates.

Chapter 5B—Declared commercial fishing activities

Part 15B—Declared commercial fishing activities

Division 1—Prohibition

390SA Civil penalty—declared commercial fishing activities

A person must not engage in a declared commercial fishing activity in a Commonwealth marine area.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Note: If a body corporate is found to have contravened this section, an executive officer of the body may be found to have contravened section 494.

390SB Offence—declared commercial fishing activities

- (1) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action is taken in a Commonwealth marine area; and
 - (c) the action is a declared commercial fishing activity.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: If a body corporate is found to have committed an offence against this section, an executive officer of the body may be found to have committed an offence against section 495.

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

- (2) Strict liability applies to paragraph (1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Division 2—Declaring a commercial fishing activity

Subdivision A—What is a declared commercial fishing activity?

390SC What is a *declared commercial fishing activity*?

- (1) A *declared commercial fishing activity* is a commercial fishing activity that is specified in:
 - (a) an interim declaration that is in force under section 390SD; or
 - (b) a final declaration that is in force under section 390SF.
- (1A) A *commercial fishing activity* is a fishing activity that is engaged in for a commercial purpose, and, to avoid doubt, does not include an activity that constitutes recreational fishing (within the meaning of subsection 212(2)).

Note: Under subsection 212(2), recreational fishing includes fishing from a charter boat and fishing in a fishing competition.
- (2) A *fishing activity* means an activity that constitutes fishing.

Subdivision B—Interim declaration

390SD Interim declaration

Making an interim declaration

- (1) The Minister may, by legislative instrument, make a declaration (an *interim declaration*) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of an interim declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For revocation of an interim declaration, see section 390SG.
- (2) When making an interim declaration, the Minister may identify a commercial fishing activity by reference to all or any of the following:

- (a) a method of fishing;
- (b) a type of vessel used for fishing;
- (c) a method of processing, carrying or transshipping of fish that have been taken;
- (d) an area of waters or of seabed.

Note: Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (2A) When making an interim declaration, the Minister may only specify a commercial fishing activity that had not been engaged in before 11 September 2012 in a Commonwealth marine area.
- (3) The Minister must not make an interim declaration unless the Minister and the Fisheries Minister agree that:
 - (a) there is uncertainty about the environmental impacts of the commercial fishing activity; and
 - (b) it is appropriate that the commercial fishing activity be prohibited in a Commonwealth marine area while consultation occurs under section 390SE about whether to make a final declaration in relation to the commercial fishing activity under section 390SF.

When an interim declaration is in force

- (4) An interim declaration:
 - (a) comes into force at the end of the day on which it is registered in the Federal Register of Legislation; and
 - (b) remains in force until the earlier of the following times:
 - (i) the end of the period specified in the declaration as the period for which the declaration is in force;
 - (ii) if the declaration is revoked—when the revocation comes into force.

Specified period for which interim declaration is in force

- (5) The Minister must specify in an interim declaration the period for which it is to be in force. The period must not be longer than 60 days.

Section 390SE

390SE Consultation

- (1) As soon as is practicable after making an interim declaration under section 390SD declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must publish a notice on the Department's website in accordance with subsection (2).
- (2) The notice must:
 - (a) invite each declaration affected person (see subsection (3)) to make a written submission about the impact on the person's rights or interests in relation to fishing if a final declaration under section 390SF were made in relation to the commercial fishing activity; and
 - (b) specify that written submissions must be lodged during the period specified in the notice; and
 - (c) specify the manner in which written submissions are to be lodged.
- (3) A ***declaration affected person***, in relation to a commercial fishing activity, means a person who:
 - (a) holds a fishing concession or is prescribed by the regulations; and
 - (b) considers that the person would be detrimentally affected by the making of a final declaration under section 390SF in relation to the commercial fishing activity.
- (4) For the purposes of paragraph (2)(b), the period specified in the notice must be at least 11 business days after the day the notice is published.

Subdivision C—Final declaration

390SF Final declaration

Making a final declaration

- (1) The Minister may, by legislative instrument, make a declaration (a ***final declaration***) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of a final declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For revocation of a final declaration, see section 390SG.

- (2) The Minister must not make a final declaration unless:
- (a) the commercial fishing activity is the same as a commercial fishing activity that is, or was, specified in an interim declaration under section 390SD; and
 - (b) consultation under section 390SE has occurred in relation to the commercial fishing activity; and
 - (c) the Minister has considered any written submission that:
 - (i) was made under section 390SE by a declaration affected person; and
 - (ii) was lodged during the period referred to in paragraph 390SE(2)(b); and
 - (d) the Minister and the Fisheries Minister agree that there is uncertainty about the environmental impacts of the commercial fishing activity; and
 - (e) the Minister and the Fisheries Minister agree that it is appropriate that:
 - (i) an expert panel be established under section 390SH to conduct an assessment of the commercial fishing activity and report on the matter; and
 - (ii) the commercial fishing activity be prohibited in a Commonwealth marine area while the expert panel conducts the assessment.

Section 390SG

When a final declaration is in force

- (3) A final declaration:
- (a) comes into force at the end of the day on which it is registered in the Federal Register of Legislation; and
 - (b) remains in force until the earliest of the following times:
 - (i) the end of the day on which the report of the expert panel is published on the Department's website under paragraph 390SL(a);
 - (ii) the end of the period specified in the declaration as the period for which the declaration is in force;
 - (iii) if the declaration is revoked—when the revocation comes into force.

Specified period for which final declaration is in force

- (4) The Minister must specify in a final declaration the period for which it is to be in force. The period must not be longer than 24 months.

Subdivision D—Revoking declarations

390SG Revoking an interim or final declaration

- (1) The Minister may, by legislative instrument, revoke:
- (a) an interim declaration under section 390SD; or
 - (b) a final declaration under section 390SF.
- (2) A revocation under subsection (1) comes into force at the end of the day on which it is registered in the Federal Register of Legislation.

Division 3—Expert panel assessment of declared commercial fishing activity

390SH Establishment of expert panel

- (1) As soon as is practicable after making a final declaration under section 390SF declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must:
 - (a) appoint, in writing, one or more persons (the *members*) as an expert panel to conduct an assessment and report to the Minister about the commercial fishing activity; and
 - (b) with the agreement of the Fisheries Minister, specify in writing (the *terms of reference*):
 - (i) the matters relating to the commercial fishing activity that are to be the subject of the assessment and report; and
 - (ii) the date by which the panel must report to the Minister.

Note: The Minister may revoke an appointment: see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Minister may specify in the terms of reference the manner in which the expert panel is to carry out the assessment.
- (3) The Minister may, in writing, vary or revoke the terms of reference with the agreement of the Fisheries Minister.
- (4) The Minister must:
 - (a) publish a copy of the terms of reference on the Department's website as soon as is practicable after the Minister specifies or varies them; and
 - (b) cause a copy of the terms of reference to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister specifies or varies them.

Section 390SI

390SI Terms and conditions

The Minister must determine, in writing, the terms and conditions applicable to members of the expert panel, including terms and conditions relating to:

- (a) term of office; and
- (b) remuneration; and
- (c) allowances; and
- (d) disclosure of interests.

390SJ Procedure for assessment

- (1) The expert panel must comply with the terms of reference in conducting the assessment.
- (2) Subject to subsection (1), the expert panel may determine the procedure to be followed in its assessment.

390SK Timing of the report

The expert panel must give the Minister the report on the assessment on the date specified by the Minister in the terms of reference.

390SL Publication of the report

The Minister must:

- (a) publish a copy of the report on the Department's website within 20 business days after the day the Minister receives the report; and
- (b) cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister receives the report; and
- (c) comply with any other publication requirements prescribed by the regulations.

Division 4—Sunsetting of this Part

390SM Sunsetting of this Part

New declarations under this Part may not be made 12 months after the day the *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012* commences.

Chapter 6—Administration

Part 16—Precautionary principle and other considerations in making decisions

391 Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

- (1) The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

- (2) The **precautionary principle** is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Decisions in which precautionary principle must be considered

- (3) The decisions are:

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
1	75	whether an action is a controlled action
2	133	whether or not to approve the taking of an action
3	201	whether or not to grant a permit
4	216	whether or not to grant a permit

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
5	238	whether or not to grant a permit
6	258	whether or not to grant a permit
6A	269AA	whether or not to have a recovery plan for a listed threatened species or a listed threatened ecological community
7	269A	about making a recovery plan or adopting a plan as a recovery plan
7A	270A	whether or not to have a threat abatement plan for a key threatening process
7B	270B	about making a threat abatement plan or adopting a plan as a threat abatement plan
8	280	about approving a variation of a plan adopted as a recovery plan or threat abatement plan
9	285	about making a wildlife conservation plan or adopting a plan as a wildlife conservation plan
10	295	about approving a variation of a plan adopted as a wildlife conservation plan
10A	303CG	whether or not to grant a permit
10AA	303DC	whether or not to amend the list of exempt native specimens
10B	303DG	whether or not to grant a permit
10C	303EC	about including an item in the list referred to in section 303EB
10D	303EN	whether or not to grant a permit
10E	303FN	about declaring an operation to be an approved wildlife trade operation
10F	303FO	about declaring a plan to be an approved wildlife trade management plan
10G	303FP	about declaring a plan to be an accredited wildlife trade management plan

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Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
10H	303GB	whether or not to grant an exceptional circumstances permit
11	316	about making a plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas
11A	324S	about making a plan for managing a National Heritage place
12	328	about making a plan for managing a wetland that is designated for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas
13	338	about making a plan for managing a Biosphere reserve entirely within one or more Commonwealth areas
13A	341T	about endorsing a plan for managing a Commonwealth Heritage place
14	370	about approving a management plan for a Commonwealth reserve

Part 17—Enforcement

Division 1—Wardens, rangers and inspectors

Subdivision A—Wardens and rangers

392 Appointment of wardens and rangers

The Minister may, in writing, appoint:

- (a) an officer or employee of the Department; or
 - (b) a person covered by an arrangement made under section 393;
- to be a warden or ranger.

393 Arrangements for certain officers or employees to exercise powers etc. of wardens or rangers

- (1) The Secretary may make arrangements with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the performance or exercise of all or any of the functions or powers of wardens and rangers under this Act or the regulations by officers or employees in that Agency or authority, as the case may be.
- (1A) However, an arrangement under subsection (1) must not provide for the performance or exercise of functions or powers under this Act or the regulations in relation to a Commonwealth reserve or conservation zone.
- (2) The Minister may enter into an arrangement with the appropriate Minister of a State or of the Australian Capital Territory or of the Northern Territory for:
 - (a) officers or employees in the Public Service of the State or Territory, or in an authority of the State or Territory (including a local government body); or
 - (b) members of the police force of the State or Territory;

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to perform or exercise all or any of the functions or powers of wardens or rangers under this Act or the regulations.

- (4) The Director may make arrangements with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the performance or exercise of all or any of the functions or powers of wardens and rangers under this Act or the regulations by officers or employees in that Agency or authority, as the case may be.

394 Wardens ex officio

By force of this section each of the following is a warden:

- (a) each member or special member of the Australian Federal Police;
- (b) each officer of Customs.

395 Identity cards

- (1) The Minister must issue to each warden (except a member of a police force or an officer of Customs) and to each ranger, an identity card, in a form approved by the Minister, containing a photograph of the person to whom it is issued.
- (2) If a person stops being a warden or ranger, the person must immediately return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding one penalty unit.

Subdivision B—Inspectors

396 Appointment of inspectors

- (1) The Minister may, in writing, appoint a person to be an inspector.
- (2) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, does not have such of the powers conferred on an inspector by this Act

as are specified in the determination. The determination has effect accordingly.

- (3) If the Minister makes a determination under subsection (2) about a named individual, the Minister must give the individual a copy of the determination.

397 Inspectors ex officio

- (1) By force of this section each of the following is an inspector:
- (a) each member or special member of the Australian Federal Police;
 - (b) each person appointed as an inspector under subsection 43(1) of the *Great Barrier Reef Marine Park Act 1975* (other than such a person whose appointment relates only to the powers of an inspector under Part VIIA of that Act);
 - (c) each officer of Customs.
- (2) Paragraph (1)(b) does not apply for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A.
- (3) By force of this section, for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A, each of the following is an inspector:
- (b) each member of the police force of an external Territory;
 - (c) each biosecurity officer (within the meaning of the *Biosecurity Act 2015*).

Note: Part 13A deals with international movement of wildlife specimens.

398 Arrangements for State and Territory officers to be inspectors

- (1) The Minister may enter into an arrangement with the appropriate Minister of a State or of the Australian Capital Territory or of the Northern Territory for:
- (a) officers or employees of the Public Service of the State or Territory, or of an authority of the State or Territory (including a local government body); or
 - (b) members of the police force of the State or Territory;

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to be inspectors, and that arrangement has effect accordingly.

- (3) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, who is an inspector because of this section does not have such of the powers conferred on an inspector by this Act as are specified in the determination. The determination has effect accordingly.
- (4) If the Minister makes a determination under subsection (3) about a named individual, the Minister must give the individual a copy of the determination.

399 Identity cards

- (1) The Minister must issue to an inspector an identity card in a form approved by the Minister, containing a photograph of the person to whom it is issued.
- (1A) Subsection (1) does not apply in relation to an inspector who is:
 - (a) a member of a police force; or
 - (b) an inspector by force of paragraph 397(1)(b); or
 - (c) an officer of Customs.
- (2) If a person stops being an inspector, the person must immediately return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding one penalty unit.
- (4) For the purposes of this Act, a requirement for a person who is an inspector by force of paragraph 397(1)(b) to produce his or her identity card is satisfied if the person shows his or her identity card issued under section 45 of the *Great Barrier Reef Marine Park Act 1975*.

**Subdivision BA—Exercise of powers of authorised officers
outside the territorial sea**

399A Powers to be exercised consistently with UNCLOS

- (1) This section applies in relation to the powers of an authorised officer under this Part (including powers an authorised officer has under or because of a search warrant or a monitoring warrant), to the extent that the powers are otherwise permitted to be exercised:
 - (a) outside the territorial sea; and
 - (b) in relation to a person, aircraft or vessel, other than a person aircraft or vessel of a kind referred to in any of paragraphs 5(3)(a) to (h).
- (2) The powers of an authorised officer, to the extent to which this section applies to them, must be exercised consistently with Australia's rights and obligations under:
 - (a) UNCLOS; and
 - (b) any other international agreements specified in regulations made for the purposes of this section.
- (3) In this section:

UNCLOS means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31. In 2006, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

**Subdivision BB—Exercise of powers of authorised officers in
relation to Great Barrier Reef Marine Park**

**399B Certain powers to be exercised only by certain authorised
officers**

- (1) The powers of an authorised officer in relation to:

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- (a) an offence against an environmental law that is the *Great Barrier Reef Marine Park Act 1975* or regulations made under that Act; or
 - (b) an environmental penalty provision that is a civil penalty provision of that Act; or
 - (c) a thing that may be done for the purposes of that Act;
- may only be exercised by an authorised officer who is an inspector by force of paragraph 397(1)(a) or (b).
- (2) To avoid doubt, an authorised officer who is an inspector by force of paragraph 397(1)(a) or (b) and also by force of paragraph 397(1)(c) is an authorised officer who may exercise the powers referred to in subsection (1).

Subdivision C—Miscellaneous

400 Regulations may give wardens, rangers and inspectors extra powers, functions and duties

The regulations may provide for functions and powers to be conferred, and duties to be imposed, on wardens, rangers and inspectors.

401 Impersonating authorised officers and rangers

- (1) A person commits an offence if:
- (a) the person:
 - (i) impersonates an authorised officer or a ranger on an occasion; and
 - (ii) does so knowing it to be an occasion when the officer or ranger would be on duty and doing an act or attending a place; or
 - (b) the person:
 - (i) falsely represents himself or herself to be an authorised officer or a ranger; and
 - (ii) does an act or attends a place in the assumed character of that officer or ranger; or

- (c) the person:
 - (i) impersonates an authorised officer or a ranger or falsely represents himself or herself to be an authorised officer or a ranger; and
 - (ii) does so with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.
- (2) Subsection (1) does not apply to an authorised officer or a ranger.
- (3) An authorised officer or a ranger commits an offence if:
 - (a) the officer or ranger:
 - (i) impersonates another authorised officer or ranger on an occasion; and
 - (ii) does so knowing it to be an occasion when the other officer or ranger would be on duty and doing an act or attending a place; or
 - (b) the officer or ranger:
 - (i) falsely represents himself or herself to be another authorised officer or a ranger; and
 - (ii) does an act or attends a place in the assumed character of the other officer or ranger; or
 - (c) the officer or ranger:
 - (i) impersonates another authorised officer or a ranger or falsely represents himself or herself to be another authorised officer or a ranger; and
 - (ii) does so with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.
- (4) An offence against this section is punishable, on conviction, by imprisonment for not more than 2 years or a fine not exceeding 120 penalty units, or both.

402 Offences against authorised officers and rangers

- (1) A person commits an offence if the person:
 - (a) uses or threatens violence against another person; and

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- (b) does so knowing that the other person is an authorised officer or a ranger; and
 - (c) does so because of that other person's status as an authorised officer or ranger.
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment for not more than 7 years or a fine not exceeding 420 penalty units, or both.
- (3) A person commits an offence if the person:
 - (a) obstructs, intimidates, resists or hinders another person who is an authorised officer or a ranger exercising or performing his or her powers, duties or functions; and
 - (b) does so knowing that the other person is an authorised officer or ranger.
- (4) An offence against subsection (3) is punishable, on conviction, by imprisonment for not more than 2 years or a fine not exceeding 120 penalty units, or both.
- (5) It is immaterial whether the defendant was aware that the authorised officer or ranger was engaged in the exercise or performance, or attempted exercise or performance of a power, duty or function of such officer or ranger.
- (6) It is a defence in proceedings for an offence against subsection (3), if at the time of the conduct constituting the offence, the authorised officer or ranger was abusing his or her power.
- (7) This section does not limit the power of a court to punish a contempt of that court.
- (8) Subsections (1) and (3) are not intended to exclude or limit the concurrent operation of any law of the Australian Capital Territory in a case where the other person referred to in that subsection is a member or special member of the Australian Federal Police.

Division 2—Boarding of vessels etc. and access to premises

403 Boarding of vessels etc. by authorised officers

- (1) This section applies to:
 - (a) any Australian vessel or Australian aircraft, whether or not it is in the Australian jurisdiction; or
 - (b) any other vessel or aircraft, or any vehicle or platform, that is in the Australian jurisdiction.
- (2) If an authorised officer suspects on reasonable grounds that there is in, or on, a vehicle, vessel, aircraft or platform to which this section applies any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, the authorised officer may, with such assistance as he or she thinks necessary:
 - (a) board the vehicle, vessel, aircraft or platform at any reasonable time for the purpose of exercising, and may exercise, the powers of an authorised officer under section 406; and
 - (b) in the case of a vehicle, vessel or aircraft—stop and detain the vehicle, vessel or aircraft for that purpose.
- (2A) An authorised officer who boards a vehicle, vessel, aircraft or platform under paragraph (2)(a) may require a person on the vehicle, vessel, aircraft or platform to:
 - (a) answer a question asked by the authorised officer; or
 - (b) give the authorised officer information requested by the authorised officer; or
 - (c) produce to the authorised officer records or documents kept on the vehicle, vessel, aircraft or platform.
- (3) If an authorised officer or the person in command of a Commonwealth ship or of a Commonwealth aircraft suspects on reasonable grounds that a vessel to which this section applies has

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been used or otherwise involved in the commission of an offence against an environmental law, he or she may:

- (a) bring the vessel to the nearest port in Australia or an external Territory to which it is safe and practicable to bring the vessel; or
 - (b) by means of an international signal code or other internationally recognised means of communication with a vessel, require the person in charge of the vessel to bring the vessel to that port.
- (4) An authorised officer, or the person in command of a Commonwealth ship or of a Commonwealth aircraft, may require the person in charge of an aircraft to which this section applies to bring the aircraft to the nearest airport in Australia or an external Territory to which it is safe and practicable to bring the aircraft if:
- (a) the authorised officer, or the person in command of the Commonwealth ship or Commonwealth aircraft, suspects on reasonable grounds that the aircraft has been used or otherwise involved in the commission of an offence against an environmental law; and
 - (b) the requirement is made by means of an international signal code or other internationally recognised means of communication with an aircraft.
- (5) An authorised officer may, for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975* (other than Part VIIA of that Act (compulsory pilotage)), require the person in charge of a vehicle, vessel, aircraft or platform to which this section applies to give information concerning any or all of the following:
- (a) the vehicle, vessel, aircraft or platform;
 - (b) the crew or any other person on board the vehicle, vessel, aircraft or platform;
 - (c) in the case of a vessel—any dory being operated in association with the vessel;
 - (d) in the case of a vessel—any person operating a dory in association with the vessel.

(5A) A person commits an offence if:

- (a) a requirement is made of the person under this section; and
- (b) the person fails to comply with the requirement.

Penalty:

- (a) if the requirement is made under subsection (2A)—
imprisonment for 6 months or 30 penalty units, or both; or
 - (b) if the requirement is made under subsection (3), (4) or (5)—
50 penalty units.
- (5B) If there is a restraint on the liberty of a person on a vessel resulting from an authorised officer's exercise of a power under this section in relation to the vessel:
- (a) the restraint is not unlawful; and
 - (b) civil or criminal proceedings in respect of the restraint may not be instituted or continued in any court against:
 - (i) the authorised officer; or
 - (ii) any person assisting the authorised officer in the exercise of the power; or
 - (iii) the Commonwealth.

This subsection is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

- (5C) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

- (6) In this Act:

Commonwealth aircraft means an aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is displayed.

Commonwealth ship means a ship in the service of the Commonwealth on which the prescribed ensign of the ship is flying.

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404 Authorised officers to produce identification

- (1) If an authorised officer (subject to subsection (1A)) boards a vehicle, vessel, aircraft or platform under section 403, the authorised officer must:
 - (a) in the case of a member of a police force—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is a member of that police force; or
 - (aa) in the case of an officer of Customs—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is an officer of Customs; or
 - (b) in any other case—produce his or her identity card for inspection by that person.
- (1A) Subsection (1) does not apply to an authorised officer if:
 - (a) the authorised officer is a member of a police force or an officer of Customs; and
 - (b) the officer is in uniform.
- (2) An authorised officer who does not comply with subsection (1) is not authorised to remain, or to require any person assisting the authorised officer to remain, on board the vehicle, vessel, aircraft or platform, or to detain the vehicle, vessel or aircraft.
- (3) If an authorised officer (subject to subsection (3A)) makes a requirement of a person under section 403 the authorised officer, unless it is impracticable to do so, must:
 - (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or
 - (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or
 - (b) in any other case—produce his or her identity card for inspection by that person;

and, if the authorised officer fails to do so, that person is not obliged to comply with the requirement.

- (3A) Subsection (3) does not apply to an authorised officer if:
- (a) the authorised officer is a member of a police force or an officer of Customs; and
 - (b) the officer is in uniform.

405 Access to premises

- (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the powers of an authorised officer under section 406.
- (2) If an authorised officer enters any premises under subsection (1), he or she may exercise the powers of an authorised officer under section 406.
- (3) An authorised officer who enters premises under subsection (1) must, if the occupier of the premises revokes his or her consent, leave the premises forthwith, and is not entitled to exercise, or continue to exercise, the powers of an authorised officer under section 406 in relation to the premises.
- (4) An authorised officer is not entitled to:
 - (a) enter premises under subsection (1); or
 - (b) exercise any powers as mentioned in subsection (2);if the occupier of the premises has required the officer to produce written identification for inspection by the occupier and:
 - (c) if the authorised officer is a member of a police force—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is a member of that police force; or
 - (d) if the authorised officer is an officer of Customs—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is an officer of Customs; or
 - (e) in any other case—the officer fails to produce his or her identity card for inspection by the occupier.

Section 406

406 Powers of authorised officers

- (1) An authorised officer who boards a vehicle, vessel, aircraft or platform under section 403, or enters premises under section 405 may:
- (a) inspect and search the vehicle, vessel, aircraft, platform or premises, as the case may be; and
 - (aa) take photographs (including a video recording), and make sketches, of the premises or of any substance or thing on the vehicle, vessel, aircraft, platform or premises; and
 - (b) inspect, take extracts from, and make copies of, any document that is, or that the authorised officer suspects on reasonable grounds is, evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and
 - (ba) in the case of an authorised officer who boards a vessel under section 403—subject to section 406A, search without warrant:
 - (i) a person on the vessel; and
 - (ii) the person's clothing;
to find out whether there is hidden on the person or in the clothing:
 - (iii) an eligible seizable item; or
 - (iv) a thing that may be evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and
 - (c) inspect, and take samples of, any other evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and
 - (ca) take measurements of, and conduct tests on, the vehicle, vessel, aircraft, platform or premises or any substance or thing on the vehicle, vessel, aircraft, platform or premises; and

- (d) exercise powers of seizure conferred on the authorised officer by section 444A or 445; and
 - (e) take onto the vehicle, vessel, aircraft, platform or premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in any of the other paragraphs of this subsection.
- (2) For the purposes of this Part, *evidential material* means:
- (a) in relation to an offence against an environmental law:
 - (i) any thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or
 - (ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of the offence; or
 - (iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing the offence; and
 - (b) in relation to a contravention of an environmental penalty provision:
 - (i) any thing with respect to which the environmental penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or
 - (ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the contravention of the environmental penalty provision; or
 - (iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of contravening the environmental penalty provision.
- (2A) A reference to a thing in subsection (2) includes a reference to any such thing in electronic form.
- (3) For the purposes of exercising a power under subsection (1), an authorised officer may break open any hold or compartment, or any container or other receptacle (including any place that could be

Section 406A

used as a receptacle), on a vehicle, vessel, aircraft or platform or on any premises.

406A Searches under paragraph 406(1)(ba)

- (1) A search under paragraph 406(1)(ba) of a person (the *subject*) may only be conducted by an authorised officer of the same sex as the subject.
- (2) However, if an authorised officer of the same sex as the subject is not available to conduct the search, it may be conducted by another person who:
 - (a) is of the same sex as the subject; and
 - (b) agrees, at the request of an authorised officer, to conduct the search.
- (3) Paragraph 406(1)(ba) and this section do not authorise the authorised officer or other person:
 - (a) to remove any of the subject's clothing; or
 - (b) to require the subject to remove any of his or her clothing; or
 - (c) to use more force, or subject the subject to greater indignity, than is reasonably necessary to conduct the search.

406AA Taking things into possession

- (1) This section applies if, in conducting a search referred to in paragraph 406(1)(a) or (ba), an authorised officer or a person who conducts a search because of subsection 406A(2) finds:
 - (a) an eligible seizable item; or
 - (b) a thing that may be evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.
- (2) An authorised officer may:
 - (a) take possession of the item or thing; and

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- (b) keep the item or thing for so long as he or she thinks necessary for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975*.
- (3) A person who conducts a search because of subsection 406A(2) must take possession of the item or thing and give it to an authorised officer.
- (4) An authorised officer who is given an item or thing under subsection (3) may keep it for so long as he or she thinks necessary for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975*.
- (5) If:
- (a) an authorised officer is keeping an item or thing under subsection (2) or (4); and
 - (b) the item or thing was found in conducting a search of a person under paragraph 406(1)(ba); and
 - (c) the person is detained under Schedule 1;
- the authorised officer may continue to keep the item or thing for so long as he or she thinks necessary for the purposes of this Act, the *Great Barrier Reef Marine Park Act 1975* or the *Migration Act 1958*.

Note: Once the person ceases to be detained under Schedule 1, the person will generally need to be detained under the *Migration Act 1958* while he or she is in the migration zone (because his or her enforcement visa under that Act will cease to have effect). Subsection (5) ensures the officer can keep the item or thing while the person is detained under this Act or that Act.

406B Thing taken into possession is not a thing seized

A reference in this Act to a thing (however described) seized under this Part or this Act does not include a reference to a thing that has been taken into possession under section 406AA or Schedule 1.

Division 3—Monitoring of compliance

407 Monitoring powers

- (1) For the purposes of this Division, each of the following powers is a **monitoring power** in relation to particular premises:
- (a) the power to inspect and search the premises;
 - (b) the power to take photographs (including a video recording), or to make sketches, of the premises or of any substance or thing at the premises;
 - (c) the power to inspect, examine and take samples of, any substance or thing on or in the premises;
 - (ca) the power to take measurements of, and conduct tests on, the premises or any substance or thing on the premises;
 - (cb) the power to mark a live specimen on the premises (see subsection (2));
 - (d) the power to take extracts from, or make copies of, any document, book or record on the premises;
 - (da) the powers to operate electronic equipment, and do other things, at the premises as mentioned in section 407A;
 - (e) the power to take onto the premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in any other paragraph of this subsection.
- (2) For the purposes of paragraph (1)(cb), **mark** includes:
- (a) in the case of a live plant:
 - (i) mark or label a cage or container in which the plant is kept or in which the plant is growing; and
 - (ii) place a label or tag on the plant; and
 - (b) in the case of a live animal:
 - (i) implant a scannable device in the animal; and
 - (ii) place a band on any part of the animal; and
 - (iii) place (whether by piercing or otherwise) a tag or ring on any part of the animal; and

- (iv) mark or label a cage or container within which the animal is kept.
- (3) If:
- (a) damage is caused to a specimen, or a cage or container in which a specimen is kept, as a result of an authorised officer exercising the power to mark under paragraph (1)(cb); and
 - (b) the damage was caused as a result of insufficient care being exercised by the authorised officer;
- compensation for the damage is payable to the owner of the specimen, or to the owner of the cage or container, as the case requires.
- (4) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (5) In determining the amount of compensation payable, regard is to be had to whether the owner, if the owner was available at the time, had provided any warning or guidance relating to the marking of the specimen, cage or container.

407A Operation of electronic equipment at premises

Monitoring powers include the powers set out in this section

- (1) Monitoring powers in relation to premises include the powers set out in this section. This section does not authorise these powers to be exercised otherwise than in situations in which this Division allows monitoring powers to be exercised.

Operation of equipment

- (2) An authorised officer may operate electronic equipment at premises to see whether relevant material is accessible by doing so, if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Section 407A

Seizure etc.

- (3) If an authorised officer operates electronic equipment at premises under subsection (2), and the authorised officer finds that relevant material is accessible by doing so, he or she may:
- (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the relevant material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the relevant material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

Limitation on seizure

- (4) An authorised officer may seize equipment under paragraph (3)(a) only if:
- (a) it is not practicable to put the relevant material in documentary form as mentioned in paragraph (3)(b) or to copy the material as mentioned in paragraph (3)(c); or
 - (b) possession of the equipment by the occupier could constitute an offence.

How this Part applies to things seized

- (5) The other provisions of this Part apply in relation to a thing seized under paragraph (3)(a) or (b) as if the thing had been seized under section 445.

Securing equipment

- (6) If an authorised officer believes on reasonable grounds that:
- (a) relevant material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice about securing equipment

- (7) An authorised officer who wishes to secure electronic equipment under subsection (6) must give notice to the occupier of the premises of:
- (a) his or her intention to secure the equipment; and
 - (b) the fact that the equipment may be secured for up to 24 hours.

Period for which equipment may be secured

- (8) Electronic equipment may be secured under subsection (6):
- (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;
- whichever happens first.

Extension of period

- (9) If an authorised officer believes on reasonable grounds that expert assistance will not be available within 24 hours, the authorised officer may apply to a magistrate for an extension of that period.

Notice to occupier

- (10) An authorised officer must give notice to the occupier of the premises of his or her intention to apply for an extension under

Section 407B

subsection (9), and the occupier is entitled to be heard in relation to the application.

Provisions relating to extensions

- (11) The provisions of this Division relating to the issue of a monitoring warrant apply, with such modifications as are necessary, to the issuing of an extension.

Definition

- (12) In this section:

relevant material means:

- (a) evidential material; or
- (b) any other material that is relevant for the purposes of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

407B Compensation for damage to electronic equipment

- (1) If:

- (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and
- (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had

provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

408 Monitoring searches with occupier's consent

Entry by consent

- (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Entry for monitoring purposes

- (2) An authorised officer may only enter premises under subsection (1) to the extent that it is reasonably necessary for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Exercise of monitoring powers

- (3) If an authorised officer enters premises under subsection (1), the authorised officer may exercise monitoring powers in relation to those premises.

Exercise of seizure powers

- (4) If an authorised officer enters premises under subsection (1), the authorised officer may exercise powers of seizure conferred by section 444A or 445.

Right to refuse to give consent

- (5) Before obtaining the consent of a person for the purposes of this section, an authorised officer must tell the person that the person may refuse to give consent.

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Consent must be voluntary

- (6) An entry by an authorised officer in consequence of the consent of a person is not lawful unless the person voluntarily consented to the entry.

Production of identity card etc.

- (7) An authorised officer is not entitled to:
- (a) enter premises under subsection (1); or
 - (b) exercise any powers referred to in subsection (3) or (4) in relation to premises;
- if the occupier of the premises has required the officer to produce written identification for inspection by the occupier and:
- (c) if the authorised officer is a member of a police force—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is a member of that police force; or
 - (ca) if the authorised officer is an officer of Customs—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is an officer of Customs; or
 - (d) in any other case—the officer fails to produce his or her identity card for inspection by the occupier.

Extension to vehicles, vessels and aircraft

- (8) Subsections (1), (2), (3), (4), (5), (6) and (7) apply in relation to:
- (a) a vehicle, vessel or aircraft in the same way as they apply in relation to premises; and
 - (b) a person apparently in charge of a vehicle, vessel or aircraft in the same way as they apply in relation to the occupier of premises.

409 Monitoring warrants

Application for monitoring warrant

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to particular premises. The warrant is to be known as a **monitoring warrant**.

Note: Urgent applications may be made by telephone or other electronic means under section 409A.

Issue of monitoring warrant

- (2) Subject to subsection (3), the magistrate may issue the monitoring warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the authorised officer should have access to the premises for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Information about grounds for issue of monitoring warrant

- (3) The magistrate must not issue the monitoring warrant unless the authorised officer or another person has given the magistrate, either orally (on oath or affirmation) or by affidavit, such further information as the magistrate requires about the grounds on which the issue of the monitoring warrant is being sought.

Terms of warrant

- (4) The monitoring warrant must:
- (a) name an authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and
 - (aa) authorise the executing officer, with such assistance and by such force as is necessary and reasonable, from time to time while the monitoring warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise monitoring powers in relation to the premises; and

Section 409A

- (b) state whether an entry under the monitoring warrant is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the monitoring warrant) on which the monitoring warrant ceases to have effect; and
- (d) state the purpose for which the monitoring warrant is issued.

Seizure powers

- (5) If an authorised officer enters premises under a monitoring warrant, he or she may exercise powers of seizure conferred by section 444A or 445.

409A Monitoring warrants by telephone or other electronic means

Application

- (1) An authorised officer may make an application to a magistrate for a monitoring warrant by telephone, telex, fax or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the monitoring warrant.

Voice communication

- (2) The magistrate:
 - (a) may require communication by voice to the extent that is practicable in the circumstances; and
 - (b) may make a recording of the whole or any part of any such communication by voice.

Information

- (3) An application under this section must include all information as required to be provided in an application under section 409, but the

application may, if necessary, be made before the information is sworn or affirmed.

Issue of monitoring warrant

- (4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:
- (a) a monitoring 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 monitoring warrant;
- the magistrate may complete and sign the same form of monitoring warrant that would be issued under section 409.

Notification

- (5) If the magistrate decides to issue the monitoring warrant, the magistrate must inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the monitoring warrant and the day on which and the time at which it was signed.

Form of monitoring warrant

- (6) The applicant must then complete a form of monitoring 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 monitoring warrant was signed.

Completed form of monitoring warrant to be given to magistrate

- (7) The applicant must, not later than 48 hours after making the application, give or transmit to the magistrate:
- (a) the form of monitoring 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.

Section 409B

Attachment of form of warrant to subsection (7) documents

- (8) The magistrate must attach to the documents provided under subsection (7) the form of monitoring warrant completed by the magistrate.

Presumption if form of warrant not produced in evidence

- (9) If:
- (a) it is material, in any proceeding, for a court to be satisfied that the exercise of a power under a monitoring warrant issued under this section was duly authorised; and
 - (b) the form of monitoring 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.

Court may admit evidence even if subsection (7) or (8) not complied with

- (10) A court may admit evidence obtained because of the issue of a warrant pursuant to this section even if either or both of subsections (7) and (8) have not been complied with if, having regard to the nature of and reasons for the non-compliance and any other relevant matters, the court is satisfied that it was not practicable to comply with that subsection or those subsections (as the case requires).

409B Executing officer to be in possession of warrant

When executing a warrant, the executing officer must be in possession of:

- (a) the original warrant issued by the magistrate under section 409, or a copy of the original warrant as so issued; or
- (b) the original form of warrant completed under subsection 409A(6), or a copy of the original form as so completed.

410 Details of monitoring warrant to be given to occupier etc.

- (1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the executing officer must make available to that person a copy of the monitoring warrant.
- (2) The executing officer must identify himself or herself to that person at the premises.
- (3) The copy of the monitoring warrant referred to in subsection (1) need not include the signature of the magistrate or the seal of the relevant court.

411 Occupier entitled to be present during search

- (1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

412 Announcement before entry

- (1) Before any person enters premises under a monitoring warrant, the executing officer must:
 - (a) announce that he or she is authorised to enter the premises;
and
 - (b) give any person at the premises an opportunity to allow entry to the premises.

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- (2) The executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
- (a) the safety of a person (including an authorised officer); or
 - (b) that the effective execution of the monitoring warrant is not frustrated.

412A Other powers when on premises under monitoring warrant

- (1) If the executing officer enters premises under a monitoring warrant, he or she may require a person on the premises to:
- (a) answer a question asked by the executing officer; or
 - (b) give the executing officer information requested by the executing officer; or
 - (c) produce to the executing officer records or documents kept on the premises.
- (2) A person commits an offence if:
- (a) the executing officer has entered premises under a monitoring warrant; and
 - (b) the person is on the premises; and
 - (c) the executing officer requires the person to:
 - (i) answer a question asked by the executing officer; or
 - (ii) give the executing officer information requested by the executing officer; or
 - (iii) produce to the executing officer records or documents kept on the premises; and
 - (d) the person contravenes the requirement.
- (3) The offence is punishable on conviction by imprisonment for a term not more than 6 months, a fine of not more than 30 penalty units, or both.

Division 4—Search warrants

413 When search warrants can be issued

- (1) A magistrate may issue a warrant authorising an authorised officer to search premises if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, at the premises evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.
- (2) A magistrate may issue a warrant authorising an authorised officer to carry out an ordinary search or a frisk search of a person if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that the person has in his or her possession, or will within the next 72 hours have in his or her possession, any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.
- (3) For the purposes of this Act, *frisk search* means:
 - (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
 - (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.
- (4) If the authorised officer applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the authorised officer must state that suspicion, and the grounds for that suspicion, in the information.
- (5) If the application for the warrant is made under section 416, this section applies as if subsections (1) and (2) referred to 48 hours rather than 72 hours.
- (6) If the applicant for a warrant is a member or special member of the Australian Federal Police and has, at any time previously, applied

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for a warrant relating to the same person or premises, the person must state particulars of those applications and their outcome in the information.

414 Statements in warrants

- (1) If a magistrate issues a warrant under section 413, the magistrate is to state in the warrant:
 - (a) each offence and/or environmental penalty provision to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates or the name or description of a person to whom it relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (f) if the warrant relates to premises—whether the premises may be entered at any time of the day or night or only during particular hours of the day or night; and
 - (g) if the warrant relates to a person—whether the search of the person may be carried out at any time of the day or night or only during particular hours of the day or night.

- (2) The magistrate is also to state, in a warrant in relation to premises:
 - (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or

- (ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or
- (iii) evidential material in relation to another contravention of an environmental penalty provision;
if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and
- (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an officer assisting suspects on reasonable grounds that the person has in his or her possession:
 - (i) any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; or
 - (ii) any eligible seizable items.
- (3) For the purposes of this Act, **ordinary search** means a search of a person or of articles in the possession of a person that may include:
 - (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
 - (b) an examination of those items.
- (4) The magistrate is also to state, in a warrant in relation to a person:
 - (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found, in the course of the search, on or in the possession of the person or in an aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, being a thing that the executing officer or an officer assisting believes on reasonable grounds to be:

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- (i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or
 - (ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or
 - (iii) evidential material in relation to another contravention of an environmental penalty provision;
if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and
- (b) the kind of search of a person that the warrant authorises.
- (5) Paragraph (1)(e) does not prevent the issue of successive warrants in relation to the same premises or person.
- (6) If the application for the warrant is made under section 416, this section applies as if paragraph (1)(e) referred to 48 hours rather than 7 days.

415 Powers of magistrate

- (1) A magistrate in a State or internal Territory may:
- (a) issue a warrant in relation to premises or a person in that State or Territory; or
 - (b) issue a warrant in relation to premises or a person in an external Territory; or
 - (c) issue a warrant in relation to premises or a person in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or
 - (d) issue a warrant in relation to a person wherever the person is in Australia or in an external Territory if he or she is satisfied that it is not possible to predict where the person may be.

- (2) A magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises or a person in the Jervis Bay Territory.

416 Warrants by telephone or other electronic means

Application

- (1) An authorised officer may make an application to a magistrate for a warrant by telephone, telex, fax or other electronic means:
- (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Voice communication

- (2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

Information

- (3) An application under this section must include all information as 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) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, 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;
- the magistrate may complete and sign the same form of warrant that would be issued under section 413.

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Notification

- (5) If the magistrate decides to issue the warrant, the magistrate is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

Form of warrant

- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

- (7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
- (a) the form of warrant completed by the applicant; and
 - (b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

Attachment

- (8) The magistrate is to 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.

417 The things that are authorised by a search warrant

Search of premises

- (1) A warrant that is in force in relation to premises authorises the executing officer or an officer assisting:
- (a) to enter the premises; and
 - (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
 - (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
 - (d) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or
 - (ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or
 - (iii) evidential material in relation to another contravention of an environmental penalty provision;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and
 - (e) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be eligible seizable items; and
 - (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an officer assisting suspects on

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reasonable grounds that the person has in his or her possession:

- (i) any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; or
- (ii) any eligible seizable items.

Search of a person

- (2) A warrant that is in force in relation to a person authorises the executing officer or an officer assisting:
 - (a) to search:
 - (i) the person as specified in the warrant and things found in the possession of the person; and
 - (ii) any aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, for things specified in the warrant; and
 - (b) to:
 - (i) seize things of that kind; or
 - (ii) record fingerprints from things; or
 - (iii) take forensic samples from things; found in the course of the search; and
 - (c) to seize other things found on or in the possession of the person or in the aircraft, vehicle or vessel mentioned in subparagraph (a)(ii) in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or
 - (ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or
 - (iii) evidential material in relation to another contravention of an environmental penalty provision;

if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and

- (d) to seize other things found in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be eligible seizable items.

Hours when premises may be searched

- (3) If a warrant in relation to premises states that the premises may be entered only during particular hours, the premises must not be entered outside those hours.

Hours when person may be searched

- (3A) If a warrant in relation to a person states that the search of the person may be carried out only during particular hours, the search must not be carried out outside those hours.

Ordinary searches or frisk searches

- (4) If a warrant authorises an ordinary search or a frisk search of a person, a search of the person different from that so authorised must not be done.

Seized items may be made available to other agencies

- (5) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

418 Availability of assistance, and use of force, in executing a warrant

- (1) In executing a warrant:

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- (a) the executing officer may obtain such assistance as is necessary and reasonable in the circumstances; and
 - (b) the executing officer, or an authorised officer who is assisting in executing the warrant, may use such force against persons and things as is necessary and reasonable in the circumstances; and
 - (c) a person who is not an authorised officer, but who has been authorised to assist in executing the warrant, may use such force against things as is necessary and reasonable in the circumstances.
- (2) A person who is not an authorised officer must not take part in searching or arresting a person.

418A Executing officer to be in possession of warrant

When executing a warrant, the executing officer must be in possession of:

- (a) the original warrant issued by the magistrate under section 415, or a copy of the original warrant as so issued; or
- (b) the original form of warrant completed under subsection 416(6), or a copy of the original form as so completed.

419 Details of warrant to be given to occupier etc.

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or an officer assisting must make available to that person a copy of the warrant.
- (2) If a warrant in relation to a person is being executed, the executing officer or an officer assisting must make available to that person a copy of the warrant.

- (3) If a person is searched under a warrant in relation to premises, the executing officer or an officer assisting must show the person a copy of the warrant.
- (4) The executing officer must identify himself or herself to the person at the premises or the person being searched, as the case may be.
- (5) The copy of the warrant referred to in subsections (1) and (2) need not include the signature of the magistrate who issued the warrant.

420 Specific powers available to person executing warrant

- (1) In executing a warrant in relation to premises, the executing officer or an officer assisting may take photographs (including video recordings) of the premises or of things at the premises:
 - (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing.
- (2) If a warrant in relation to premises is being executed, the executing officer and all officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:
 - (a) for not more than one hour; or
 - (b) for a longer period if the occupier of the premises consents in writing.
- (3) The execution of a warrant that is stopped by an order of a court may be completed if:
 - (a) the order is later revoked or reversed on appeal; and
 - (b) the warrant is still in force.

421 Use of equipment to examine or process things

- (1) The executing officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.

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- (2) If:
- (a) it is not practicable to examine or process the things at the warrant premises; or
 - (b) the occupier of the premises consents in writing;
- the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:
- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or an officer assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or an officer assisting believes on reasonable grounds that:
- (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or thing.

422 Use of electronic equipment at premises

Operation of equipment

- (1) The executing officer or an officer assisting may operate electronic equipment at the premises to see whether evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, is accessible by doing so if he or she believes on

reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Seizure etc.

- (2) If the executing officer or an officer assisting, after operating the equipment, finds that evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, is accessible by doing so, he or she may:
- (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

Limitation on seizure

- (3) A person may seize equipment under paragraph (2)(a) only if:
- (a) it is not practicable to put the material in document form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
 - (b) possession of the equipment by the occupier could constitute an offence.

Securing equipment

- (4) If the executing officer or an officer assisting believes on reasonable grounds that:
-

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- (a) evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, may be accessible by operating electronic equipment at the premises; and
- (b) expert assistance is required to operate the equipment; and
- (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice about securing equipment

- (5) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

Period for which equipment may be secured

- (6) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert; whichever happens first.

Extension of period

- (7) If the executing officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of that period.

Notice to occupier

- (8) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an

extension, and the occupier is entitled to be heard in relation to the application.

Provisions relating to extensions

- (9) The provisions of this Division relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

423 Compensation for damage to electronic equipment

- (1) If:
- (a) damage is caused to equipment as a result of it being operated as mentioned in section 421 or 422; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;
- compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

424 Copies of seized things to be provided

- (1) Subject to subsection (2), if an authorised officer seizes, under a warrant relating to premises:
- (a) a document, film, computer file or other thing that can be readily copied; or

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- (b) a storage device the information in which can be readily copied;
- the authorised officer must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
- (a) the thing that has been seized was seized under paragraph 422(2)(b) or (c); or
 - (b) possession of the document, film, computer file, thing or information by the occupier could constitute an offence.

425 Occupier entitled to be present during search

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

426 Receipts for things seized under warrant

- (1) If a thing is seized under a warrant or moved under subsection 421(2), the executing officer or an officer assisting must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

427 Restrictions on personal searches

A warrant cannot authorise a strip search or a search of a person's body cavities.

428 When a thing is in the possession of a person

This Division applies to a person (the *possessor*) who has a thing under his or her control in any place (whether for the use or benefit of the possessor or of another person), even if another person has the actual possession or custody of the thing, as if the possessor has possession of the thing.

Division 6—Arrest and related matters

430 Powers of arrest

- (1) An authorised officer may, without warrant, arrest any person, if the authorised officer believes on reasonable grounds that:
 - (a) the person is committing or has committed an offence against an environmental law; and
 - (b) proceedings against the person by summons would not be effective.
- (2) If an authorised officer (subject to subsection (2A)) arrests a person under subsection (1), the authorised officer must:
 - (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; and
 - (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; and
 - (b) in any other case—produce his or her identity card for inspection by that person.
- (2A) Subsection (2) does not apply to an authorised officer if:
 - (a) the authorised officer is a member of a police force or an officer of Customs; and
 - (b) the officer is in uniform.
- (3) If a person is arrested under subsection (1), an authorised officer must without unreasonable delay bring the person, or cause the person to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.
- (4) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

431 Power to conduct a frisk search of an arrested person

An authorised officer who arrests a person for an offence against an environmental law, or who is present at such an arrest, may, if the authorised officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the arrested person is carrying any eligible seizable items:

- (a) conduct a frisk search of the arrested person at or soon after the time of arrest; and
- (b) seize any eligible seizable items found as a result of the search.

432 Power to conduct an ordinary search of an arrested person

An authorised officer who arrests a person for an offence against an environmental law, or who is present at such an arrest, may, if the authorised officer suspects on reasonable grounds that the arrested person is carrying:

- (a) evidential material in relation to that or another offence against an environmental law; or
- (aa) evidential material in relation to a contravention of an environmental penalty provision; or
- (b) an eligible seizable item;

conduct an ordinary search of the arrested person at or soon after the time or arrest, and seize any such thing found as a result of the search.

433 Power to conduct search of arrested person's premises

An authorised officer who arrests a person at premises for an offence against an environmental law, or who is present at such an arrest, may seize a thing in plain view at those premises that the authorised officer believes on reasonable grounds to be:

- (a) evidential material in relation to that or another offence against an environmental law; or
- (aa) evidential material in relation to a contravention of an environmental penalty provision; or

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(b) an eligible seizable item.

433A Interaction of this Division with Schedule 1

This Division does not limit, and is not limited by, Schedule 1. In particular, the detention of a person under Schedule 1 is not to be taken to constitute the arrest of the person for the purposes of this Division.

**Division 6A—Provisions relating to detention of suspected
foreign offenders**

433B Provisions relating to detention of suspected foreign offenders

Schedule 1 has effect.

Division 7—Miscellaneous provisions about searches, entry to premises, warrants etc.

434 Conduct of ordinary searches and frisk searches

An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.

435 Announcement before entry

- (1) An authorised officer must, before any person enters premises under a warrant or to arrest a person under this Act:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An authorised officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including an authorised officer); or
 - (b) that the effective execution of the warrant or the arrest is not frustrated.

436 Offence of making false statements in warrants

A person commits an offence punishable upon conviction by imprisonment for a term not exceeding 2 years if the person:

- (a) makes a statement in an application for a warrant; and
- (b) does so knowing the statement is false or misleading in a material particular.

437 Offences relating to telephone warrants

A person must not:

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- (a) state in a document that purports to be a form of warrant under section 409A or 416 the name of a magistrate unless the magistrate issued the warrant; or
- (b) state on a form of warrant under section 409A or 416 a matter that, to the person's knowledge, departs in a material particular from the form authorised by the magistrate; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under section 409A or 416 that the person knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) departs in a material particular from the terms authorised by a magistrate under that section; or
- (d) give to a magistrate a form of warrant under section 409A or 416 that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

438 Retention of things seized under Division 4 or 6

- (1) This section applies to a thing that is seized under Division 4 or 6.
- (2) The thing may be retained until:
 - (a) the reason for the seizure of the thing no longer exists; or
 - (b) it is decided that the thing is not to be used in evidence;whichever happens first.
- (3) As soon as practicable after the end of the period during which the thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
 - (a) the thing is forfeited or forfeitable to the Commonwealth; or
 - (b) the thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the

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Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or

- (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

440 Law relating to legal professional privilege not affected

This Part does not affect the law relating to legal professional privilege.

441 Other laws about search, arrest etc. not affected

- (1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth relating to:
- (a) the search of persons or premises; or
 - (b) arrest and related matters; or
 - (c) the stopping, detaining or searching of aircraft, vehicles or vessels; or
 - (d) the seizure of things.
- (2) To avoid doubt, it is declared that even though another law of the Commonwealth provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

442 Persons to assist authorised officers

- (1) Subject to subsection (5), the owner, or person in charge:
- (a) of any vehicle, vessel, aircraft or platform boarded by an authorised officer under section 403; or

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- (b) of any premises entered by an authorised officer under section 405;
must, if requested by an authorised officer to do so, provide reasonable assistance to the authorised officer in the performance of the functions, or carrying out of the duties, or the exercise of the powers, conferred on the authorised officer under this Act.
- (2) A person must not contravene subsection (1).
Penalty: Imprisonment for 12 months.
- (3) Subject to subsection (5), the owner, or the person in charge, of:
(a) premises entered under a warrant; or
(b) an aircraft, vehicle or vessel stopped under section 403;
must, if requested by an authorised officer to do so, provide reasonable assistance to the authorised officer in the performance of the functions, or carrying out of the duties, or the exercise of the powers, conferred on the authorised officer under this Act.
- (4) A person must not contravene subsection (3).
Penalty: Imprisonment for 12 months.
- (5) Where an authorised officer (subject to subsection (6)) makes a request of a person under this section, the authorised officer must:
(a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or
(aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or
(b) in any other case—produce his or her identity card for inspection by that person;
and, if the authorised officer fails to do so, that person is not obliged to comply with the request.
- (6) Subsection (5) does not apply to an authorised officer if:
(a) the authorised officer is a member of a police force or an officer of Customs; and
-

Chapter 6 Administration

Part 17 Enforcement

Division 7 Miscellaneous provisions about searches, entry to premises, warrants etc.

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(b) the officer is in uniform.

Division 8—Power to search goods, baggage etc.

443 Power to search goods, baggage etc.

- (1) This section applies to any goods that are to be, are being, or have been, taken on or off a ship that voyages, or an aircraft that flies, between:
 - (a) a place in Australia and a place outside Australia; or
 - (b) a place in an external Territory and a place outside that Territory.
- (2) If an authorised officer believes, on reasonable grounds that goods are goods to which this section applies, he or she may:
 - (a) examine the goods; or
 - (b) if the goods are baggage—open and search the baggage; or
 - (c) if the goods are in a container—open and search the container.
- (3) An authorised officer may ask a person who owns, is carrying or is otherwise associated with, or appears to the authorised officer to be associated with, goods to which this section applies any question in respect of the goods.
- (4) A person must not refuse or fail to answer a question put to the person under subsection (3).

Penalty: 60 penalty units.

- (5) In this Act:

baggage includes any parcel or other goods that:

- (a) a passenger; or
- (b) the master, a mate, an engineer or any other member of the crew of a ship; or
- (c) the pilot or any other member of the crew of an aircraft; has had with him or her on the ship or aircraft.

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Division 8 Power to search goods, baggage etc.

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goods includes baggage.

Division 8A—Power to ask questions about specimens

443A Authorised officer may ask questions about the nature or origin of specimens

When section applies

- (1) This section applies if an authorised officer has reasonable grounds to suspect that:
 - (a) a specimen has been exported, or is proposed to be exported, in contravention of section 303CC or 303DD; or
 - (b) a specimen has been imported, or is proposed to be imported, in contravention of section 303CD or 303EK; or
 - (c) a person has in the person's possession a specimen, and that possession contravenes section 303GN.

Note: Sections 303CC, 303CD, 303DD, 303EK and 303GN are included in Part 13A, which deals with international movement of wildlife specimens.

Questions

- (2) If the authorised officer has reasonable grounds to suspect that a person has information about the nature or origin of the specimen, the authorised officer may ask the person one or more questions about the nature or origin of the specimen.
- (2A) The authorised officer may ask the questions:
 - (a) in any case—by asking them in the presence of the person; or
 - (b) if the authorised officer is not a member of a police force and is not an officer of Customs—by sending written questions to the person.

Answers to questions

- (3) Subject to subsections (6) and (7), if a person is asked a question under subsection (2), the person must not intentionally refuse or

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intentionally fail to answer the question to the extent that the person is capable of doing so.

- (4) A person who contravenes subsection (3) commits an offence punishable on conviction by a fine not exceeding 10 penalty units.
- (5) In subsection (3), strict liability applies to the circumstance that the person was asked a question under subsection (2).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

No requirement to give incriminating answers

- (6) If a person is asked a question under subsection (2), the person is not required to answer the question if the answer might tend to incriminate the person or expose the person to a penalty.

Identity cards etc.

- (7) If a person is asked a question under subsection (2) by an authorised officer, the person is not required to answer the question unless:
 - (a) if the authorised officer is a member of a police force—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is a member of that police force; or
 - (b) if the authorised officer is an officer of Customs—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is an officer of Customs; or
 - (c) if the authorised officer is not a member of a police force and is not an officer of Customs:
 - (i) if the questions are asked in the presence of the person—the authorised officer produces the authorised officer's identity card for inspection by the person; or
 - (ii) if the questions are asked by sending written questions to the person—the authorised officer sends with the questions a copy of his or her instrument of appointment.

Division 9—Power to ask for names and addresses

444 Authorised person may ask for person’s name and address

- (1) An authorised officer may ask an individual to tell the authorised officer the individual’s name and address if the authorised officer has reasonable grounds to suspect that the individual has been involved in the commission of an offence against an environmental law.
- (2) Subject to subsection (4), a person must not refuse or fail to comply with a request under subsection (1).

Penalty: 10 penalty units.
- (3) A person commits an offence punishable upon conviction by a fine not exceeding 10 penalty units if the person:
 - (a) in purported compliance with a request under subsection (1), gives a name and address; and
 - (b) does so knowing the name or address is false or misleading.
- (4) If an authorised officer makes a request of a person under subsection (1), the person is not required to comply with the request unless:
 - (a) if the authorised officer is a member of a police force—he or she produces, for inspection by the person, written evidence of the fact that he or she is a member of that police force; or
 - (aa) if the authorised officer is an officer of Customs—he or she produces, for inspection by the person, written evidence of the fact that he or she is an officer of Customs; or
 - (b) in any other case—the authorised officer produces his or her identity card for inspection by the person.

Division 10—Seizure and forfeiture etc.

Subdivision AA—Seizure of specimens involved in a contravention of Part 13A

444A Seizure of specimens involved in a contravention of Part 13A

- (1) An authorised officer may seize a specimen if he or she has reasonable grounds to suspect that the specimen has been used or otherwise involved in the commission of an offence against Part 13A.

Note: Part 13A deals with international movement of wildlife specimens.

- (2) If a warrant has been issued under Division 4:
- (a) if the warrant relates to premises—this section does not apply:
- (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or
 - (ii) to anything found during the course of such a search; and
- (b) if the warrant relates to a person—this section does not apply:
- (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or
 - (ii) to anything found during the course of such a search.

Note: Division 4 is about search warrants. The Division contains its own seizure powers (see paragraphs 417(1)(c), (d) and (e) and (2)(b), (c) and (d)).

444B Notice about seizure

- (1) Subject to subsection (2), if a specimen is seized by an authorised officer under section 444A, the authorised officer must give:
- (a) the owner of the specimen; or

- (b) the person who had possession, custody or control of the specimen immediately before it was seized;
- a written notice:
- (c) identifying the specimen; and
 - (d) stating that it has been seized under section 444A and giving the reason for the seizure; and
 - (e) setting out the terms of sections 444C and 444D.
- The notice must be given as soon as practicable after the seizure.
- (2) An authorised officer is not required to give a notice under subsection (1) about a specimen if, after making such inquiries as the authorised officer thinks appropriate, the authorised officer does not, within 30 days after the seizure, have sufficient information to enable the authorised officer to give the notice. In that event, the authorised officer must keep a written record of the seizure.

444C Applications for return of specimen

- (1) If a specimen is seized under section 444A, the owner of the specimen may apply in writing to the Secretary for the delivery to the owner of the specimen.
- (2) The application must be made:
 - (a) within 30 days after the seizure; or
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) The application must be made on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.
- (4) If the applicant satisfies the Secretary that the ground has been established, the Secretary must grant the application.

Note: Under section 444G, the Secretary may retain the specimen for up to 30 days after making a decision on the application.

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444D Court action for return of specimen

- (1) If a specimen is seized under section 444A, the owner of the specimen may bring an action against the Commonwealth in a court of competent jurisdiction for the delivery of the specimen to the owner on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.
- (2) An action under subsection (1) must be brought:
 - (a) within 30 days after the seizure; or
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) If:
 - (a) an action is brought under subsection (1); and
 - (b) the court finds that the specimen was used or otherwise involved in the commission of the offence concerned;the court must order the specimen to be forfeited to the Commonwealth.
- (4) If:
 - (a) an action is brought under subsection (1); and
 - (b) the action is discontinued by the owner otherwise than because of:
 - (i) the delivery of the specimen to the owner; or
 - (ii) the forfeiture of the specimen to the Commonwealth; or
 - (iii) the disposal of the specimen under section 449;the specimen is forfeited to the Commonwealth.

444E Consignment of specimen with consent of owner

- (1) If:
 - (a) a specimen is seized under section 444A; and
 - (b) the specimen was imported from a particular foreign country; and

- (c) the export of the specimen from the foreign country was not in contravention of a law of the foreign country that corresponds to Part 13A; and
 - (d) if the importer had applied for a permit authorising the import of the specimen, there is no reasonable likelihood that the permit would have been granted; and
 - (e) the importer produces written evidence from the relevant CITES authority of the foreign country that the specimen may be returned to the foreign country without contravening such a law;
- the Secretary may, with the consent of the owner of the specimen, consign the specimen to a place in the foreign country.
- (2) The consignment is to be at the expense of the owner of the specimen.

444G Retention of specimen

- (1) If a specimen is seized under section 444A, the specimen may be retained until the end of 30 days after whichever is the latest of the following events:
- (a) the seizure;
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—the giving of the notice;
 - (c) if an application is made under subsection 444C(1) in relation to the specimen—the making of a decision on that application;
 - (d) if:
 - (i) proceedings for an offence against Part 13A are instituted during the period within which an application may be made under subsection 444C(1) in relation to the specimen; and
 - (ii) the specimen may have been used or otherwise involved in the commission of the offence or the specimen may afford evidence of the commission of the offence;
- the termination of the proceedings (including any appeal to a court in relation to those proceedings).

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- (2) The rule in subsection (1) does not authorise the retention of the specimen if the owner of the specimen succeeds in an action under subsection 444D(1) for the delivery of the specimen to the owner.
- (3) As soon as practicable after the end of the period during which the specimen may be retained under subsection (1), the Secretary must cause reasonable steps to be taken to return the specimen to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
 - (a) the specimen is forfeited or forfeitable to the Commonwealth; or
 - (b) the specimen has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the specimen; or
 - (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the specimen; or
 - (d) proceedings under subsection 444D(1) relating to the specimen are pending.

444H Forfeiture of specimen after end of retention period

- (1) If:
 - (a) a specimen is seized under section 444A; and
 - (b) none of the following happens before the end of the period for which the specimen may be retained:
 - (i) proceedings are instituted for an offence against Part 13A, where the specimen is alleged to have been used or otherwise involved in the commission of the offence;
 - (ii) the specimen is released unconditionally to a person under section 449BA;

- (ii) the specimen is delivered to a person under section 444C;
 - (iii) the owner of the specimen brings an action under subsection 444D(1) for the delivery of the specimen to the owner;
 - (iv) proceedings are instituted under section 450A in relation to the specimen;
 - (v) the specimen is disposed of under section 449;
- the specimen is forfeited to the Commonwealth at the end of that period.
- (2) Subsection (1) has effect only to the extent (if any) to which it gives effect to paragraph 1(b) of Article VIII of CITES.

Subdivision AB—Seizure of things (other than specimens involved in a contravention of Part 13A)

445 Seizure of things (other than specimens involved in a contravention of Part 13A)

- (1) Subject to subsections (2) and (3), an authorised officer may seize a thing if he or she has reasonable grounds to suspect that it is evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.
- (2) This section does not apply to a specimen that an authorised officer has reasonable grounds to suspect has been used or otherwise involved in the commission of an offence against Part 13A.
- Note: Section 444A deals with the seizure of such specimens.
- (3) If a warrant has been issued under Division 4:
- (a) if the warrant relates to premises—this section does not apply:
 - (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or

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- (ii) to anything found during the course of such a search;
and
- (b) if the warrant relates to a person—this section does not apply:
 - (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or
 - (ii) to anything found during the course of such a search.

Note: Division 4 is about search warrants. The Division contains its own seizure powers (see paragraphs 417(1)(c), (d) and (e) and (2)(b), (c) and (d)).

(3A) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

(4) In this section:

thing includes a vehicle, vessel, aircraft, platform, document, organism and specimen.

446 Retention of things seized under this Subdivision

(1) This section applies to a thing that is seized under section 445.

(1A) The thing may be retained until:

- (a) the reason for the seizure no longer exists; or
- (b) it is decided that the thing is not to be used in evidence; or
- (c) the end of the period of 60 days after the seizure, or, if that period has been extended under subsection (3), the end of the extended period;

whichever happens first.

(1B) As soon as practicable after the end of the period (the **retention period**) during which the thing may be retained under subsection (1A), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

- (1C) Subsection (1B) does not apply if:
- (a) the thing is forfeited or forfeitable to the Commonwealth; or
 - (b) a proceeding in respect of which the thing may afford evidence was commenced before the end of the retention period and has not been completed (including an appeal to a court in relation to that proceeding); or
 - (c) the thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or
 - (d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.
- (2) An authorised officer may, before the end of the retention period, apply to a magistrate for an order permitting the retention of the thing for a further period.
- (3) If, in relation to an application under subsection (2), the magistrate is satisfied, by information on oath or affirmation, that it is necessary for the thing to continue to be retained:
- (a) for the purposes of an investigation as to whether an offence against an environmental law has been committed, or whether an environmental penalty provision has been contravened; or
 - (b) to enable evidence of an offence against an environmental law, or of a contravention of an environmental penalty provision, to be secured for the purposes of a proceeding against the person for such an offence or contravention;
- the magistrate may order that the thing may continue to be retained for a period specified in the order. The maximum period of an individual extension must not be more than 30 days.
- (3A) Before an authorised officer makes an application under subsection (2), he or she must:

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- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, give notice in writing of the proposed application to each person whom the authorised officer believes to have an interest in the proposed application.
- (4) Subsection (3) does not prevent a magistrate from granting 2 or more successive extensions under that subsection of the period during which the thing may be retained.
- (5) A function of making an order conferred on a magistrate by subsection (3) is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (6) Without limiting the generality of subsection (5), an order made by a magistrate under subsection (3) has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (7) A magistrate performing a function of, or connected with, making an order under subsection (3) has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).
- (8) The Governor-General may make arrangements with the Governor of a State, the Chief Minister for the Australian Capital Territory or the Administrator of the Northern Territory for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under subsection (3).

Subdivision AC—Direction to deliver seizable items

447 Direction to deliver seizable items

- (1) An authorised officer may direct a person to deliver to the officer, or to another person specified in the direction, a thing that the

officer is authorised to seize under a warrant issued under Division 4 or under section 445.

- (2) The direction must:
- (a) be in writing; and
 - (b) be given to the person who is directed to deliver the thing, who must be:
 - (i) if the thing is a vessel—the person in charge of the vessel, or the vessel's owner; or
 - (ii) if the thing is an aircraft—the person in charge of the aircraft; or
 - (iii) otherwise—the person in possession of the thing; and
 - (c) specify the place at which the delivery is to occur; and
 - (d) specify the period within which the delivery is to occur.
- (3) A person must not fail to comply with a direction under this section.
- Penalty: Imprisonment for 12 months or 60 penalty units, or both.
- (4) This Part applies to a thing delivered in compliance with a direction under this section as if the thing had been seized under the warrant or section that authorised the officer to seize the thing.
- (5) A direction made under subsection (1) is not a legislative instrument.

Subdivision B—Disposal of seized items

449 Immediate disposal of seized items

- (1) If:
- (a) a thing is seized under this Part; and
 - (b) the Secretary considers that it is reasonably likely that the retention of the thing would:
 - (i) constitute a serious threat to the environment; or

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- (ii) constitute a serious threat to the continued existence, in the wild, of a particular species of animal or of a particular species of plant; or
- (iii) result in the introduction of an alien species that represents a threat to ecosystems, habitats or other species; or
- (iv) constitute a danger to public health; or
- (v) in the case of a live organism or specimen—constitute a significant threat to the health of the organism or specimen; or
- (vi) in the case of a live animal—result in the animal suffering;

the Secretary may cause the thing to be dealt with in such manner as the Secretary considers appropriate (including the destruction of the thing).

- (1A) If the Secretary causes a live animal to be destroyed under subsection (1), the Secretary must require the destruction to be carried out in a humane manner.
- (2) Subject to subsection (3), if a thing is dealt with in accordance with subsection (1), the Secretary must give to:
 - (a) the owner of the thing; or
 - (b) the person who had possession, custody or control of the thing immediately before it was seized;a written notice:
 - (c) identifying the thing; and
 - (d) stating that the thing has been seized under this Part and giving the reason for the seizure; and
 - (e) stating that the thing has been dealt with under subsection (1) and specifying the manner in which it has been so dealt with and the reason for doing so; and
 - (f) setting out the terms of subsection (4).

The notice must be given as soon as practicable after the thing is so dealt with.

- (3) The Secretary need not give a notice under subsection (2) about a thing if, after making such inquiries as the Secretary thinks appropriate, the Secretary does not, within 20 days after dealing with the thing, have sufficient information to enable the notice to be given.
- (4) If a thing is dealt with in accordance with subsection (1), the owner of the thing may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the thing at the time it was so dealt with. The action must be brought on the ground that the thing was not used or otherwise involved in the commission of an offence against this Act or the regulations.

449A Disposal of seized items if Secretary cannot locate or identify person entitled etc.

- (1) This section applies to a thing that is seized under this Part if:
 - (a) apart from this section, the thing is required to be returned or delivered to a person (or reasonable steps are required to be taken for the return or delivery to a person of the thing); and
 - (b) one or more of the following applies:
 - (i) the Secretary is satisfied that reasonable steps have been taken to locate or identify the person, but those steps have not succeeded;
 - (ii) the Secretary is satisfied that reasonable steps have been taken to return or deliver the thing to the person, but those steps have not succeeded;
 - (iii) the Secretary is otherwise satisfied that it is not practicable to return or deliver the thing to the person.
- (2) The Secretary may dispose of the thing in such manner as the Secretary considers appropriate.

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Subdivision BA—Release of seized items to owner etc.

449BA Release of seized items to owner etc.

- (1) If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either:
 - (a) unconditionally; or
 - (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of its value if it is forfeited).
- (2) A person commits an offence if:
 - (a) a thing is released to the person under subsection (1) subject to a condition; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the condition.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (3) Absolute liability applies to paragraph (2)(a).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

449BB How this Part applies in relation to things released conditionally

- (1) This section applies if a thing, or anything in, on or attached to a thing, seized under this Part is released on conditions to a person under section 449BA. The provision of this Part under which the seizure was made is the *seizure provision*, and the thing that is released is the *released thing*.
- (2) Subject to this section, the provisions of this Part that apply in relation to things seized under the seizure provision continue to apply to the released thing as if it had not been released.

- (3) A reference in a provision of this Part to the return or delivery of the released thing to a person is, if the person is the person to whom the thing has been released, taken to be a reference to making the release of the thing to the person unconditional.
- (4) The regulations may specify modifications of provisions of this Part that are to have effect in relation to things to which this section applies. However, regulations must not:
 - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
 - (b) widen, or have the effect of widening, the scope of any offence.

Subdivision C—Forfeiture of seized items

450 Court-ordered forfeiture: order by court dealing with offence proceedings

- (1) If a court convicts a person of an offence against an environmental law, the court may order the forfeiture to the Commonwealth of any thing used or otherwise involved in the commission of the offence.
- (1A) If a court convicts a person of an offence against Part 13A, the court must order the forfeiture to the Commonwealth of any specimen used or otherwise involved in the commission of the offence.

Note: Part 13A deals with the international movement of wildlife specimens.

- (2) A court may make an order under subsection (1) or (1A) even if the thing or specimen has been seized under this Act or taken into possession under section 406AA or Schedule 1.
- (3) If:
 - (a) a specimen is seized under this Part; and
 - (b) either:
 - (i) a court finds a person not guilty of an offence against an environmental law in relation to the specimen; or

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- (ii) a proceeding in a court for such an offence in relation to the specimen is discontinued or dismissed; and
 - (c) the court is satisfied that there are reasonable grounds for suspecting that, if the specimen were released to the person from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of an environmental law;
- the court may order the forfeiture to the Commonwealth of the specimen.
- (4) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

450A Court-ordered forfeiture: other situations

- (1) A court may, on the application of the Secretary, order the forfeiture to the Commonwealth of a thing that is seized under this Part if the court is satisfied that the thing has been used or otherwise involved in the commission of an offence against an environmental law.
- (2) Without limiting subsection (1), a court may, on the application of the Secretary, order the forfeiture to the Commonwealth of a specimen if:
 - (a) the specimen was seized under this Part; and
 - (b) either:
 - (i) a court has found a person not guilty of an offence against an environmental law in relation to the specimen; or
 - (ii) a proceeding in a court for such an offence in relation to the specimen has been discontinued or dismissed; and
 - (c) the court to which the Secretary applies is satisfied that there are reasonable grounds for suspecting that, if the specimen were released to the person from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of an environmental law.

- (3) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

450B Forfeiture of seized items by consent etc.

- (1) If:
- (a) a thing is seized under this Part; and
 - (b) the owner of the thing agrees to transfer ownership of the thing to the Commonwealth, either:
 - (i) unconditionally; or
 - (ii) in the event that a future contingency happens; and
 - (c) if subparagraph (b)(ii) applies—that contingency happens;
- then:
- (d) the thing becomes the property of the Commonwealth; and
 - (e) the provisions of this Part relating to forfeiture apply as if the thing had been forfeited to the Commonwealth under this Act.
- (2) If:
- (a) a thing is seized under this Part; and
 - (b) the owner of the thing agrees to transfer ownership of the thing to the Commonwealth in the event that a future contingency happens;
- the Secretary may retain the thing:
- (c) until the thing becomes the property of the Commonwealth; or
 - (d) if the thing does not become the property of the Commonwealth—until the end of the last day on which that contingency could happen.
- (3) Subsection (2) has effect despite anything in section 438, 444G, 446, 456AB or 456AC.

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451 Dealings in forfeited items

- (1) A thing forfeited to the Commonwealth under this Act becomes the property of the Commonwealth.
- (2) A thing forfeited to the Commonwealth under this Act is to be dealt with in such manner as the Secretary considers appropriate.
- (3) Without limiting subsection (2), the Secretary may sell a thing forfeited to the Commonwealth under this Act.
- (4) The Secretary must not sell a specimen forfeited to the Commonwealth under this Act unless, in the opinion of the Secretary, the buyer will use the specimen for scientific or educational purposes.

452 Delivery of forfeited items to the Commonwealth

- (1) If:
 - (a) a thing is forfeited to the Commonwealth under this Act; and
 - (b) the thing has not been dealt with under section 451; and
 - (c) the thing is in the possession, custody or control of a person other than:
 - (i) the Commonwealth; or
 - (ii) an agency of the Commonwealth; and
 - (d) the Secretary requests the person to deliver the thing to the Secretary;the person must deliver the thing to the Secretary.
- (2) A person must not contravene subsection (1).
Penalty: Imprisonment for 2 years.

Subdivision F—Keeping of organisms or specimens that have been seized

453 Keeping of organisms or specimens retained under this Part

If a person is authorised under this Part to retain an organism or specimen, the person may do so by causing the organism or specimen to be taken to, and kept at, a place approved by the Secretary for the purpose of keeping organisms or specimens seized under this Division.

454 Recovery of costs of storing or keeping organisms or specimens

- (1) If an organism or specimen is seized under this Division, the owner is liable to pay to the Commonwealth an amount equal to the sum of the following costs:
 - (a) reasonable costs incurred by the Commonwealth in relation to the custody of the organism or specimen;
 - (b) reasonable costs incurred by the Commonwealth in transporting the organism or specimen;
 - (c) reasonable costs incurred by the Commonwealth in maintaining the organism or specimen.
- (2) If:
 - (a) an organism or specimen is seized under this Division; and
 - (b) the organism or specimen is disposed of;the owner is liable to pay to the Commonwealth an amount equal to the reasonable costs incurred by the Commonwealth in disposing of the organism or specimen.
- (3) An amount payable by a person under this section is a debt due by the person to the Commonwealth.
- (4) An amount payable by a person to the Commonwealth under this section may be recovered by action in a court of competent jurisdiction.

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- (5) The Secretary may remit an amount payable by a person under this section.
- (6) In addition to its effect apart from this subsection, this section also has the effect it would have if a liability under this section were, by express provision, confined to the case of an organism or specimen that:
 - (a) is forfeited to the Commonwealth under this Act; or
 - (b) would have been forfeited to the Commonwealth under this Act if it had not been disposed of.

Subdivision G—Rescuing things

455 Rescuing things

A person commits an offence punishable upon conviction by imprisonment for a term not exceeding 2 years if:

- (a) the person rescues any thing; and
- (b) the thing has been, or is about to be, seized under this Act.

456 Breaking or destroying things or documents to prevent seizure etc.

A person must not:

- (a) stave, break or destroy any thing in order to prevent the seizure of a thing, the securing of a thing, or the proof of any offence under an environmental law; or
- (b) destroy any documents relating to any thing in order to prevent the seizure of a thing, the securing of a thing, or the proof of any offence under an environmental law.

Penalty: Imprisonment for 2 years.

Subdivision H—Seizure of cages or containers

456AA Power to seize cages or containers containing seizable things

- (1) This section applies if:
 - (a) an authorised officer has power to seize a thing (a *seizable thing*) under another provision of this Part; and
 - (b) the seizable thing is in a cage or container; and
 - (c) the authorised officer considers that it is not reasonably practicable to seize the seizable thing without also seizing the cage or container.
- (2) For the purpose of seizing the seizable thing and despite any other provision of this Part, the authorised officer may seize the cage or container containing the seizable thing (whether or not the cage or container also contains any other thing).
- (3) The seizure of the seizable thing is taken to occur under the provision mentioned in paragraph (1)(a) (not under this section).

Note: The provisions governing the retention and return of the seizable thing are therefore the provisions that usually govern the seizure of a thing under the provision mentioned in paragraph (1)(a).

- (4) If:
 - (a) an authorised officer seizes a cage or container; and
 - (b) the seizure of the cage or container is authorised by this section, and is also authorised by another provision of this Part;then the seizure is taken to be under this section, rather than under that other provision (subject to subsection 456AB(5)).

456AB Retention of seized cage or container

- (1) This section applies to a cage or container that is seized under section 456AA because it contains a seizable thing.

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- (2) The cage or container may be retained for so long as an authorised officer considers that it is reasonably necessary to retain it for the purpose of housing the seizable thing.
- (3) As soon as practicable after the end of the period during which the cage or container may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the cage or container to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
 - (a) the seizure was also authorised by another provision of this Part (the *other seizure provision*), as mentioned in subsection 456AA(4)); or
 - (b) the cage or container is forfeited or forfeitable to the Commonwealth; or
 - (c) the cage or container has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the cage or container; or
 - (d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the cage or container.
- (5) If, because of paragraph (4)(a), the cage or container does not have to be returned at the end of the period referred to in subsection (3), this Part then applies in relation to the cage or container as if, at the end of that period, it had been seized under the other seizure provision.

456AC Retention of non-seizable things contained in seized cages or containers

- (1) This section applies if:
 - (a) a cage or container is seized under section 456AA because it contains a seizable thing; and

- (b) the cage or container also contains a thing (a *non-seizable thing*) that is not a seizable thing.
- (2) The non-seizable thing may be retained until it is reasonably practicable to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (3) As soon as practicable after the end of the period during which the non-seizable thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
- (a) the non-seizable thing is forfeited or forfeitable to the Commonwealth; or
 - (b) the non-seizable thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or
 - (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the non-seizable thing.

Division 12—Environmental audits

458 Directed environmental audits

- (1) The Minister may, by written notice given to the holder of an environmental authority, require the holder to carry out an environmental audit if the Minister believes or suspects on reasonable grounds:
 - (a) that the holder has contravened, or is likely to contravene, a condition of the authority; or
 - (b) the impacts that the action authorised by the authority has, has had or is likely to have on the matter dealt with by the provision for which the authority authorises the action are significantly greater than was indicated in the information available to the Minister when the authority was granted.
- (2) The notice must specify:
 - (a) the matters to be covered by the audit; and
 - (b) the form of the audit report and the kinds of particulars it is to contain; and
 - (c) the date on or before which the report must be given to the Minister.
- (3) Without limiting the matters that may be specified under paragraph (2)(a), those matters may include all or any of the following:
 - (a) an evaluation of the nature of the environment that is or will be affected by the holder's activities; and
 - (b) an assessment of the risks to the environment resulting from the activities; and
 - (c) an assessment of the holder's existing capacity to comply with the authority and the requirements of this Act and the regulations in carrying on the activities; and
 - (d) an assessment of what the holder will need to do, or continue to do, so to comply.

- (4) For the purposes of this Act, an *environmental authority* is:
- (a) an approval under Part 9; or
 - (b) a permit issued under Chapter 5.

459 Appointment of auditor and carrying out of audit

- (1) If the Minister gives the holder of an environmental authority a notice under section 458, the holder must appoint an environmental auditor and arrange for the auditor to carry out an environmental audit in accordance with the notice.
- (2) The holder of an environmental authority must not contravene subsection (1).
- Civil penalty: 500 penalty units.
- (3) The holder must not appoint an officer or employee of the holder to be an environmental auditor.
- (4) The holder must not appoint a person to be an environmental auditor unless the Minister has approved the person for such appointment before the appointment is made.
- (5) An appointment of a person as an environmental auditor made otherwise than in accordance with subsections (3) and (4) has no effect.

460 Nature of directed environmental audit

- (1) If:
- (a) an environmental auditor carries out a directed environmental audit; and
 - (b) in the course of carrying out the audit, the auditor does not deal with a particular matter; and
 - (c) the matter is specified in the Minister's notice under section 458 as a matter that is to be covered by the audit;
- the auditor commits an offence, punishable on conviction by a fine not exceeding 30 penalty units.

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Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibilities.

- (2) If:
- (a) an environmental auditor carries out a directed environmental audit; and
 - (b) in the course of carrying out the audit, the auditor conceals, or does not take into account, any information or document; and
 - (c) the information or document is relevant to the audit;
- the auditor commits an offence punishable on conviction by imprisonment for not more than 6 months.

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).

- (3) In carrying out a directed environmental audit, the environmental auditor may, if:
- (a) an environmental audit (including an environmental audit carried out in accordance with a condition of the relevant authority) was completed within the last preceding 2 years; and
 - (b) the auditor is satisfied that the previous audit is still relevant; have regard to the results of the previous audit.
- (4) For the purposes of this Act, a ***directed environmental audit*** is an audit required by a notice under section 458.

461 Audit reports

- (1) After completing a directed environmental audit, the environmental auditor must prepare, and give the holder of the relevant environmental authority, a written report setting out the results of the audit.
- (2) The holder must give the report to the Minister:

- (a) on or before the date specified by the Minister under paragraph 458(2)(c); or
 - (b) on or before such later date as the Minister, on application by the holder, determines.
- (3) If the holder fails to comply with subsection (2), the holder commits an offence, punishable on conviction by a fine not exceeding 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibilities.

- (4) If:
- (a) the environmental auditor includes a statement in the report; and
 - (b) the statement is false or misleading in a material particular;
- the auditor commits an offence punishable on conviction by imprisonment for not more than 6 months.

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).

462 Directed environmental audits do not affect other audit obligations

This Division does not affect any obligation of a holder of an environmental authority to carry out an environmental audit in accordance with a condition of the authority.

Division 13—Conservation orders

Subdivision A—Simplified outline

463 Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may make conservation orders controlling activities, and requiring specified people to take specified actions, in Commonwealth areas to protect listed threatened species or ecological communities.

A person who contravenes a conservation order commits an offence.

Before the Minister makes a conservation order, he or she must consult various Commonwealth agencies.

The Secretary must publicise conservation orders, and may give assistance to a person to comply with a conservation order.

Subdivision B—Making and reviewing conservation orders

464 Minister may make conservation orders

Making conservation orders

- (1) The Minister may make a written order (a **conservation order**):
- (a) prohibiting or restricting specified activities on or in:
 - (i) all Commonwealth areas; or
 - (ii) specified Commonwealth areas; or
 - (b) requiring specified persons to take specified action on or in:
 - (i) all Commonwealth areas; or
 - (ii) specified Commonwealth areas.

Note: Section 470 makes contravening a conservation order an offence.

Prerequisite to making conservation order

- (2) The Minister may only make a conservation order if he or she reasonably believes that it is necessary to make the order to protect a listed threatened species or a listed threatened ecological community.

Minister must consider economic and social matters

- (3) In considering whether to make a conservation order, the Minister must be satisfied that making the order is justified, having regard to economic and social considerations that are consistent with the principles of ecologically sustainable development.

Minister must consult before making conservation order

- (4) Before making a conservation order, the Minister:
 - (a) must seek the Secretary's advice on whether it should be made; and
 - (b) must consult each Commonwealth agency that may be affected by the order, and any other Commonwealth agency the Minister thinks appropriate, unless delay in making the order would result in significant, irreparable damage to a listed threatened species or listed threatened ecological community.

465 Duration of conservation orders

- (1) A conservation order comes into force:
 - (a) if a commencement day is specified in the order—on that day; or
 - (b) otherwise—immediately after it is made.
- (2) The order remains in force:
 - (a) for the period (if any) specified in the order; or
 - (b) until it is revoked by the Minister.

Section 466

466 Reviews of conservation orders

- (1) The Minister must:
 - (a) at intervals of not more than 5 years, review the conservation order; and
 - (b) after each review, confirm, vary or revoke the order by instrument in writing.
- (2) Before reviewing the order, the Minister must seek the Secretary's advice on the review.
- (3) The Minister must not revoke the order unless he or she is satisfied that the order is no longer needed to protect the listed threatened species or listed threatened ecological community the order was made to protect.
- (4) The Minister must not vary the order unless he or she is satisfied that the order as varied adequately protects the listed threatened species or listed threatened ecological community the order was first made to protect.
- (5) Immediately after a variation of the order, the order continues in force as so varied.

467 Publication of conservation orders

- (1) As soon as practicable after making or reviewing a conservation order, the Minister must cause the Secretary to be informed of the making of the order, or the decision on the review, as the case requires.
- (2) The Secretary must, as soon as practicable after being so informed:
 - (a) cause to be published in the *Gazette*, in a daily newspaper circulating in each State or self-governing Territory in which are located Commonwealth areas to which the order relates and in any other way required by the regulations, a notice containing:
 - (i) a copy of the order; and

- (ii) a statement to the effect that contravention of the order is an offence against this Act; and
 - (iii) if applicable, a statement of the decision on the review; and
 - (iv) a statement to the effect that a person affected by the order may apply to the Minister, within 28 days of the publication (or within such further period as the Minister allows), for a reconsideration of the order by the Minister; and
- (b) take all reasonable steps to ensure that each person who the Secretary knows would be affected by the order is given a notice containing:
- (i) a copy of the order; and
 - (ii) if applicable, a statement of the decision on the review; and
 - (iii) unless the person is a Commonwealth agency or an agency of a State or self-governing Territory—a statement to the effect that contravention of the order is an offence against this Act; and
 - (iv) a statement to the effect that the person may apply to the Minister, within 28 days of being given the notice (or within such further period as the Minister allows), for a reconsideration of the order by the Minister.
- (3) Failure to comply with this section does not affect the validity of the order.

468 Application for reconsideration of conservation orders or decisions on review

- (1) A person affected by a conservation order, or by the decision on a review of a conservation order, may apply to the Minister to reconsider the order or the decision, as the case requires.
- (2) The application must be in writing.
- (3) Subject to subsection (4), the application must be made within 28 days, or within such further period as the Minister allows, after the

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publication under paragraph 467(2)(a) of the notice relating to the making of the order or conduct of the review.

- (4) If the person is given a copy of the order after that publication, the period of 28 days within which that person must make the application is taken to commence on the day on which the person received the notice.

469 Reconsideration of conservation orders and decisions on review

- (1) Upon receiving the application, the Minister must:
- (a) seek the Secretary's advice on the application; and
 - (b) reconsider the conservation order or the decision on review, as the case requires; and
 - (c) by written instrument:
 - (i) confirm, vary or revoke the order; or
 - (ii) confirm or vary the decision on review; and
 - (d) cause the Secretary to be informed accordingly.
- (2) As soon as practicable after being so informed, the Secretary must:
- (a) notify the applicant in writing of the result of the reconsideration; and
 - (b) if the order is revoked or varied or the decision on review is varied—cause to be published in the *Gazette*, and in any other way required by the regulations, a notice:
 - (i) stating that fact; and
 - (ii) in the case of a variation—setting out a copy of the order or decision as so varied.
- (3) Immediately after a variation of the order, the order continues in effect as so varied.

Subdivision C—Complying with conservation orders

470 Contravening conservation orders is an offence

- (1) A person must not take an action reckless as to whether the action contravenes a conservation order.

Penalty: 500 penalty units.

- (2) If a person believes that taking an action that he or she proposes to take may contravene a particular conservation order, the person may seek the Minister's advice under subsection 471(3) on whether the order would be contravened by taking that action.
- (3) The person does not contravene the order if he or she acts in accordance with advice given to him or her under subsection 471(3) to the effect that the order would not be contravened.

471 Minister to consider proposed actions etc.

- (1) This section applies to a proposed action if it is referred to the Minister under section 470 for the Minister's advice on whether it would contravene a conservation order.
- (2) A person who proposes to take the action may make written submissions to the Minister about the proposed action.
- (3) The Minister must:
 - (a) refer the proposed action, together with any submissions received by the Minister about the proposed action, to the Secretary; and
 - (b) after considering the Secretary's advice on the matter, give the person who sought the Minister's advice under section 470 a written notice of the minister's advice on the proposed action.

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472 Contents of notices of advice

- (1) The notice of advice must state whether the Minister thinks that the proposed action would contravene a conservation order.
- (2) If the decision to give the advice was not made personally by the Minister and the notice of advice is given to a person who is not a Commonwealth agency, the notice must include:
 - (a) a statement to the effect that, if the person is dissatisfied with the decision to give that advice, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision; and
 - (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision.

473 Review by the Administrative Appeals Tribunal

- (1) Subject to subsections (1A) and (2), applications may be made to the Administrative Appeals Tribunal for review of the decision to give the advice.
- (1A) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
- (2) Despite section 27 of the *Administrative Appeals Tribunal Act 1975*, applications are not to be made by or on behalf of Commonwealth agencies.

474 Assistance in complying with conservation orders

- (1) On behalf of the Commonwealth, the Secretary may provide assistance to a person (other than a Commonwealth agency) to comply with prohibitions, restrictions or requirements imposed on a person by a conservation order.
- (2) The assistance may take any one or more of the following forms:

- (a) payment of money;
 - (b) provision of goods;
 - (c) provision of labour;
 - (d) provision of other services.
- (3) The value of the assistance must not exceed that which the Secretary thinks are the reasonable and direct costs of complying with the prohibitions, restrictions or requirements in question.
- (4) Assistance given under this section must be taken into account in determining compensation payable under section 519.

Division 14—Injunctions

475 Injunctions for contravention of the Act

Applications for injunctions

- (1) If a person has engaged, engages or proposes to engage in conduct consisting of an act or omission that constitutes an offence or other contravention of this Act or the regulations:
 - (a) the Minister; or
 - (b) an interested person (other than an unincorporated organisation); or
 - (c) a person acting on behalf of an unincorporated organisation that is an interested person;may apply to the Federal Court for an injunction.

Prohibitory injunctions

- (2) If a person has engaged, is engaging or is proposing to engage in conduct constituting an offence or other contravention of this Act or the regulations, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

- (3) If the court grants an injunction restraining a person from engaging in conduct and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

Mandatory injunctions

- (4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure did, does or would constitute an offence or other contravention of this Act or the regulations, the Court may grant an injunction requiring the person to do the act.

Interim injunctions

- (5) Before deciding an application for an injunction under this section, the Court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
 - (b) requiring a person to do an act.

Meaning of interested person—individuals

- (6) For the purposes of an application for an injunction relating to conduct or proposed conduct, an individual is an **interested person** if the individual is an Australian citizen or ordinarily resident in Australia or an external Territory, and:
- (a) the individual's interests have been, are or would be affected by the conduct or proposed conduct; or
 - (b) the individual engaged in a series of activities for protection or conservation of, or research into, the environment at any time in the 2 years immediately before:
 - (i) the conduct; or
 - (ii) in the case of proposed conduct—making the application for the injunction.

Meaning of interested person—organisations

- (7) For the purposes of an application for an injunction relating to conduct or proposed conduct, an organisation (whether incorporated or not) is an **interested person** if it is incorporated (or was otherwise established) in Australia or an external Territory and one or more of the following conditions are met:
- (a) the organisation's interests have been, are or would be affected by the conduct or proposed conduct;
 - (b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:
 - (i) the organisation's objects or purposes included the protection or conservation of, or research into, the environment; and

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- (ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment;
- (c) if the application relates to proposed conduct—at any time during the 2 years immediately before the making of the application:
 - (i) the organisation's objects or purposes included the protection or conservation of, or research into, the environment; and
 - (ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment.

476 Injunctions for contraventions of conservation agreements

Applications for injunctions

- (1) If a person bound by a conservation agreement engages or proposes to engage in conduct consisting of an act or omission that constitutes a contravention of the agreement, another person bound by the agreement or the Minister may apply to the Federal Court for an injunction.

Note: Section 307 explains who is bound by a conservation agreement.

Prohibitory injunctions

- (2) If a person has engaged, is engaging or is proposing to engage in conduct contravening the agreement, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

- (3) If the court grants an injunction restraining a person from engaging in conduct and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

Mandatory injunctions

- (4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure was, is or would be a contravention of the agreement, the Court may grant an injunction requiring the person to do the act.

Interim injunctions

- (5) Before deciding an application for an injunction under this section the Court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
 - (b) requiring a person to do an act.

477 Discharge of injunctions

On application, the Federal Court may discharge or vary an injunction.

479 Certain considerations for granting injunctions not relevant

Prohibitory injunctions

- (1) The Federal Court may grant an injunction restraining a person from engaging in conduct:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person engages, or continues to engage, in conduct of that kind.

Mandatory injunctions

- (2) The Federal Court may grant an injunction requiring a person to do a particular act or thing:

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- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and
- (b) whether or not the person has previously refused or failed to do the act or thing; and
- (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person refuses or fails, or continues to refuse or fail, to do the act or thing.

480 Powers conferred are in addition to other powers of the Court

The powers conferred on the Federal Court by this Division are in addition to (and do not limit) any other powers of the Court.

Division 14A—Federal Court's power to make remediation orders

480A Remediation orders

- (1) If, after the commencement of this section, a person has engaged, or is engaging, in conduct constituting an offence or other contravention of this Act or the regulations, the Federal Court may make an order (a **remediation order**) requiring the person to take action (the **remediation action**) to repair or mitigate damage that may or will be, or that has been, caused to the environment by the contravention.
- (2) In considering whether to grant a remediation order, the matters to which the Federal Court may have regard include (but are not limited to) the following:
 - (a) the nature and extent of the contravention;
 - (b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the contravention;
 - (c) the circumstances in which the contravention took place;
 - (d) whether the person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;
 - (e) the cost to the person of taking the remediation action.
- (3) The description in a remediation order of the remediation action may either be in general terms (for example, requiring the person to take whatever action is necessary to repair or mitigate the damage), or it may require the person to take particular action to repair or mitigate the damage.
- (4) If the Federal Court makes a remediation order, it may also make an order requiring the person to provide security for the due taking of the remediation action.
- (5) Application to the Federal Court for a remediation order may only be made by the Minister.

Section 480B

480B Discharge of remediation orders

On application by the Minister, the Federal Court may discharge or vary a remediation order.

480C Powers conferred are in addition to other powers of the Court

The powers conferred on the Federal Court by this Division are in addition to (and do not limit) any other powers of the Court.

Division 14B—Minister's power to make remediation determinations

Subdivision A—Making of remediation determinations

480D Minister may make remediation determination

- (1) If:
 - (a) the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3; and
 - (b) the Minister considers it desirable to make an order under this section in relation to the action;the Minister may make a written determination (a **remediation determination**) requiring the person to take action to repair or mitigate damage that may or will be, or that has been, caused by the contravention, to the matter protected by the provision of Part 3.
- (2) The Minister cannot make a remediation determination at a time that is more than 6 years after the time when the person took the action referred to in paragraph (1)(a).
- (3) A remediation determination is not a legislative instrument.

480E Contents of a remediation determination

- (1) A remediation determination must specify the following:
 - (a) the person (the **specified person**) referred to in paragraph 480D(1)(a);
 - (b) the action (the **specified action**) referred to in that paragraph;
 - (c) the civil penalty provision (the **specified civil penalty provision**) of Part 3 referred to in that paragraph;
 - (d) the action (the **remediation action**) that the person is required to take.

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- (2) A remediation determination may do all or any of the following in relation to some or all of the remediation action:
- (a) require action to be taken in a specified place;
 - (b) require action to be taken at, or by, a specified time;
 - (c) require a specified industry standard or code of practice to be complied with in taking action;
 - (d) require the taking of reasonable steps to obtain any Commonwealth, State or Territory approval or authority needed to carry out action;
 - (e) require the preparation, and submission to the Minister for approval, of a plan for taking action, and require action to be taken in accordance with the plan as approved by the Minister;
 - (f) require the spending of a specified amount of money on the taking of action;
 - (g) require the payment to a specified person of a specified amount or money, for the purpose of activities directed towards the protection and conservation of the matter protected by the specified civil penalty provision;
 - (h) require the payment to the Commonwealth of a specified amount of money as security for the due taking of action;
 - (i) provide for monitoring, auditing, or reporting to the Minister, in relation to the taking of action.
- (3) A remediation determination must contain a statement to the effect that the specified person may apply for a reconsideration of the determination under section 480J.

480F Notifying owners and occupiers of land of proposed remediation determination

- (1) Before the Minister makes a remediation determination that requires action to be taken on land that is not owned or occupied by the person proposed to be specified in the order, the Minister must:
- (a) take all practicable steps to identify each person who is an owner or occupier of all or part of the land; and

- (b) take all practicable steps to advise each person identified of the remediation determination that the Minister proposes to make; and
 - (c) give persons advised at least 20 business days to comment in writing to the Minister on the proposed remediation determination.
- (2) The Minister must take the comments into account in deciding whether to make the proposed remediation determination.

480G Notifying that remediation determination has been made

As soon as practicable after a remediation determination is made, the Minister must:

- (a) give the specified person a copy of the determination; and
- (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the making of the remediation determination.

480H Duration of remediation determinations

- (1) A remediation determination comes into force:
- (a) if a commencement day is specified in the determination (not being a day before paragraph 480G(a) is complied with)—on that day; or
 - (b) otherwise—when paragraph 480G(a) is complied with.
- (2) The determination remains in force:
- (a) for the period (if any) specified in the order; or
 - (b) until it is set aside by the Federal Court under Subdivision B or it is revoked by the Minister under Subdivision D.

480J Ministerial reconsideration of remediation determinations

- (1) Within 20 days after receiving a copy of a remediation determination as required by paragraph 480G(a), the specified person may apply to the Minister for a reconsideration of the determination.

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- (2) On receipt of an application for reconsideration of a remediation determination, the Minister may affirm, vary or set aside the determination.
- (3) The Minister may take account of information and comments from any source the Minister considers appropriate in deciding what action to take in relation to an application under this section.
- (4) The Minister must:
 - (a) advise the specified person of the Minister's decision in relation to an application under this section; and
 - (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the Minister's decision in relation to an application under this section.

Subdivision B—Federal Court may set aside remediation determination

480K Applying to Federal Court to have remediation determination set aside

- (1) Within 28 days after any of the following:
 - (a) the specified person receives a copy of a remediation determination as required by paragraph 480G(a); or
 - (b) a remediation determination is affirmed or varied under section 480J; or
 - (c) a remediation determination is varied by the Minister under Subdivision D;the specified person may apply to the Federal Court to have the remediation determination set aside.
- (2) On an application under subsection (1), the Federal Court must set aside the remediation determination if the Court is satisfied that:
 - (a) the specified action did not occur; or
 - (b) the specified person did not take the specified action; or
 - (c) the specified action was not a contravention of the specified civil penalty provision; or

- (d) the remediation action is not a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision.
- (3) In considering whether the remediation determination is a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision, the Federal Court must have regard to the following:
- (a) the nature and extent of the specified action;
 - (b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision;
 - (c) the circumstances in which the specified action took place;
 - (d) whether the specified person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;
 - (e) the cost to the specified person of taking the remediation action.
- The Federal Court may also have regard to any other matters it considers relevant.
- (4) The Federal Court must not set aside the remediation determination unless it is satisfied as mentioned in subsection (2).

Subdivision C—Complying with remediation determinations

480L Federal Court may order compliance with remediation determination

- (1) If the Minister considers that the specified person has contravened a remediation determination, the Minister may apply to the Federal Court for an order under subsection (2).

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- (2) If the Federal Court is satisfied that the specified person has contravened a remediation determination, the Court may make one or more of the following orders:
 - (a) an order directing the specified person to comply with the remediation determination;
 - (b) any other order that the Court considers appropriate.

480M Civil penalty for contravention of remediation determination

- (1) The specified person must not contravene a remediation determination.
- (2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order the specified person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the specified civil penalty provision.

Subdivision D—Variation or revocation of remediation determinations

480N Variation or revocation of remediation determination

- (1) The Minister may, in writing, vary or revoke a remediation determination.
- (2) Sections 480F and 480G apply in relation to the variation or revocation of a remediation determination in the same way as they apply in relation to the making of a remediation determination.

Division 15—Civil penalties

Subdivision A—Obtaining an order for a civil penalty

481 Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, the Minister may apply on behalf of the Commonwealth to the Federal Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

Court may order wrongdoer to pay pecuniary penalty

- (2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate (but not more than the relevant amount specified for the provision).

Determining amount of pecuniary penalty

- (3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

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Conduct contravening more than one civil penalty provision

- (4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

482 What is a *civil penalty provision*?

A subsection of this Act (or a section of this Act that is not divided into subsections) is a *civil penalty provision* if:

- (a) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section); or
- (b) another provision of this Act specifies that the subsection (or section) is a civil penalty provision.

483 Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

484 Persons involved in contravening civil penalty provision

- (1) A person must not:
- (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
 - (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
 - (d) conspire to contravene a civil penalty provision.
- (2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

485 Recovery of a pecuniary penalty

If the Federal Court orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

Subdivision B—Civil penalty proceedings and criminal proceedings

486A Civil proceedings after criminal proceedings

The Federal Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

486B Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
 - (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

486C Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

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486D Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

Subdivision C—Enforceable undertakings relating to contraventions of Part 3 civil penalty provisions

486DA Acceptance of undertakings relating to contraventions of Part 3 civil penalty provisions

- (1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3.
- (2) The Minister may accept a written undertaking given by the person in relation to the action, in which the person undertakes to pay a specified amount, within a specified period:
 - (a) to the Commonwealth; or
 - (b) to some other specified person, for the purpose of activities directed towards the protection and conservation of the matter protected by the civil penalty provision referred to in subsection (1).
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Minister.

486DB Enforcement of undertakings

- (1) If the Minister considers that a person who gave an undertaking under section 486DA has breached any of its terms, the Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) any other order that the Court considers appropriate.

Division 15A—Notices to produce or attend

486E Application of Division

- (1) This Division applies if the Minister believes, on reasonable grounds, that a person is capable of giving information, or producing books, records or documents, that are relevant for the purposes of investigating or preventing:
 - (a) an offence against an environmental law; or
 - (b) a contravention of an environmental penalty provision.
- (2) In this Division:

official means any of the following:

- (a) the Minister;
- (b) an officer or employee in the Department;
- (c) the Director;
- (d) the Chief Executive Officer of the Great Barrier Reef Marine Park Authority;
- (e) a member of the staff of the Great Barrier Reef Marine Park Authority.

486F Minister may require person to provide information etc.

- (1) The Minister may, by written notice, require the person to give to an official specified in the notice, in the manner and within the period specified in the notice:
 - (a) such information as is specified in the notice; or
 - (b) any book, record or document that is specified in the notice.The period must end not less than 14 days after the notice is given.
- (2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the *Criminal Code*.
- (3) A person commits an offence if:

- (a) the person is required to give information or a book, record or document to an official under subsection (1); and
- (b) the person does not give the information, book, record or document to the official.

Penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

486G Minister may require person to appear before Minister

- (1) The Minister may, by written notice, require the person to appear before an official specified in the notice, at a time and place specified in the notice:
 - (a) to answer any questions put by the official; and
 - (b) to produce to the official such books, records or documents as are specified in the notice.The time must not be earlier than 14 days after the notice is given.
- (2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the *Criminal Code*.
- (3) A person commits an offence if:
 - (a) the person is required to appear before an official under subsection (1); and
 - (b) the person does not appear before the official.

Penalty: Imprisonment for 6 months.

- (4) A person commits an offence if:
 - (a) the person is required to appear before an official under subsection (1); and
 - (b) when appearing before the official, the person does not:
 - (i) answer a question put by the official; or
 - (ii) produce a book, record or document to the official as required by the notice given under that subsection.

Penalty: Imprisonment for 6 months.

Section 486H

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

486H Persons to whom notices may not be given

A notice under subsection 486F(1) or 486G(1) must not be given to a person if the person is, or has been, a lawyer for:

- (a) if the notice relates to the investigation or prevention of an offence against an environmental law—the person suspected of having committed the offence; or
- (b) if the notice relates to the investigation or prevention of a contravention of an environmental penalty provision—the person suspected of having contravened the provision.

486J Self-incrimination

- (1) An individual is not excused from giving information (including by answering a question), or from giving or producing a book, record or document, under this Division on the ground that the information, or the giving or production of the book, record or document, might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
 - (a) the information given, or the book, record or document given or produced; or
 - (b) giving the information, or giving or producing the book record or document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, or giving or producing the book, record or document;is not admissible in evidence against the person:
 - (d) in any civil proceedings; or
 - (e) in any criminal proceedings other than:
 - (i) proceedings for an offence against subsection 486F(3) or 486G(3) or (4); or

- (ii) proceedings for an offence against section 491 that relates to a requirement under this Division; or
- (iii) proceedings for an offence against section 137.1 or 137.2 (false or misleading information or documents) of the *Criminal Code* that relates to a requirement under this Division.

Division 16—Review of administrative decisions

487 Extended standing for judicial review

- (1) This section extends (and does not limit) the meaning of the term *person aggrieved* in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:
 - (a) a decision made under this Act or the regulations; or
 - (b) a failure to make a decision under this Act or the regulations; or
 - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations.
- (2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:
 - (a) the individual is an Australian citizen or ordinarily resident in Australia or an external Territory; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment.
- (3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:
 - (a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment; and
 - (c) at the time of the decision, failure or conduct, the objects or purposes of the organisation or association included

protection or conservation of, or research into, the environment.

- (4) A term (except *person aggrieved*) used in this section and in the *Administrative Decisions (Judicial Review) Act 1977* has the same meaning in this section as it has in that Act.

488 Applications on behalf of unincorporated organisations

- (1) A person acting on behalf of an unincorporated organisation that is a person aggrieved (for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*) by:
- (a) a decision made under this Act or the regulations; or
 - (b) a failure to make a decision under this Act or the regulations;
or
 - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations;
- may apply under that Act for a review of the decision, failure or conduct.
- (2) The *Administrative Decisions (Judicial Review) Act 1977* applies in relation to the person as if he or she were a person aggrieved.

Division 17—Duty to provide accurate information

489 Providing false or misleading information to obtain approval or permit

- (1) A person commits an offence if:
- (a) the person provides information in response to a requirement or request under Part 7, 8, 9, 13 or 13A; and
 - (b) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1)(b) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the *Criminal Code*.

- (2) An offence against subsection (1) is punishable on conviction by:
- (a) imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or
 - (b) imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

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.

- (2A) A person commits an offence if:
- (a) the person provides information in response to a requirement or request under Part 7, 8, 9, 13 or 13A; and
 - (b) the person is negligent as to whether the information is false or misleading in a material particular.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2B) An offence against subsection (2A) is punishable on conviction by a fine not more than 30 penalty units.

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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.

- (3) Subsections (1) and (2A) do not apply to a requirement to provide information that is imposed by a condition attached to an environmental authority.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

490 Providing false or misleading information in response to a condition on an approval or permit

- (1) A person commits an offence if:
- (a) the person is the holder of an environmental authority; and
 - (b) a condition attached to the environmental authority requires the person to provide information; and
 - (c) the person provides information in response (or purportedly in response) to the requirement; and
 - (d) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1)(d) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the *Criminal Code*.

- (2) The offence is punishable on conviction by:
- (a) imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or
 - (b) imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

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.

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491 Providing false or misleading information to authorised officer etc.

- (1) A person commits an offence if the person:
- (a) provides information or a document to another person (the *recipient*); and
 - (b) knows the recipient is:
 - (i) an authorised officer; or
 - (ii) the Minister; or
 - (iii) an employee or officer in the Department; or
 - (iv) a commissioner;
performing a duty or carrying out a function under this Act or the regulations; and
 - (c) knows the information or document is false or misleading in a material particular.
- (2) The offence is punishable on conviction by imprisonment for a term not more than 1 year, a fine not more than 60 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.

Division 18—Liability of executive officers for corporations

493 Who is an *executive officer* of a body corporate?

In this Act:

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

494 Civil penalties for executive officers of bodies corporate

- (1) If:
- (a) a body corporate contravenes:
 - (i) a civil penalty provision of Part 3 (requirements for approval); or
 - (ii) section 142 (condition of approval); or
 - (iii) section 390SA (declared commercial fishing activity); and
 - (b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention;
- the officer contravenes this subsection.
- (2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order an individual to pay for contravening the civil penalty provision contravened by the body corporate.

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495 Criminal liability of executive officers of bodies corporate

(1) If:

(a) a body corporate contravenes:

- (i) section 489 (Providing false or misleading information to obtain approval or permit); or
- (ii) section 490 (Providing false or misleading information in response to a condition on an approval or permit); or
- (iii) section 491 (Providing false or misleading information to authorised officer etc.); and

(b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and

(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

(d) the officer failed to take all reasonable steps to prevent the contravention;

the officer commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

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).

(2) If:

(a) a body corporate contravenes:

- (i) section 15A (Offences relating to declared World Heritage properties); or
- (ia) section 15C (Offences relating to National Heritage places); or
- (ii) section 17B (Offences relating to declared Ramsar wetlands); or
- (iii) section 18A (Offences relating to threatened species etc.); or

- (iv) section 20A (Offences relating to listed migratory species); or
 - (v) section 22A (Offences relating to nuclear actions); or
 - (vi) section 24A (Offences relating to marine areas); or
 - (via) section 24E (Offences relating to water resources); or
 - (vii) section 27A (Offences relating to Commonwealth land); or
 - (viiia) section 27C (Offences relating to Commonwealth heritage places overseas); or
 - (viii) section 142A (Offence of breaching conditions on approval); or
 - (ix) section 390SB (Offence relating to declared commercial fishing activity); and
- (b) an executive officer of the body was reckless as to whether the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention;
- the officer commits an offence.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) An offence against subsection (2) is punishable on conviction by imprisonment for a term not exceeding the term specified in the provision contravened by the body corporate.

Note: 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).

496 Did an executive officer take reasonable steps to prevent contravention?

- (1) For the purposes of sections 494 and 495, in determining whether an executive officer of a body corporate failed to take all

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reasonable steps to prevent the contravention, a court is to have regard to:

- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
 - (i) that the body arranges regular professional assessments of the body's compliance with this Act and the regulations;
 - (ii) that the body implements any appropriate recommendations arising from such an assessment;
 - (iii) that the body has an appropriate system established for managing the effects of the body's activities on the environment;
 - (iv) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affect the employees, agents or contractors concerned;
 - (b) what action (if any) the officer took when he or she became aware that the body was contravening:
 - (i) this Act; or
 - (ii) the regulations; or
 - (iii) if the body contravened Part 3 or section 142 or 142A—any action management plan that was prepared by the body, and approved by the Minister, as required by a condition attached to an approval under Part 9 for the purposes of a provision of Part 3 of the body's taking of an action.
- (2) This section does not, by implication, limit the generality of sections 494 and 495.

Division 18A—Liability of landholders for other people's actions

496A Who is a *landholder*?

For the purposes of this Division, a *landholder*, in relation to an area of land, is a person who is an owner, lessee or occupier of the area of land.

496B Civil penalties for landholders

- (1) If:
- (a) a person (the *actor*) takes an action on an area of land that is a contravention of:
 - (i) a provision of Part 3 that is a civil penalty provision; or
 - (ii) section 142; and
 - (b) a landholder in relation to the area of land knew that, or was reckless or negligent as to whether, the contravention would occur; and
 - (c) the landholder was in a position to influence the conduct of the actor in relation to the contravention; and
 - (d) the landholder failed to take all reasonable steps to prevent the contravention;
- the landholder contravenes this subsection.
- (2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a landholder contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the landholder to pay, if the landholder had contravened the civil penalty provision contravened by the actor.

496C Criminal liability of landholders

- (1) If:
- (a) a person (the *actor*) takes an action on an area of land that contravenes:

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- (i) section 15A (Offences relating to declared World Heritage properties); or
 - (ii) section 15C (Offences relating to National Heritage places); or
 - (iii) section 17B (Offences relating to declared Ramsar wetlands); or
 - (iv) section 18A (Offences relating to threatened species etc.); or
 - (v) section 20A (Offences relating to listed migratory species); or
 - (vi) section 22A (Offences relating to nuclear actions); or
 - (vii) section 24A (Offences relating to marine areas); or
 - (viii) section 24E (Offences relating to water resources); or
 - (viii) section 27A (Offences relating to Commonwealth land); or
 - (ix) section 142A (Offence of breaching conditions on approval); and
- (b) a landholder in relation to the area of land was reckless as to whether the contravention would occur; and
- (c) the landholder was in a position to influence the conduct of the actor in relation to the contravention at the time when the contravention occurred; and
- (d) the landholder failed to take all reasonable steps to prevent the contravention;
- the landholder commits an offence.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) An offence against subsection (1) is punishable on conviction by imprisonment for the term specified in the provision contravened by the actor, a fine of the amount specified in that provision, 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 the provision.

496D Did a landholder take reasonable steps to prevent a contravention?

- (1) For the purposes of sections 496B and 496C, in determining whether a landholder failed to take all reasonable steps to prevent the contravention, a court is to have regard to:
 - (a) what action (if any) the landholder took directed towards ensuring that the actor had an appropriate system established for managing the effects of the actor's activities on the environment; and
 - (b) what action (if any) the landholder took upon becoming aware that there was a substantial risk that the actor was contravening provisions of this Act referred to in subsection 496B(1) or 496C(1), as the case requires.
- (2) This section does not, by implication, limit the generality of sections 496B and 496C.

Division 19—Infringement notices

497 Infringement notices

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against section 142B or the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

Division 20—Publicising contraventions

498 Minister may publicise contraventions of this Act or the regulations

- (1) The Minister may publicise, in any way he or she thinks appropriate, a contravention of this Act or the regulations for which a person has been convicted or ordered to pay a pecuniary penalty.
- (2) This Division does not:
 - (a) limit the Minister's powers to publicise a contravention of this Act or the regulations; or
 - (b) prevent anyone else from publicising a contravention of this Act or the regulations; or
 - (c) affect any obligation (however imposed) on anyone to publicise a contravention of this Act or the regulations.

Division 21—Immunity of officers

498A Immunity of officers and assistants

- (1) An authorised officer or ranger is not liable to any proceedings relating to an act done, or omitted to be done, in good faith in the exercise or purported exercise of any power conferred on the officer or ranger by this Part, Schedule 1 (in the case of an authorised officer) or regulations made for the purposes of this Part or Division 5 of Part 15.
- (2) A person requested by an authorised officer or ranger to assist the officer or ranger in the exercise or purported exercise of any power conferred on the officer or ranger by this Part, by Schedule 1 (in the case of an authorised officer), or by regulations made for the purposes of this Part or Division 5 of Part 15, is not liable to any proceedings relating to an act done, or omitted to be done, in good faith for the purpose of assisting the officer or ranger.

Division 22—Conduct of directors, employees and agents

498B Conduct of directors, employees and agents

Bodies corporate—conduct

- (1) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Bodies corporate—state of mind

- (2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (1)(a) or (b); and
 - (b) that the person had that state of mind.

Persons other than bodies corporate—conduct

- (3) Any conduct engaged in on behalf of a person other than a body corporate:
- (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or

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agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent; is to be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

Persons other than bodies corporate—state of mind

- (4) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (3)(a) or (b); and
 - (b) that the person had that state of mind.

Reasonable precautions

- (5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and exercised due diligence to avoid particular conduct, a court must have regard to what steps (if any) the body or person took directed towards ensuring the following (to the extent that the steps are relevant to the conduct):
- (a) that the body or person arranges regular professional assessments of the body's or person's compliance with this Act and the regulations;
 - (b) that the body or person implements any appropriate recommendations arising from such an assessment;
 - (c) that the body or person has an appropriate system established for managing the effects of the body's or person's activities on the environment;
 - (d) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affect the directors, employees or agents concerned.

Meaning of state of mind

- (6) A reference in subsection (2) or (4) to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Meaning of director

- (7) A reference in this section to a *director* of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

Meaning of engage in conduct

- (8) A reference in this section to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

Disapplying Part 2.5 of Criminal Code

- (9) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

Part 18—Remedying environmental damage

499 Commonwealth powers to remedy environmental damage

- (1) This section applies if the Minister suspects that an act or omission constitutes a contravention of this Act or the regulations (whether or not the act or omission is an offence against this Act or the regulations).
- (2) On behalf of the Commonwealth, the Minister may cause to be taken such steps as he or she thinks proper:
 - (a) to repair or remove any condition that arises from the act or omission and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
 - (b) to mitigate any damage that arises from the act or omission and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
 - (c) to prevent any damage that is likely to arise from the act or omission and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision.
- (3) If:
 - (a) a person provided false or misleading information in contravention of section 489; and
 - (b) as a result of the contravention the Minister granted an environmental authority to a person, or set conditions relating to the environmental authority, unaware of the certainty or likelihood of the action covered by the authority:

- (i) resulting in damage to the environment or to a matter protected by a provision of Part 3; or
 - (ii) giving rise to a condition relating to the environment or to a matter protected by a provision of Part 3; and
 - (c) the action results in damage to the environment or gives rise to a condition relating to the environment;
- then, for the purposes of this section and section 500, the damage or condition is taken to arise from the provision of false or misleading information in contravention of section 489.
- (4) This section does not affect the exercise by the Commonwealth or the Minister of powers under another provision of this Act or under any other law.

500 Liability for loss or damage caused by contravention

- (1) A person (the *wrongdoer*) who contravenes this Act or the regulations is liable to pay to another person (the *affected party*) who suffers loss or damage arising from the contravention an amount equal to the other person's loss or damage.
- (2) Without limiting the amount payable under subsection (1), the loss or damage a person suffers from a contravention of this Act or the regulations includes the expenses and liabilities (if any) reasonably incurred by the affected party to:
- (a) repair or remove any condition that arises from the act or omission constituting the contravention and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
 - (b) mitigate any damage that arises from the act or omission constituting the contravention and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
 - (c) prevent any damage likely to arise from the act or omission constituting the contravention and relates to:

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- (i) the environment; or
- (ii) if the contravention was of a provision of Part 3—the matter protected by the provision.

Note: This makes the person who contravenes the Act liable to pay the Commonwealth the expenses reasonably incurred in taking steps under section 499 in relation to the contravention.

- (3) An amount payable under subsection (1) is a debt due to the affected party, recoverable in a court of competent jurisdiction.
- (4) If 2 or more persons are liable under subsection (1) to pay an amount in respect of the same loss or damage, those persons are jointly and severally liable to pay the sum.
- (5) A finding by a court in criminal proceedings or civil proceedings that the wrongdoer contravened this Act or the regulations is admissible as evidence of that fact in proceedings to recover an amount payable under subsection (1).
- (6) This section applies:
 - (a) whether or not the contravention was an offence; and
 - (b) whether or not the provision contravened is a civil penalty provision.
- (7) This section does not apply to a decision (or a failure to make a decision or conduct for the purposes of making a decision) purportedly under this Act or the regulations that contravenes this Act or the regulations.

501 Other powers not affected

This Division does not affect any other powers or rights under this Act, the regulations or any other law.

Part 19—Organisations

Division 1—Establishment and functions of the Threatened Species Scientific Committee

502 Establishment

- (1) The Threatened Species Scientific Committee is established.
- (2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.
- (3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.

503 Functions of the Committee

The functions of the Committee are:

- (a) to advise the Minister in accordance with Division 5 of Part 13 in relation to recovery plans, threat abatement plans and approved conservation advice; and
- (b) to advise the Minister (on the Minister's request or on the Committee's initiative) on the amendment and updating of the lists established under Part 13; and
- (c) to advise the Minister, at his or her request, on matters relating to the administration of this Act; and
- (d) to give the Minister such other advice as is provided for in this Act; and
- (e) to perform such other functions as are conferred on the Committee by this Act.

Division 2A—Indigenous Advisory Committee

505A Establishment

- (1) The Indigenous Advisory Committee is established.
- (2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.
- (3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.

505B Functions of the Committee

- (1) The function of the Committee is to advise the Minister on the operation of the Act, taking into account the significance of indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity.
- (2) The Minister may give the Committee written guidelines about its function.

**Division 2B—Establishment and functions of the
Independent Expert Scientific Committee on
Coal Seam Gas and Large Coal Mining
Development**

505C Establishment

- (1) The Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development is established.
- (2) The Committee is to consist of at least 5, but not more than 8, members.
- (3) A member of the Committee is to be appointed by the Minister by written instrument, on a part-time basis.
- (4) The Minister must appoint one member of the Committee to be the Chair.
- (5) When appointing members of the Committee, the Minister must ensure that:
 - (a) each member (other than the Chair) possesses appropriate scientific qualifications or expertise that the Minister considers relevant to the performance of the Committee's functions; and
 - (b) each member's appointment is not being made to represent any particular body, group or community.
- (6) The Minister must also ensure that a majority of the members possess scientific qualifications and expertise in one or more of the following areas:
 - (a) geology;
 - (b) hydrology;
 - (c) hydrogeology;
 - (d) ecology.

Note: Other provisions relating to members are set out in Division 3.

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505D Functions of the Committee

- (1) The Committee has the following functions:
 - (a) within 2 months of a request by the Minister (the *Environment Minister*)—to provide scientific advice to the Environment Minister in relation to proposed coal seam gas developments or large coal mining developments that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity;
 - (b) within 2 months of a request by an appropriate Minister of a declared State or Territory—to provide scientific advice to the Minister in relation to proposed coal seam gas developments or large coal mining developments in the relevant State or Territory that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity;
 - (c) at the request of the Environment Minister—to provide advice to the Environment Minister about:
 - (i) how bioregional assessments should be conducted in areas where coal seam gas development or large coal mining development is being carried out or is proposed; and
 - (ii) priority areas in which bioregional assessments should be undertaken; and
 - (iii) bioregional assessments commissioned by the Minister;
 - (d) at the request of the Environment Minister—to provide advice to the Environment Minister about:
 - (i) priorities for research projects to improve scientific understanding of the impacts of coal seam gas developments and large coal mining developments on water resources, including any impacts of associated salt production and/or salinity; and
 - (ii) research projects commissioned by the Minister in relation to the impacts of coal seam gas developments and large coal mining developments on water resources,

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- including any impacts of associated salt production
and/or salinity;
- (e) to publish information about improving the consistency and comparability of research in relation to the impacts of coal seam gas developments and large coal mining developments on water resources, including any impacts of associated salt production and/or salinity;
 - (f) to publish information relating to the development of standards for protecting water resources from the impacts of coal seam gas development and large coal mining development, including from any impacts of associated salt production and/or salinity;
 - (g) to collect, analyse, interpret and disseminate scientific information in relation to the impacts of coal seam gas development and large coal mining development on water resources, including any impacts of associated salt production and/or salinity;
 - (h) any other functions prescribed by the regulations;
 - (i) to do anything incidental to, or conducive to, the performance of the above functions.
- (2) The Committee also has the following functions:
- (a) at the request of the Environment Minister—to provide scientific advice to the Environment Minister in relation to a matter that is protected by a provision of Part 3;
 - (b) at the request of the appropriate Minister of a declared State or Territory and with the written agreement of the Environment Minister—to provide scientific advice to the Minister of the State or Territory in relation to the matters specified in the request, if the Committee has sufficient scientific expertise.

505E Declared States and Territories

- (1) The Minister may, by legislative instrument, declare a specified State or self-governing Territory to be a *declared State or Territory*.

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Part 19 Organisations

Division 2B Establishment and functions of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development

Section 505E

- (2) The Minister must not declare a State or a self-governing Territory unless, at the time of the declaration, the State or Territory is a party to the National Partnership Agreement on Coal Seam Gas and Large Scale Coal Mining Development between the Commonwealth and one or more States or self-governing Territories that commenced on 14 February 2012.

Division 3—Members and procedures of Committees

506 Application

This Division applies to the following Committees:

- (a) the Threatened Species Scientific Committee;
- (c) the Indigenous Advisory Committee;
- (d) the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.

507 Terms and conditions

Term of office

- (1) A member of a Committee holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Section 509 sets out the circumstances in which a member's appointment may be (or must be) terminated.

Resignation

- (2) A member of a Committee may resign his or her appointment by giving the Minister a written resignation.

Other terms and conditions

- (3) A member of a Committee holds office on the terms and conditions (if any) that are determined by the Minister in relation to matters not covered by this Act or the regulations.

508 Remuneration

- (1) A member of a Committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.

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- (2) A member of a Committee is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

509 Termination of appointments of Committee members

Termination when person stops being qualified for appointment

- (1) The appointment of a person to a position of member of a Committee is terminated when the person ceases to be qualified for appointment to the position.

Termination for misbehaviour or incapacity

- (2) The Minister may terminate the appointment of a member of a Committee for misbehaviour or physical or mental incapacity.

Termination for failure to attend Committee meetings

- (3) The Minister may terminate the appointment of a member of a Committee if the member is absent, except on leave of absence, from 3 consecutive meetings of the Committee of which the member has had notice.

Termination for engaging in conflicting work

- (4) The Minister may terminate the appointment of a member of a Committee if the member engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of the member.

Termination for failure to disclose interests

- (5) The Minister must terminate the appointment of a member of a Committee if:
 - (a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the

- member has in a matter being considered or about to be considered by the Committee; and
- (b) the member does not have a reasonable excuse for not complying.

Termination for bankruptcy or insolvency

- (6) The Minister may terminate the appointment of a member of a Committee if the member:
- (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

510 Procedure of a Committee

- (1) The regulations may provide for:
- (a) matters relating to the operation of a Committee, including:
 - (i) procedures for convening meetings of the Committee; and
 - (ii) procedures for determining who is to preside at a meeting of the Committee; and
 - (iii) determining who may attend a meeting of the Committee; and
 - (iv) the constitution of a quorum for a meeting of the Committee; and
 - (v) procedures relating to a member's interest in matters being dealt with by the Committee; and
 - (vi) the way in which matters are to be resolved by the Committee; and
 - (b) the appointment and rights of a deputy of a member of a Committee.

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Part 19 Organisations

Division 3 Members and procedures of Committees

Section 510

- (2) The regulations may allow a Committee to determine a matter relating to the operation of the Committee for which the regulations may provide.
- (3) If there are no regulations in force, a Committee may operate in the way it determines.

Division 4—Advisory committees

511 Minister may establish advisory committees

- (1) The Minister may by written instrument establish an advisory committee to advise the Minister on specified matters relating to the administration of this Act.
- (2) However, the Minister must not specify that an advisory committee is to advise the Minister on the management of a jointly managed reserve.
- (3) The Minister is to determine in writing the composition of an advisory committee, including qualifications of its members.

512 Appointments

- (1) The Minister may appoint a person on a part-time basis to be a member of an advisory committee.
- (2) The Minister must appoint one of the members to chair the committee.

513 Members of advisory committees

The regulations may provide for the terms and conditions applicable to members of an advisory committee, including terms and conditions relating to:

- (a) term of office; and
- (b) remuneration; and
- (c) allowances; and
- (d) leave of absence; and
- (e) disclosure of interests; and
- (f) termination of membership.

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514 Committee procedure

- (1) An advisory committee may operate in the way it determines, subject to any regulations.
- (2) The regulations may provide for the operation and procedures of an advisory committee. The regulations may allow a committee to determine its own procedure on any matter.

Division 5—Director of National Parks

Subdivision A—Establishment, functions and powers

514A Continuation

The corporation sole that existed under section 15 of the *National Parks and Wildlife Conservation Act 1975* immediately before the commencement of this Act continues in existence as the Director of National Parks.

Note: Subject to section 514U, the *Public Governance, Performance and Accountability Act 2013* applies to the Director. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

514B Functions

- (1) The functions of the Director are:
 - (a) to administer, manage and control Commonwealth reserves and conservation zones; and
 - (b) to protect, conserve and manage biodiversity and heritage in Commonwealth reserves and conservation zones; and
 - (ba) to contribute to the protection, conservation and management of biodiversity and heritage in areas outside Commonwealth reserves and conservation zones; and
 - (c) to co-operate with any country in matters relating to the establishment and management of national parks and nature reserves in that country; and
 - (d) to provide, and assist in the provision of, training in the knowledge and skills relevant to the establishment and management of national parks and nature reserves; and
 - (e) to carry out alone or in co-operation with other institutions and persons, and to arrange for any other institution or person to carry out, research and investigations relevant to the establishment and management of Commonwealth reserves; and

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- (f) to make recommendations to the Minister in relation to the establishment and management of Commonwealth reserves; and
- (g) to administer the Australian National Parks Fund; and
- (h) any other functions conferred on the Director under this or any other Act; and
- (i) to do anything incidental or conducive to the performance of any of the functions mentioned in paragraphs (a) to (h) (inclusive).

Note 1: Section 514D sets out requirements relating to the performance of the Director's functions.

Note 2: The Minister may delegate additional functions to the Director under subsection 515(1).

- (2) The Director may perform any of the Director's functions in co-operation with a State, a self-governing Territory, an agency of a State or self-governing Territory or a Commonwealth agency.

514C Powers

- (1) The Director has power to do all things necessary or convenient to be done for or in connection with the performance of the Director's functions.
- (2) The Director's powers include, but are not limited to, the following powers:
 - (a) to enter into contracts; and
 - (b) to erect buildings and structures and carry on works; and
 - (c) to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Director; and
 - (d) to acquire, hold and dispose of real or personal property; and
 - (e) despite section 514D, obtain goods or services on credit from any person by the use of a credit card; and
 - (f) to accept gifts, devises and bequests made to the Director whether on trust or otherwise, and to act as trustee of moneys or other property vested in the Director upon trust.

Note: Section 514D sets out limits on the Director's powers.

514D Requirements relating to functions and powers

Ministerial directions

- (1) The Director must perform the Director's functions and exercise the Director's powers in accordance with any directions given by the Minister, unless this Act provides otherwise.

Consultation

- (2) The Director must consult and have regard to the views of the following persons in relation to the performance of the Director's functions and the exercise of the Director's powers in relation to a Commonwealth reserve or conservation zone:
 - (a) if the reserve or zone is wholly or partly in a State or self-governing Territory—the agency (if any) of the State or Territory responsible for managing national parks established under the law of the State or Territory;
 - (b) if the reserve or zone is wholly or partly in an area for which an Aboriginal Land Council has been established under the *Aboriginal Land Rights (Northern Territory) Act 1976*—the Chairperson of the Council;
 - (c) if the reserve is Booderee National Park—the Chairperson of the Wreck Bay Aboriginal Community Council.

Trust property

- (4) The Director must deal with any money or property vested in the Director on trust in accordance with the powers and duties of the Director as trustee, despite the other provisions of this Act.

Limits on contracts and leases

- (5) The Director must not:
 - (a) enter into a contract involving the payment or receipt of an amount more than:
 - (i) \$1,000,000; or

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- (ii) if the regulations prescribe a greater amount—that greater amount; or
- (b) take land (except indigenous people’s land) on lease for more than 10 years;
without the Minister’s approval.

No borrowing

- (6) The Director must not borrow money in the performance of the Director’s functions.

Subdivision B—Constitution of Director of National Parks

514E Constitution

- (1) The Director:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a seal; and
 - (c) may sue and be sued in its corporate name.
- (2) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Director appearing on a document; and
 - (b) presume that the document was duly sealed.

514F Appointment

- (1) A person is to be appointed as the Director by the Governor-General by written instrument.
- (2) Before the Governor-General appoints a person as the Director, the Minister must be satisfied that the person has qualifications and experience in connection with national parks or the conservation and management of biodiversity that make the person suitable for the appointment.
- (3) The appointment is on a full-time basis. However, a person appointed as the Director may also hold an office or be employed

in the Australian Public Service on a part-time basis, subject to this Division.

514G Acting appointments

- (1) The Minister may appoint a person to act as the Director:
 - (a) during a vacancy in the office of Director; or
 - (b) during any period, or during all periods, when the person appointed as the Director is absent from duty or from Australia, or is, for any reason, temporarily unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) A person acting as the Director is taken to constitute the corporation mentioned in section 514A while the person is acting.

Subdivision C—Terms and conditions of appointment

514H Term of office

The person appointed as the Director holds office for the period specified in the instrument of appointment. The period must not exceed 7 years.

514J Remuneration

- (1) The person appointed as the Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the person is to be paid the remuneration that is prescribed.
- (2) The person is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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514K Outside employment

The person appointed as the Director must not engage in paid employment outside the duties of the Director's office without the Minister's approval.

514M Leave of absence

- (1) The person appointed as the Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the person appointed as the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

514N Resignation

The person appointed as the Director may resign his or her appointment by giving the Governor-General a written resignation.

514P Termination

- (1) The Governor-General may terminate the appointment of a person as the Director for misbehaviour or physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of a person as the Director if:
 - (a) the person:
 - (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 person is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the person engages, except with the Minister's approval, in paid employment outside the duties of the office of Director.

Note: The appointment of a person as the Director may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

514Q Other terms and conditions

The person appointed as the Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

Subdivision D—Australian National Parks Fund

514R Australian National Parks Fund

The fund established by section 45 of the *National Parks and Wildlife Conservation Act 1975* continues in existence as the Australian National Parks Fund, vested in the Director.

514S Payments to Australian National Parks Fund

The following amounts are to be paid into the Australian National Parks Fund:

- (a) any money appropriated by the Parliament for the purposes of the Department and allocated by the Secretary for the management of Commonwealth reserves or conservation zones;
- (b) the proceeds of the sale of any property acquired out of money standing to the credit of the Fund;
- (c) any amounts paid to the Director in respect of leases, licences, permits and other authorities granted by the Director in relation to Commonwealth reserves or conservation zones;
- (d) any other amount paid by a person to the Director if:
 - (i) payment of the amount into the Fund would be consistent with the purposes for which the amount was paid; and

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- (ii) the Minister administering the *Public Governance, Performance and Accountability Act 2013* considers it appropriate that the amount should be paid into the Fund;
- (e) any charges paid under section 356A or section 390F;
- (f) any other money received by the Director in the performance of his or her functions.

514T Application of money

- (1) The money of the Australian National Parks Fund may be applied only:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Director in the performance of the Director's functions; and
 - (b) in payment of any remuneration, allowances and compensation payable under this Division or Division 4 of Part 15.
- (2) Subsection (1) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Fund.

Subdivision E—Accountability

514U Application of *Public Governance, Performance and Accountability Act 2013*

- (1) Sections 514A and 514E provide that the Director is a corporation. The *Public Governance, Performance and Accountability Act 2013* applies (subject to subsection (2) of this section) in relation to the corporation as if the person holding, or performing the duties of, the office of Director were an accountable authority of the corporation for the purposes of that Act.

- (2) To avoid doubt, the *Public Governance, Performance and Accountability Act 2013* applies to the Australian National Parks Fund as though the Fund were money held by the Director.

514V Extra matters to be included in annual report

The annual report prepared by the Director under and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must also include particulars of any directions given by the Minister under subsection 514D(1) of this Act during the period.

Subdivision F—Miscellaneous

514W Exemption from taxation

The income of the Australian National Parks Fund and the property and transactions of the Director are not subject to taxation under a law of the Commonwealth or of a State or Territory.

514X Changes in office of Director

An authority given, or a delegation or appointment made, by a person for the time being holding or acting in the office of Director continues in force despite the person ceasing to hold or act in that office, but may be revoked by a person later holding or acting in that office.

Section 514Y

Part 19A—Reconsideration of fees

514Y Applications for reconsideration of fee

- (1) This section applies if a fee is worked out by a person to whom a function or power is delegated under section 515.
- (2) If:
 - (a) a method prescribed by the regulations under subsection 520(4C) has been used to work out a fee; and
 - (b) the person required to pay the fee is dissatisfied with the way the method was used to work out the fee;the person may apply to the Secretary for the Secretary to reconsider the way the method was used to work out the fee.
- (3) The application must:
 - (a) be in a form prescribed by the regulations; and
 - (b) set out the reasons for the application.
- (4) The application must be made within 30 business days after the applicant is informed of the fee.
- (5) A person may apply only once in relation to a fee.

514YA Reconsideration of fee

- (1) Upon receiving an application for reconsideration of a fee, the Secretary must:
 - (a) reconsider the way the method was used to work out the fee; and
 - (b) either:
 - (i) confirm the fee; or
 - (ii) work out a new fee by using the method again.
- (2) The person who undertakes the reconsideration must be:
 - (a) the Secretary; or

Section 514YB

- (b) an employee in the Department who:
 - (i) was not involved in working out the fee; and
 - (ii) occupies a position that is senior to that occupied by any person involved in working out the fee.
- (3) The Secretary must give to the applicant a written notice that:
 - (a) states the outcome of the reconsideration; and
 - (b) gives reasons for that outcome.

514YB Deadline for reconsideration

The Secretary must undertake a reconsideration of a fee within 30 business days after receiving an application for reconsideration.

Part 20—Delegation

515 Delegation

- (1) The Minister may, by signed instrument, delegate all or any of his or her powers or functions under this Act to an officer or employee in the Department or to the Director. The delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Minister.
- (2) The Secretary may, by signed instrument, delegate all or any of his or her powers or functions under this Act to an officer or employee in the Department or to the Director. The delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Secretary.
- (3) The Director may, by sealed instrument, delegate all or any of the Director's powers or functions under this Act to a person. The delegate is, in the exercise of a delegated power or function, subject to the directions of the Director.

515AA Delegation by Minister in relation to Great Barrier Reef Marine Park

- (1) The Minister may, by signed instrument, delegate any or all of his or her powers or functions to which subsection (2) applies to:
 - (a) the Great Barrier Reef Marine Park Authority; or
 - (b) the Chief Executive Officer of the Great Barrier Reef Marine Park Authority; or
 - (c) a member of the staff of the Great Barrier Reef Marine Park Authority.
- (2) For the purposes of subsection (1), this subsection applies to a power or function if:
 - (a) the exercise of the power or performance of the function relates (including in a way described in subsection 7(1A) of

Section 515AB

the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park; or

- (b) the exercise of the power or performance of the function is incidental to a matter that relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park.

Note: If a power or function is delegated to the Great Barrier Reef Marine Park Authority under this section, the Authority may sub-delegate the power or function under section 47 of the *Great Barrier Reef Marine Park Act 1975*.

- (3) Despite subsection (1), the Minister must not delegate under that subsection a power or function under Part 17 (Enforcement) to a person mentioned in paragraph (1)(c) unless the person:
- (a) is an SES employee or an acting SES employee; or
 - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (4) In exercising a power or performing a function under a delegation, the delegate must comply with any directions of the Minister.
- (5) This section does not limit the Minister's power of delegation under section 515.

515AB Delegation by Secretary in relation to Great Barrier Reef Marine Park

- (1) The Secretary may, by signed instrument, delegate any or all of his or her powers or functions to which subsection (2) applies to:
- (a) the Great Barrier Reef Marine Park Authority; or
 - (b) the Chief Executive Officer of the Great Barrier Reef Marine Park Authority; or
 - (c) a member of the staff of the Great Barrier Reef Marine Park Authority.
- (2) For the purposes of subsection (1), this subsection applies to a power or function if:

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- (a) the exercise of the power or performance of the function relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park; or
- (b) the exercise of the power or performance of the function is incidental to a matter that relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park.

Note: If a power or function is delegated to the Great Barrier Reef Marine Park Authority under this section, the Authority may sub-delegate the power or function under section 47 of the *Great Barrier Reef Marine Park Act 1975*.

- (3) Despite subsection (1), the Secretary must not delegate under that subsection a power or function under Part 17 (Enforcement) to a person mentioned in paragraph (1)(c) unless the person:
 - (a) is an SES employee or an acting SES employee; or
 - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (4) In exercising a power or performing a function under a delegation, the delegate must comply with any directions of the Secretary.
- (5) This section does not limit the Secretary's power of delegation under section 515.

Part 20A—Publication of information on the internet

515A Publication of information on the internet

Without limiting the operation of section 170A, the Secretary must publish on the internet each week a list of:

- (a) all permits issued or granted under this Act in the immediately preceding week; and
- (b) all matters required by this Act to be made available to the public in the immediately preceding week.

Part 21—Reporting

Division 1—Annual reports

516 Annual report on operation of Act

- (1) The Secretary must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operation of this Act (except Divisions 4 and 5 of Part 15 and Division 5 of Part 19) for the 12 months ending on that 30 June.

Note 1: Other provisions of this Act require the report to include certain matters.

Note 2: Section 34C of the *Acts Interpretation Act 1901* sets out rules about the time within which annual reports must be given to the Minister.

- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

516A Annual reports to deal with environmental matters

Annual reports for Commonwealth entities

- (1) The accountable authority of a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) must ensure that an annual report prepared under section 46 of that Act complies with subsection (6) of this section.

Annual reports of Commonwealth companies

- (4) The directors of a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that is a Commonwealth agency must ensure that the documents given to the responsible Minister (within the meaning of that Act) under section 97 of that Act include a report complying with subsection (6) of this section.

Annual reports of other Commonwealth agencies

- (5) A Commonwealth agency that is:
- (a) established by or under a law of the Commonwealth; and
 - (b) required by law to give the Minister responsible for it an annual report; and
 - (c) not described in subsection (1) or (4);
- must ensure that the annual report complies with subsection (6).

Content of report

- (6) A report described in subsection (1), (4) or (5) relating to a body or person (the **reporter**) for a period must:
- (a) include a report on how the activities of, and the administration (if any) of legislation by, the reporter during the period accorded with the principles of ecologically sustainable development; and
 - (b) identify how the outcomes (if any) specified for the reporter in an Appropriations Act relating to the period contribute to ecologically sustainable development; and
 - (c) document the effect of the reporter's activities on the environment; and
 - (d) identify any measures the reporter is taking to minimise the impact of activities by the reporter on the environment; and
 - (e) identify the mechanisms (if any) for reviewing and increasing the effectiveness of those measures.

Note: The *Auditor-General Act 1997* lets the Auditor-General audit a reporter's compliance with these requirements.

- (7) In subsection (6):

activities includes:

- (a) developing and implementing policies, plans, programs and legislation; and
- (b) the operations of a department, authority, company or agency referred to in this section.

Division 2—State of the environment reports

516B State of the environment reports

- (1) The Minister must cause a report on the environment in the Australian jurisdiction to be prepared in accordance with the regulations (if any) every 5 years. The first report must be prepared by 31 December 2001.
- (2) The report must deal with the matters prescribed by the regulations.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

Chapter 7—Miscellaneous

Part 22—Miscellaneous

517 Determinations of species

- (1) The Minister may, by legislative instrument, determine that a distinct population of biological entities is a species for the purposes of this Act.
- (3) A determination does not apply for the purposes of:
 - (a) Part 13A; or
 - (b) the definitions of *CITES I species*, *CITES II species* and *CITES III species* in section 528.
- (4) Subsection (3) does not affect the meaning of the expression *listed threatened species* when used in Part 13A.

517A Exemption for activities that might harm particular species introduced into particular areas

Provisions for which this section applies

- (1) This section applies for the purposes of the provisions of the following sections:
 - (a) sections 18 and 18A;
 - (b) sections 20 and 20A;
 - (c) sections 196 to 196E;
 - (d) section 207B;
 - (e) sections 211 to 211E;
 - (f) sections 254 to 254E.

Minister may exempt carrying on of activities

- (2) The Minister may, in writing, exempt from the provisions mentioned in subsection (1) the carrying on of particular activities

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by particular persons (or a particular class of persons), in a particular area, that will or may have an impact on a particular species or its habitat. The species must be a listed threatened species, a listed migratory species or a listed marine species.

Matters Minister must be satisfied of

- (3) An exemption under subsection (2) may only be given if the Minister is satisfied that:
- (a) members of the species have been, or are proposed to be, introduced into the area by or on behalf of a person (whether the person is a Commonwealth agency or otherwise); and
 - (b) the purpose of the introduction, or proposed introduction, of the members of the species into the area was or is to make a contribution to the conservation of the species; and
 - (c) carrying on the activities in the area will or may have an impact on members of the species, or their habitat, but any such impact would be incidental to, and not the purpose of, the activities; and
 - (d) if the person referred to in paragraph (a) is not the person who is or will be primarily responsible for carrying out the activities—the person who is or will be so responsible has agreed to the introduction of the members of the species into the area.
- (4) For the purpose of deciding whether to give an exemption under subsection (2), the Minister may (subject to subsection (3)):
- (a) have regard to any matters the Minister considers appropriate; and
 - (b) seek, and have regard to, information or advice from any source.

What must be specified in an exemption

- (5) An exemption under subsection (2) must:
- (a) specify the species to which it applies; and
 - (b) specify the area to which it applies; and
 - (c) specify the activities to which it applies; and
-

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- (d) specify the persons (or classes of persons) who, if they engage in actions that are within the activities, are covered by the exemption.

When an exemption comes into force

- (6) An exemption under subsection (2) comes into force on the day the Minister gives the exemption, or on a later day specified in the exemption.

Actions covered by exemption do not contravene provisions for which this section applies

- (7) While an exemption under subsection (2) is in force, an action of a person does not contravene any of the provisions mentioned in subsection (1), in so far as the provisions apply in relation to a member of the species specified as mentioned in paragraph (5)(a), if:
 - (a) the action occurs in the area specified as mentioned in paragraph (5)(b); and
 - (b) the action is within the activities specified as mentioned in paragraph (5)(c); and
 - (c) the person is a person, or is a member of a class of persons, specified as mentioned in paragraph (5)(d).

Note 1: If the action also has an impact on a member of another species that is not covered by an exemption under subsection (2), subsection (7) does not affect the question whether the action may contravene a provision mentioned in subsection (1), in so far as the provision applies to the other species.

Note 2: In a prosecution for an offence against a provision mentioned in subsection (1), the defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exemption is not a legislative instrument

- (8) An exemption under subsection (2) is not a legislative instrument.

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518 Non-compliance with time limits

- (1) Anything done by the Commonwealth, the Minister or the Secretary under this Act or the regulations is not invalid merely because it was not done within the period required by this Act or the regulations.
- (2) If, during a financial year, one or more things required to be done under this Act or the regulations were not done within the period required by this Act or the regulations, the Minister must:
 - (a) cause to be prepared a statement setting out the reasons why each of those things was not done within the period required by this Act or the regulations; and
 - (b) cause a copy of the statement to be laid before each House of the Parliament as soon as practicable after the end of the financial year.
- (3) Subsection (1) does not reduce or remove an obligation under this Act or the regulations to do a thing within a particular period.

519 Compensation for acquisition of property

When compensation is necessary

- (1) If, apart from this section, the operation of this Act would result in an acquisition of property from a person that would be invalid because of paragraph 51(xxxi) of the Constitution (which deals with acquisition of property on just terms) the Commonwealth must pay the person a reasonable amount of compensation.

Definition

- (2) In this Act:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Court can decide amount of compensation

- (3) If the Commonwealth and the person do not agree on the amount of compensation to be paid, the person may apply to the Federal Court for the recovery from the Commonwealth of a reasonable amount of compensation fixed by the Court.

Other compensation to be taken into account

- (4) In assessing compensation payable by the Commonwealth, the Court must take into account any other compensation or remedy arising out of the same event or situation.

520 Regulations

- (1) The Governor-General may make regulations prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties for offences against the regulations. A penalty must not be more than 50 penalty units.
- (3) Regulations may be made for and in relation to giving effect to any of the following agreements:
- (a) the Apia Convention;
 - (b) the Convention for the Protection of the Natural Resources and Environment of the South Pacific (the SPREP Convention) signed at Noumea on 24 November 1986;
 - (c) the Bonn Convention;
 - (d) CAMBA;
 - (e) JAMBA;
 - (f) an agreement between the Commonwealth and one or more other countries relating to whales;
 - (g) the World Heritage Convention;
 - (h) the Ramsar Convention;
 - (i) the Biodiversity Convention;

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- (j) CITES;
 - (k) the Framework Convention on Climate Change done at New York on 9 May 1992.
- (4) Regulations made in relation to an agreement that has not entered into force for Australia are not to come into operation on a day earlier than the day on which the agreement enters into force for Australia.
- (4A) The regulations may prescribe fees that are payable for services the Minister or Secretary provides in performing functions, or exercising powers, under this Act or the regulations.
- (4B) A fee prescribed by the regulations is payable to the Commonwealth.
- (4C) Regulations prescribing fees may also:
- (a) prescribe fees in respect of:
 - (i) a particular class of decision; or
 - (ii) a particular class of action; or
 - (iii) a particular class of person; and
 - (b) prescribe 2 or more fees for the same matter; and
 - (c) prescribe a method for working out a fee; and
 - (d) prescribe a method for working out the refund of part of a fee; and
 - (e) deal with other matters, including the following:
 - (i) specifying the way in which, and times at which, a fee is to be paid;
 - (ii) specifying the fees that must be paid, and by whom, in the event of a transfer under section 145B or a change of person proposing to take an action under section 156F;
 - (iii) the consequences of failure to pay a specified fee;
 - (iv) the circumstances in which the Minister may waive a fee;
 - (v) the circumstances in which a person is exempt from paying a specified fee;

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- (vi) the circumstances in which a fee may be refunded, in whole or in part.
- (5) Subsections (3), (4A) and (4C) do not limit subsection (1).
- (6) The regulations may prohibit or regulate the export from an external Territory to Australia or another external Territory of:
 - (a) CITES specimens; and
 - (b) regulated native specimens.
- (7) The regulations may prohibit or regulate the import into an external Territory from Australia or another external Territory of:
 - (a) CITES specimens; and
 - (b) regulated live specimens.
- (8) The regulations may prohibit or regulate the possession in an external Territory of:
 - (a) specimens that have been imported into that Territory in contravention of regulations made for the purposes of subsection (7); or
 - (b) the progeny of such specimens.

520A Statements about the application of the Act

- (1) The Minister may issue, in writing, statements about the way in which the Minister considers that provisions of the Act or the regulations apply or would apply to:
 - (a) persons generally or a class of persons; or
 - (b) persons generally or a class of persons in relation to particular circumstances.
- (2) A statement made under subsection (1) is not a legislative instrument.

521 Fees and charges must not be taxes

A fee or charge provided for by or under this Act, and whether prescribed by the regulations or not, must be reasonably related to

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the expenses incurred or to be incurred by the Commonwealth in relation to the matters to which the fee or charge relates and must not be such as to amount to taxation.

521A Time does not run if all or part of fee remains unpaid

- (1) If:
- (a) one or more fees are payable in respect of a service the Minister or Secretary provides in performing functions, or exercising powers, under this Act or the regulations; and
 - (b) a provision of this Act or the regulations:
 - (i) requires or allows the Minister or Secretary to do a thing relating to the service; or
 - (ii) requires or allows the Minister or Secretary to do a thing relating to the service within a particular period; and
 - (c) all of part of a fee relating to the service remains unpaid;
- then:
- (d) if subparagraph (b)(i) applies—the Minister or Secretary need not do the thing until all of the required fee is paid; and
 - (e) if subparagraph (b)(ii) applies and the period has not begun—the period does not begin until all of the required fee is paid; and
 - (f) if subparagraph (b)(ii) applies and the period has begun—the period stops until all of the required fee is paid and, when paid, begins again for the balance of the period.
- (2) For the purposes of paragraphs (1)(e) and (f), the day that all of the required fee is paid is not to be counted in the relevant period.

522 Financial assistance etc. to be paid out of appropriated money

Payment of amounts of financial assistance under this Act, and of any amounts that the Commonwealth is required to pay to a person under this Act or an agreement made under this Act, are to be made out of money appropriated by the Parliament for the purpose.

522A Review of operation of Act

- (1) The Minister must cause independent reviews to be undertaken by a person or body of:
 - (a) the operation of this Act; and
 - (b) the extent to which the objects of this Act have been achieved.
- (2) The first review must be undertaken within 10 years of the commencement of this Act. Later reviews must be undertaken at intervals of not more than 10 years.
- (3) The person or body undertaking a review must give a report of the review to the Minister.
- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

Chapter 8—Definitions

Part 23—Definitions

Division 1—Some definitions relating to particular topics

Subdivision A—Actions

523 *Actions*

- (1) Subject to this Subdivision, **action** includes:
 - (a) a project; and
 - (b) a development; and
 - (c) an undertaking; and
 - (d) an activity or series of activities; and
 - (e) an alteration of any of the things mentioned in paragraph (a), (b), (c) or (d).

524 **Things that are not actions**

- (1) This section applies to a decision by each of the following kinds of person (**government body**):
 - (a) the Commonwealth;
 - (b) a Commonwealth agency;
 - (c) a State;
 - (d) a self-governing Territory;
 - (e) an agency of a State or self-governing Territory;
 - (f) an authority established by a law applying in a Territory that is not a self-governing Territory.
- (2) A decision by a government body to grant a governmental authorisation (however described) for another person to take an action is not an **action**.

- (3) To avoid doubt, a decision by the Commonwealth or a Commonwealth agency to grant a governmental authorisation under one of the following Acts is not an **action**:
- (a) the *Customs Act 1901*;
 - (b) the *Export Control Act 1982*;
 - (c) the *Export Finance and Insurance Corporation Act 1991*;
 - (d) the *Fisheries Management Act 1991*;
 - (e) the *Foreign Acquisitions and Takeovers Act 1975*;
 - (f) the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
 - (g) the *Biosecurity Act 2015*;
 - (h) the *Competition and Consumer Act 2010*.

This subsection does not limit this section.

524A Provision of grant funding is not an action

Provision of funding by way of a grant by one of the following is not an **action**:

- (a) the Commonwealth;
- (b) a Commonwealth agency;
- (c) a State;
- (d) a self-governing Territory;
- (e) an agency of a State or self-governing Territory;
- (f) an authority established by a law applying in a Territory that is not a self-governing Territory.

Subdivision B—Areas

525 Commonwealth areas

What is a Commonwealth area?

- (1) Each of the following, and any part of it, is a **Commonwealth area**:
- (a) land owned by the Commonwealth or a Commonwealth agency and airspace over the land;

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- (b) an area of land held under lease by the Commonwealth or a Commonwealth agency and airspace over the land;
- (c) land in:
 - (i) an external Territory; or
 - (ii) the Jervis Bay Territory;and airspace over the land;
- (d) the coastal sea of Australia or an external Territory;
- (e) the continental shelf, and the waters and airspace over the continental shelf;
- (f) the waters of the exclusive economic zone, the seabed under those waters and the airspace above those waters;
- (g) any other area of land, sea or seabed that is included in a Commonwealth reserve.

Territory Land in ACT is not a Commonwealth area

- (2) Despite paragraph (1)(a), an area of land that is Territory Land, within the meaning of the *Australian Capital Territory (Planning and Land Management) Act 1988* is not a **Commonwealth area** merely because of that paragraph, unless it is held under lease by the Commonwealth or a Commonwealth agency.

Coastal waters of States and NT are not Commonwealth areas

- (3) Despite paragraphs (1)(d), (e) and (f), none of the following areas (or parts of them) are **Commonwealth areas**:
 - (a) the seabed vested in a State under section 4 of the *Coastal Waters (State Title) Act 1980*; and
 - (b) the seabed vested in the Northern Territory under section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
 - (c) the subsoil under the seabed described in paragraph (a) or (b); and
 - (d) any water and airspace over seabed described in paragraph (a) or (b).

Subdivision C—Entities

526 Subsidiaries of bodies corporate

The question whether a body corporate is a subsidiary of a body or company is to be determined in the same way as the question whether a body corporate is a subsidiary of another body corporate is determined for the purposes of the *Corporations Act 2001*.

Subdivision D—Criminal law

527 Convictions

A reference in this Act to a conviction of a person of an offence includes a reference to making an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

Subdivision E—Specimens

527A Specimens

- (1) For the purposes of this Act, a *specimen* is:
 - (a) an animal; or
 - (b) animal reproductive material; or
 - (c) the skin, feathers, horns, shell or any other part of an animal;
or
 - (d) any article wholly produced by or from, or otherwise wholly derived from, a single animal; or
 - (e) a plant; or
 - (f) plant reproductive material; or
 - (g) any part of a plant; or
 - (h) any article wholly produced by or from, or otherwise wholly derived from, a single plant.
- (2) However, a fossil, or a mineralised deposit, is not a *specimen* for the purposes of this Act.

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- (3) In any provision of this Act, references to a *specimen* are to be read as including references to an article that consists of, or is derived from:
- (a) a specimen and material other than a specimen; or
 - (b) 2 or more specimens; or
 - (c) 2 or more specimens and material other than a specimen.
- (4) If an article consists of, or is derived from, 2 or more specimens, either with or without any material other than a specimen, then this Act applies to and in relation to that article separately in so far as it consists of, or is derived from, each of those specimens.
- (5) For the purposes of this Act:
- (a) if a live animal (other than animal reproductive material) that was bred in captivity dies, the dead animal and specimens derived from the dead animal are taken to be specimens derived from that live animal; and
 - (b) if a live plant (other than plant reproductive material) that was artificially propagated dies, the dead plant and specimens derived from the dead plant are taken to be specimens derived from that live plant; and
 - (c) a specimen covered by paragraph (1)(b), (c) or (d) is taken to be derived from the animal concerned; and
 - (d) a specimen covered by paragraph (1)(f), (g) or (h) is taken to be derived from the plant concerned; and
 - (e) if a specimen is derived from an animal that belongs to a particular species or taxon, the specimen is taken to belong to that species or taxon; and
 - (f) if a specimen is derived from a plant that belongs to a particular species or taxon, the specimen is taken to belong to that species or taxon.
- (6) In this section:
- this Act* does not include sections 356 and 390E.

527B Breeding in captivity

For the purposes of this Act, a live animal of a particular kind is taken to have been *bred in captivity* if, and only if, it was bred in circumstances declared by the regulations to be circumstances the breeding in which of:

- (a) any live animal; or
 - (b) any live animal of that kind; or
 - (c) any live animal included in a class of live animals that includes live animals of that kind;
- would constitute breeding in captivity.

527C Artificial propagation

For the purposes of this Act, a live plant of a particular kind is taken to have been *artificially propagated* if, and only if, it was propagated in circumstances declared by the regulations to be circumstances the propagation in which of:

- (a) any live plant; or
 - (b) any live plant of that kind; or
 - (c) any live plant included in a class of live plants that includes live plants of that kind;
- would constitute artificial propagation.

527D Things represented to be CITES specimens

- (1) For the purposes of this Act, if a thing is represented by an accompanying document, the package or a mark or label, or from any other circumstances, to be:
 - (a) the skin, feathers, horns, shell or any other part of a CITES listed animal; or
 - (b) part of a CITES listed plant; or
 - (c) reproductive material from a CITES listed animal or a CITES listed plant; or
 - (d) an article produced by or from, or derived from, one or more CITES listed animals or one or more CITES listed plants, whether with or without any other material;

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then the thing is taken to be a CITES specimen.

Note: This subsection has the effect (among other things) of widening the scope of sections 303CC, 303CD and 303GN, which are offence provisions relating to the export, import and possession of specimens.

(2) The Minister must not issue a permit under section 303CG authorising the export or import of a thing that is taken under subsection (1) to be a CITES specimen unless the thing is a CITES specimen apart from subsection (1).

(3) In this section:

CITES listed animal means an animal of a species included in Appendix I, II or III to CITES.

CITES listed plant means a plant of a species included in Appendix I, II or III to CITES.

export has the same meaning as in Part 13A.

import has the same meaning as in Part 13A.

Subdivision F—Impacts

527E Meaning of *impact*

- (1) For the purposes of this Act, an event or circumstance is an ***impact*** of an action taken by a person if:
- (a) the event or circumstance is a direct consequence of the action; or
 - (b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.
- (2) For the purposes of paragraph (1)(b), if:
- (a) a person (the ***primary person***) takes an action (the ***primary action***); and
 - (b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and

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- (c) the secondary action is not taken at the direction or request of the primary person; and
 - (d) an event or circumstance is a consequence of the secondary action;
- then that event or circumstance is an *impact* of the primary action only if:
- (e) the primary action facilitates, to a major extent, the secondary action; and
 - (f) the secondary action is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the primary action; and
 - (g) the event or circumstance is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the secondary action.

Division 2—General list of definitions

528 Definitions

In this Act, unless the contrary intention appears:

accredited authorisation process has the meaning given by subsection 33(2A).

accredited management arrangement has the meaning given by subsection 33(2).

acquisition of property has the meaning given by subsection 519(2).

action has the meaning given by Subdivision A of Division 1 of Part 23.

action management plan, in relation to an action, means a plan for managing the impacts of the action on a matter protected by a provision of Part 3, such as a plan for conserving habitat of a species.

agency of a State or self-governing Territory means:

- (a) a Minister of the State or Territory; or
- (b) a body corporate established for a public purpose by a law of the State or Territory; or
- (c) a body corporate established by:
 - (i) the Governor of the State; or
 - (ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or
 - (iii) if the Territory is the Northern Territory—the Administrator of the Territory; or
 - (iv) a Minister of the State or Territory;otherwise than by or under a law of the State or Territory; or

- (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the State or Territory; or
- (e) a body corporate that is a subsidiary of:
 - (i) a body or company referred to in paragraph (b), (c) or (d); or
 - (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be an agency of the State or Territory for the purposes of this definition; or
- (f) a person holding, or performing the duties of:
 - (i) an office established by or under a law of the State or Territory (except a judicial office or an office of member of a tribunal); or
 - (ii) an appointment made under a law of the State or Territory (except appointment to a judicial office or an office of member of a tribunal); or
- (g) a person holding, or performing the duties of, an appointment made by:
 - (i) the Governor of the State; or
 - (ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or
 - (iii) if the Territory is the Northern Territory—the Administrator of the Territory; or
 - (iv) a Minister of the State or Territory;otherwise than by or under a law of the State or Territory.

aggravated offence:

- (a) in Subdivision B of Division 1 of Part 13—has the meaning given by section 196F; and
- (b) in Subdivision B of Division 2 of Part 13—has the meaning given by section 211F; and
- (c) in Subdivision B of Division 4 of Part 13—has the meaning given by section 254F.

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aircraft means an apparatus that can derive support in the atmosphere from the reactions of the air.

animal means any member, alive or dead, of the animal kingdom (other than a human being).

animal reproductive material means:

- (a) an embryo, an egg or sperm of an animal; or
- (b) any other part, or product, of an animal from which another animal could be produced.

Antarctic has the same meaning as in the *Antarctic Treaty (Environment Protection) Act 1980*.

Apia Convention means the Convention on Conservation of Nature in the South Pacific, done at Apia, Western Samoa, on 12 June 1976, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1990 No. 41.

approved conservation advice has the meaning given by subsection 266B(2).

article includes a substance or a mixture of substances.

artificially propagated, in relation to a plant or plant reproductive material, has the meaning given by section 527C.

assess an action includes assess the impacts that the action:

- (a) has or will have; or
- (b) is likely to have.

assessment report has the meaning given by subsection 130(2).

Australian aircraft has the meaning given by subsection 5(5).

Australian Biosphere reserve management principles has the meaning given by section 340.

Australian Heritage Council means the body established by the *Australian Heritage Council Act 2003*.

Australian IUCN reserve management principles has the meaning given by subsection 348(1).

Australian jurisdiction has the meaning given by subsection 5(5).

Australian national has the meaning given by subsection 5(5).

Australian permanent resident has the meaning given by subsection 5(5).

Australian Ramsar management principles has the meaning given by section 335.

Australian vessel has the meaning given by subsection 5(5).

Australian Whale Sanctuary has the meaning given by subsection 225(2).

Australian World Heritage management principles has the meaning given by section 323.

authorisation process means a process set out in a law of the Commonwealth or a State or Territory under which actions are authorised.

authorised officer means:

- (a) a warden; or
- (b) an inspector.

baggage has the meaning given by section 443.

bilateral agreement has the meaning given by subsection 45(2).

bilaterally accredited authorisation process has the meaning given by subsection 46(2A).

bilaterally accredited management arrangement has the meaning given by subsection 46(2).

biodiversity means the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes:

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- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

Biodiversity Convention means the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992, as amended and in force for Australia from time to time.

Note: The English text of this Convention is set out in Australian Treaty Series 1993 No. 32.

biological resources includes genetic resources, organisms, parts of organisms, populations and any other biotic component of an ecosystem with actual or potential use or value for humanity.

bioregional assessment, in relation to an area, means the scientific analysis of the ecology, hydrology and geology of the area for the purpose of assessing the potential direct and indirect impacts of coal seam gas development or large coal mining development on water resources in the area, including any impacts of associated salt production and/or salinity.

bioregional plan means a bioregional plan for a bioregion as mentioned in section 176.

Biosphere reserve has the meaning given by section 337.

Board means a Board established under section 377.

Bonn Convention means the Convention on the Conservation of Migratory Species of Wild Animals done at Bonn on 23 June 1979, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1991 No. 32.

bred in captivity, in relation to an animal or animal reproductive material, has the meaning given by section 527B.

CAMBA means the Agreement between the Government of Australia and the Government of the People's Republic of China for the protection of Migratory Birds and their Environment done

at Canberra on 20 October 1986, as amended and in force for Australia from time to time.

Note: The English text of the Agreement is set out in Australian Treaty Series 1988 No. 22.

cetacean means a member of the sub-order Mysticeti or Odontoceti of the Order Cetacea, and includes:

- (a) a part of such a member; and
- (b) any animal reproductive material of such a member, or any part of such reproductive material; and
- (c) any product derived from such a member; and
- (d) the whole or part of the dead body of such a member; and
- (e) any product derived from the dead body, or part of the dead body, of such a member.

CITES means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington on 3 March 1973, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1976 No. 29.

CITES I species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix I to CITES.

CITES I specimen means a specimen that belongs to a CITES I species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES II species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix II to CITES.

CITES II specimen means a specimen that belongs to a CITES II species, where there is a notation in the list referred to in section 303CA that describes the specimen.

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CITES III species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix III to CITES.

CITES III specimen means a specimen that belongs to a CITES III species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES specimen means:

- (a) a CITES I specimen; or
- (b) a CITES II specimen; or
- (c) a CITES III specimen.

civil penalty provision has the meaning given by section 482.

coal seam gas development means any activity involving coal seam gas extraction that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

- (a) in its own right; or
- (b) when considered with other developments, whether past, present or reasonably foreseeable developments.

coastal sea of Australia or an external Territory has the same meaning as in subsection 15B(4) of the *Acts Interpretation Act 1901*.

coastal waters of a State or the Northern Territory has the meaning given by section 227.

commercial fishing activity has the meaning given by subsection 390SC(1A).

commissioner means a person holding an appointment under paragraph 107(1)(a).

Commonwealth agency means:

- (a) a Minister; or
- (b) a body corporate established for a public purpose by a law of the Commonwealth; or

- (c) a body corporate established by a Minister otherwise than under a law of the Commonwealth; or
 - (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the Commonwealth; or
 - (e) a body corporate that is a subsidiary of:
 - (i) a body or company referred to in paragraph (b), (c) or (d); or
 - (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be a Commonwealth agency for the purposes of this definition; or
 - (f) a person holding, or performing the duties of:
 - (i) an office established by or under a law of the Commonwealth (except a judicial office or office of member of a tribunal); or
 - (ii) an appointment made under a law of the Commonwealth (except an appointment to a judicial office or office of member of a tribunal); or
 - (g) a person holding, or performing the duties of, an appointment made by the Governor-General, or by a Minister, otherwise than under a law of the Commonwealth;
- but does not include:
- (h) a person holding an office established by or under any of the following Acts, or holding an appointment made under any of them:
 - (i) the *Northern Territory (Self-Government) Act 1978*;
 - (ii) the *Norfolk Island Act 1979*;
 - (iii) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (i) any of the following:
 - (i) an Aboriginal Land Trust, or an Aboriginal Land Council, established under the *Aboriginal Land Rights (Northern Territory) Act 1976*;

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- (ii) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
- (iii) the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; or
- (j) a company prescribed by the regulations for the purposes of this paragraph.

Commonwealth aircraft has the meaning given by section 403.

Commonwealth area has the meaning given by section 525.

Commonwealth Heritage criteria has the meaning given by subsection 341D(1).

Commonwealth Heritage List means the list referred to in section 341C.

Commonwealth Heritage management principles has the meaning given by section 341Y.

Commonwealth Heritage place has the meaning given by subsection 341C(3).

Commonwealth Heritage value has the meaning given by section 341D.

Commonwealth land has the meaning given by section 27.

Commonwealth marine area has the meaning given by section 24.

Commonwealth reserve means a reserve declared under Division 4 of Part 15.

Commonwealth ship has the meaning given by section 403.

components of biodiversity has the meaning given by subsection 171(3).

conservation agreement means an agreement made under section 305.

conservation dependent: a native species may be included in the **conservation dependent** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

conservation dependent species means a listed threatened species that is included in the conservation dependent category of the list referred to in section 178.

conservation order means an order made under section 464 (with variations (if any) under section 466 or 469).

conservation zone means a Commonwealth area that is declared to be a conservation zone under Division 5 of Part 15.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

continental shelf means:

- (a) the continental shelf (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories); or
- (b) the Greater Sunrise special regime area.

continuation of a use of land, sea or seabed has the meaning given by section 43B.

control: a Commonwealth agency **controls** a place only if the agency has rights (whether arising under a law, lease, licence or otherwise) to:

- (a) occupy or use the place; and
- (b) take actions in relation to the place that could potentially have an impact on heritage values that the place may have.

controlled action has the meaning given by section 67.

controlling provision has the meaning given by section 67.

convict a person of an offence has a meaning affected by section 527.

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copy, when used in relation to a warrant issued under section 409 or 416 (or a form of warrant completed under subsection 409A(6) or 416(6)), includes:

- (a) a copy sent by fax or other electronic means; or
- (b) a copy of a copy so sent.

country includes a place that is a territory, dependency or colony (however described) of a foreign country.

critical habitat for a listed threatened species or a listed threatened ecological community has the meaning given by subsection 207A(4).

critically endangered:

- (a) a native species may be included in the **critically endangered** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the **critically endangered** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

daily newspaper means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days.

declaration affected person has the meaning given by subsection 390SE(3).

declared commercial fishing activity has the meaning given by subsection 390SC(1).

declared Ramsar wetland has the meaning given by section 17.

declared State or Territory means a State or self-governing Territory that is declared by the Minister under section 505E.

declared World Heritage property has the meaning given by section 13.

designated proponent of an action means the person designated under Division 2 of Part 7 as the proponent of the action.

directed environmental audit has the meaning given by subsection 460(4).

Director means the Director of National Parks referred to in section 514A.

Director of Biosecurity has the same meaning as in the *Biosecurity Act 2015*.

dory means:

- (a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a law of the Commonwealth, a State or a Territory authorising the vessel to be used in association with a primary commercial fishing vessel; or
- (b) a vessel that is used in association with a primary commercial fishing vessel.

Note: A dory might also be known as a tender commercial fishing vessel.

ecological character has the meaning given by subsection 16(3).

ecological community means the extent in nature in the Australian jurisdiction of an assemblage of native species that:

- (a) inhabits a particular area in nature; and
- (b) meets the additional criteria specified in the regulations (if any) made for the purposes of this definition.

ecologically sustainable use of natural resources means use of the natural resources within their capacity to sustain natural processes while maintaining the life-support systems of nature and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the needs and aspirations of future generations.

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ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

eligible seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

endangered:

- (a) a native species may be included in the **endangered** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the **endangered** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

environmental authorisation has the meaning given by section 43A.

environmental authority has the meaning given by subsection 458(4).

environmental law means:

- (a) this Act; or
- (b) the regulations; or
- (c) the *Great Barrier Reef Marine Park Act 1975*; or
- (d) regulations made under the *Great Barrier Reef Marine Park Act 1975*.

environmental penalty provision means:

- (a) a civil penalty provision under this Act; or
- (b) a civil penalty provision under the *Great Barrier Reef Marine Park Act 1975*.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

evidential material has the meaning given by subsection 406(2).

exclusive economic zone means the exclusive economic zone (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

executing officer, in relation to a warrant, means:

- (a) the authorised officer named in the warrant as being responsible for executing the warrant; or
- (b) if that authorised officer does not intend to be present at the execution of the warrant—another authorised officer whose name has been written in the warrant by the authorised officer so named; or
- (c) another authorised officer whose name has been written in the warrant by the authorised officer last named in the warrant.

executive officer of a body corporate has the meaning given by section 493.

extinct: a native species may be included in the ***extinct*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

extinct in the wild: a native species may be included in the ***extinct in the wild*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

Federal Court means the Federal Court of Australia.

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Federal Register of Legislation means the Federal Register of Legislation established under the *Legislation Act 2003*.

fish has the same meaning as in the *Fisheries Management Act 1991*.

Fisheries Minister means the Minister administering the *Fisheries Management Act 1991*.

fishing has the same meaning as in the *Fisheries Management Act 1991*.

fishing activity has the meaning given by subsection 390SC(2).

fishing concession has the same meaning as in the *Fisheries Management Act 1991*.

foreign whaling vessel has the meaning given by subsection 236(5).

frisk search has the meaning given by subsection 413(3).

genetic resources means any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential value for humanity.

goods has the meaning given by section 443.

Great Barrier Reef Marine Park means the Great Barrier Reef Marine Park established under the *Great Barrier Reef Marine Park Act 1975*.

Great Barrier Reef Marine Park Authority means the Great Barrier Reef Marine Park Authority established by the *Great Barrier Reef Marine Park Act 1975*.

Greater Sunrise special regime area has the meaning given by subsection 5(5).

habitat means the biophysical medium or media:

- (a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; or

- (b) once occupied (continuously, periodically or occasionally) by an organism, or group of organisms, and into which organisms of that kind have the potential to be reintroduced.

heritage value of a place includes the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

holder means:

- (a) in the case of a permit issued under Chapter 5—the person to whom the permit was issued or transferred, as the case may be; or
(b) in the case of an approval under Part 9—the person named in the approval under paragraph 133(2)(c).

impact has the meaning given by section 527E.

important cetacean habitat area means an area declared, by a declaration in force under subsection 228A(1), to be an important cetacean habitat area.

Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development means the Committee established by section 505C.

indigenous heritage value of a place means a heritage value of the place that is of significance to indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history.

indigenous people's land has the meaning given by subsection 363(3).

indigenous person has the meaning given by subsection 363(4).

indigenous tradition has the meaning given by section 201.

inspector means:

- (a) a person appointed as an inspector under section 396;

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- (b) a person who is an inspector because of section 397; or
- (c) a person who is an inspector because of an arrangement entered into under section 398.

interested person has the meaning given by section 475.

interfere with a cetacean has the meaning given by subsection 229B(4).

IUCN category has the meaning given by subsection 346(1).

JAMBA means the Agreement between the Government of Japan and the Government of Australia for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment done at Tokyo on 6 February 1974, as amended and in force for Australia from time to time.

Note: The English text of the Agreement is set out in Australian Treaty Series 1981 No. 6.

jointly managed reserve has the meaning given by subsection 363(5).

Kakadu National Park has the meaning given by subsection 387(3).

Kakadu region has the meaning given by subsection 386(1).

keep a cetacean or member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community means:

- (a) in the case of a cetacean, or a species of animal or community of animals—have charge or possession of the cetacean or member, either in captivity or in a domesticated state; and
- (b) in the case of a species of plant or community of plants—have possession of the member.

key threatening process means a threatening process included in the list referred to in section 183.

land has the meaning given by subsection 345(2).

land council for indigenous people's land has the meaning given by subsection 363(2).

large coal mining development means any coal mining activity that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

- (a) in its own right; or
- (b) when considered with other developments, whether past, present or reasonably foreseeable developments.

large-scale disposal facility for radioactive waste has a meaning affected by subsection 22(2).

list includes a list containing no items.

listed marine species means a marine species included in the list referred to in section 248.

listed migratory species means a migratory species included in the list referred to in section 209.

listed threatened ecological community means an ecological community included in the list referred to in section 181.

listed threatened species means a native species included in the list referred to in section 178.

List of Overseas Places of Historic Significance to Australia means the record referred to in section 390K.

live animal includes animal reproductive material.

live plant includes plant reproductive material.

longfin mako shark means the listed migratory species with the common name longfin mako shark and the scientific name *Isurus paucus*.

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magistrate means a magistrate who is remunerated by salary or otherwise, and includes a Judge, or acting Judge, of the Local Court of the Northern Territory.

management arrangement includes:

- (a) a management plan; and
- (b) a regime; and
- (c) a policy.

master of a foreign whaling vessel has the meaning given by subsection 236(5).

matter protected by a provision of Part 3 has the meaning given by section 34.

member includes:

- (a) in relation to a species of animal (other than a species of cetacean):
 - (i) any part of an animal of the species; and
 - (ii) any animal reproductive material of an animal of the species, or any part of such reproductive material; and
 - (iii) the whole or any part of the dead body of an animal of the species; and
- (b) in relation to a species of plant:
 - (i) any part of a plant of the species; and
 - (ii) any plant reproductive material of a plant of the species, or any part of such reproductive material; and
 - (iii) the whole or any part of a plant of the species that has died; and
- (c) in relation to an ecological community:
 - (i) any part of an animal or plant of the community; and
 - (ii) any animal reproductive material of an animal, or plant reproductive material of a plant, of the community, or any part of such animal reproductive material or plant reproductive material; and
 - (iii) the whole or any part of an animal or plant of the community that has died.

migration zone has the same meaning as in the *Migration Act 1958*.

migratory species has the meaning given by subsection 209(8).

mineral has the meaning given by subsection 355(3).

mining operations has the meaning given by subsection 355(2).

monitoring power relating to premises has the meaning given by section 407.

monitoring warrant has the meaning given by section 409.

national of a foreign country has the meaning given by subsection 5(5).

National Heritage criteria has the meaning given by subsection 324D(1).

National Heritage List means the list referred to in section 324C.

National Heritage management principles has the meaning given by section 324Y.

National Heritage place has the meaning given by subsection 324C(3).

National Heritage value has the meaning given by section 324D.

native amphibian means an amphibian of a native species.

native animal means an animal of a native species.

native bird means a bird of a native species.

native mammal means a mammal of a native species.

native plant means a plant of a native species.

native reptile means a reptile of a native species.

native species means a species:

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- (a) that is indigenous to Australia or an external Territory; or
- (b) that is indigenous to the seabed of the coastal sea of Australia or an external Territory; or
- (c) that is indigenous to the continental shelf; or
- (d) that is indigenous to the exclusive economic zone; or
- (e) members of which periodically or occasionally visit:
 - (i) Australia or an external Territory; or
 - (ii) the exclusive economic zone; or
- (f) that was present in Australia or an external Territory before 1400.

Note: A reference to Australia or an external Territory includes a reference to the coastal sea of Australia or the Territory. See section 15B of the *Acts Interpretation Act 1901*.

nuclear action has the meaning given by subsection 22(1).

nuclear installation has the meaning given by subsection 22(1).

occupier of premises means the person apparently in charge of the premises.

officer assisting, in relation to a warrant, means:

- (a) an authorised officer who is assisting in executing the warrant; or
- (b) a person who is not an authorised officer, but who has been authorised by the relevant executing officer to assist in executing the warrant.

officer of Customs has the same meaning as it has in the *Customs Act 1901*.

ordinary search has the meaning given in subsection 414(3).

organism includes:

- (a) a virus; and
- (b) the reproductive material of an organism; and
- (c) an organism that has died.

place includes:

- (a) a location, area or region or a number of locations, areas or regions; and
- (b) a building or other structure, or group of buildings or other structures (which may include equipment, furniture, fittings and articles associated or connected with the building or structure, or group of buildings or structures); and
- (c) in relation to the protection, maintenance, preservation or improvement of a place—the immediate surroundings of a thing in paragraph (a) or (b).

plant means a member, alive or dead, of the plant kingdom or of the fungus kingdom, and includes a part of a plant and plant reproductive material.

plant reproductive material means:

- (a) a seed or spore of a plant; or
- (b) a cutting from a plant; or
- (c) any other part, or product, of a plant from which another plant can be produced.

population of a species or ecological community means an occurrence of the species or community in a particular area.

porbeagle shark means the listed migratory species with the common name porbeagle shark and the scientific name *Lamna nasus*.

precautionary principle has the meaning given by subsection 391(2).

premises includes a place, vehicle, vessel and aircraft.

prescribed waters means waters in respect of which regulations made for the purposes of section 226 are in force.

primary commercial fishing vessel means:

- (a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a law of the Commonwealth, a State or a

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Territory authorising the vessel to be used to take fish for commercial purposes; or

- (b) a vessel that is used to take fish for commercial purposes.

principles of ecologically sustainable development has a meaning affected by section 3A.

progeny includes:

- (a) in relation to an animal—any animal reproductive material of that animal or of any progeny of that animal; and
- (b) in relation to a plant—any plant reproductive material of that plant or of any progeny of that plant; and
- (c) in relation to a live animal that is animal reproductive material—any animal resulting from that material or any progeny of such animal; and
- (d) in relation to a live plant that is plant reproductive material—any plant resulting from that material or any progeny of such plant.

To avoid doubt, a reference in this Act to ***progeny*** of an animal or a plant includes a reference to any descendant of that animal or plant.

radioactive waste has the meaning given by subsection 22(1).

Ramsar Convention means the Convention on Wetlands of International Importance especially as Waterfowl Habitat done at Ramsar, Iran, on 2 February 1971, as amended and in force for Australia from time to time.

Note: The English Text of the Convention is set out in Australian Treaty Series 1975 No. 48.

range of a species means the area where members of the species live, feed, breed or visit periodically or regularly.

ranger means a person holding an appointment as a ranger under Part 17.

recovery plan means a plan made or adopted under section 269A.

regulated live specimen has the meaning given by section 303EA.

regulated native specimen has the meaning given by section 303DA.

relevant impacts of an action has the meaning given by section 82.

remediation determination means a determination, as in force from time to time, made under section 480D.

remediation order means an order, as in force from time to time, made under section 480A.

reprocessing has the meaning given by subsection 22(1).

Scientific Committee means the Threatened Species Scientific Committee established by section 502.

seabed has the meaning given by subsection 345(2).

Secretary means the Secretary of the Department that:

- (a) deals with the matter to which the provision containing the reference relates; and
- (b) is administered by the Minister administering the provision.

seized has a meaning affected by section 406B.

self-governing Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory.

shortfin mako shark means the listed migratory species with the common name shortfin mako shark and the scientific name *Isurus oxyrinchus*.

species means a group of biological entities that:

- (a) interbreed to produce fertile offspring; or
- (b) possess common characteristics derived from a common gene pool;

and includes:

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- (c) a sub-species; and
- (ca) for the purposes of Part 13A—a distinct population of such biological entities; and
- (d) except for the purposes of Part 13A—a distinct population of such biological entities that the Minister has determined, under section 517, to be a species for the purposes of this Act.

In this definition, *the purposes of Part 13A*:

- (a) include the purposes of the definitions of *CITES I species*, *CITES II species* and *CITES III species*; and
- (b) do not include determining the meaning of the expression *listed threatened species* when used in Part 13A.

specific environmental authorisation has the meaning given by section 43A.

specimen has the meaning given by section 527A.

spent nuclear fuel has the meaning given by subsection 22(1).

subsidiary of a body corporate has a meaning affected by section 526.

sub-species means a geographically separate population of a species, being a population that is characterised by morphological or biological differences from other populations of that species.

take, except in Part 13A, includes:

- (a) in relation to an animal—harvest, catch, capture and trap; and
- (b) in relation to a plant—harvest, pick, gather and cut.

Note: For the meaning of *take* in Part 13A, see section 303BC.

taxon means any taxonomic category (for example, a species or a genus), and includes a particular population.

terms of reference:

- (a) in relation to an inquiry under Division 7 of Part 8—has the meaning given by paragraph 107(1)(b); and

- (b) in relation to an assessment under Division 3 of Part 15B—
has the meaning given by paragraph 390SH(1)(b).

territorial sea means the territorial sea (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

threat abatement plan means a plan made or adopted under section 270B.

threatening process has the meaning given by subsection 188(3).

trade:

- (a) when used in the context of a reference to a member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community—includes:
- (i) buy the member, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
 - (ii) sell the member, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or
 - (iii) export the member from Australia or an external Territory or import it into Australia or an external Territory; or
 - (iv) cause or allow any of the acts referred to in subparagraph (i), (ii) or (iii) to be done; or
- (b) when used in the context of a reference to a cetacean (not being a reference that covers a cetacean because a cetacean is a member referred to in paragraph (a))—has the meaning given by subsection 229B(4).

traditional owners of indigenous people's land has the meaning given by subsection 368(4).

treat a cetacean has the meaning given by subsection 229D(3).

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Uluru-Kata Tjuta National Park has the meaning given by subsection 344(3).

Uluru region has the meaning given by subsection 386(2).

usage right has the meaning given by subsection 350(7).

vehicle includes a hovercraft.

vessel means a ship, boat, raft or pontoon or any other thing capable of carrying persons or goods through or on water and includes a floating structure and hovercraft.

vulnerable:

- (a) a native species may be included in the ***vulnerable*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the ***vulnerable*** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

warden means a person holding an appointment as a warden under Part 17.

warrant premises means premises in relation to which a warrant is in force.

water resource has the same meaning as in the *Water Act 2007*.

wetland has the same meaning as in the Ramsar Convention.

whale watching has the meaning given by section 238.

wildlife means:

- (a) an animal; or
- (b) a specimen derived from an animal; or
- (c) a plant; or
- (d) a specimen derived from a plant.

wildlife conservation plan means a plan of a kind referred to in section 285 that has been made or adopted under that section.

World Heritage Convention means the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1975 No. 47.

World Heritage List means the list kept under that title under Article 11 of the World Heritage Convention.

world heritage values of a property has the meaning given by subsection 12(3).

Schedule 1—Provisions relating to detention of suspected foreign offenders

Note: See section 433B.

Part 1—Preliminary

Division 1—Objects of this Schedule

1 Main objects of this Schedule

- (1) This Schedule has 3 main objects.
- (2) The first main object is to provide for the detention (*environment detention*) in Australia or a Territory of persons who:
 - (a) are reasonably suspected by an authorised officer of having committed an offence:
 - (i) involving the use of a foreign vessel; or
 - (ii) in the Australian jurisdiction but outside the migration zone; and
 - (b) are not Australian citizens or Australian residents;
for a limited period for the purposes of determining whether to charge them with the offence.
- (3) The second main object is to provide for persons in environment detention to be searched, screened, given access to facilities for obtaining legal advice, and identified.
- (4) The third main object is to facilitate the transition of persons from environment detention to immigration detention under the *Migration Act 1958*:
 - (a) by providing for the things mentioned in subclause (3) to be done in a way corresponding to the way that Act provides for those things to be done to persons in immigration detention; and

- (b) by authorising the disclosure of personal information about individuals who are or have been in environment detention to persons, agencies and organisations responsible for holding the individuals in immigration detention, for the purpose of the immigration detention and welfare of the individuals.

Note: The enforcement visa of a person who is neither an Australian citizen nor an Australian resident ceases to have effect under the *Migration Act 1958* when the person ceases to be in environment detention, so that Act requires the person to be taken into immigration detention.

Division 2—Definitions

2 Definitions

In this Schedule, unless the contrary intention appears:

approved officer means:

- (a) an authorised officer (other than a person who is an authorised officer because of subsection 397(3)); or
- (b) a detention officer;

who is approved under Division 4 for the purposes of the provision in which the expression occurs.

Australian resident means:

- (a) a person who holds a permanent visa (as defined in the *Migration Act 1958*) that is in effect; or
- (b) a New Zealand citizen who is usually resident in Australia or a Territory and who holds a special category visa (as defined in the *Migration Act 1958*) that is in effect; or
- (c) any other person who is usually resident in Australia or a Territory and whose continued presence in Australia or a Territory is not subject to a limitation as to time imposed by law.

authorised Migration Act officer means an authorised officer, within the meaning of the *Migration Act 1958*.

detainee means a person detained under Part 2.

detention means detention under Part 2.

detention officer means a person appointed under clause 3 to be a detention officer.

foreign vessel means a vessel that is not an Australian vessel.

Division 3—Appointment etc. of detention officers

3 Minister may appoint persons to be detention officers

- (1) The Minister may, by instrument, appoint one or more persons (except persons who are authorised officers) to be detention officers.

Note: Authorised officers have the same powers as detention officers, as well as other powers, so there is no reason for authorised officers to be appointed as detention officers.

- (2) An instrument appointing persons to be detention officers:
- (a) may identify the persons by reference to a class; and
 - (b) may provide for persons to be appointed when they become members of the class at or after a time specified in the instrument.

4 Detention officers subject to directions

- (1) A detention officer is, in the exercise of his or her powers, and the performance of his or her duties, under this Schedule, subject to the directions given by the Minister.
- (2) A direction given by the Minister under subclause (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction. See regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

5 Detention officer etc. not liable to certain actions

- (1) A detention officer, or a person assisting a detention officer in the exercise of powers under this Schedule or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the

Schedule 1 Provisions relating to detention of suspected foreign offenders

Part 1 Preliminary

Division 3 Appointment etc. of detention officers

Clause 5

exercise or purported exercise of any power conferred by this Schedule or by regulations made for the purposes of this Schedule.

Note: Section 498A makes similar provision for authorised officers and their assistants.

- (2) However, subclause (1) does not affect a contractual liability of a detention officer or person assisting a detention officer.

Division 4—Approval of authorised officers and detention officers

6 The Secretary may approve authorised officers and detention officers

- (1) The Secretary may, by instrument, approve one or more authorised officers and/or detention officers for the purposes of a specified provision of this Schedule, from among authorised officers and/or detention officers who have successfully completed minimum training prescribed by the regulations.
- (2) An instrument approving authorised officers and/or detention officers:
 - (a) may identify them by reference to a class; and
 - (b) may provide for them to be approved when they become members of the class at or after a time specified in the instrument.

7 Persons who are authorised officers for purposes of the *Migration Act 1958* are taken to be approved for this Schedule

- (1) A person who:
 - (a) is an authorised officer or a detention officer; and
 - (b) is an authorised Migration Act officer for a provision of the *Migration Act 1958* listed in column 2 of an item of the table;
 is, while he or she meets the conditions in paragraphs (a) and (b), taken to be approved under clause 6 for the purposes of the provision of this Schedule listed in column 3 of the item.

Corresponding provisions of the *Migration Act 1958* and this Schedule

Column 1 Item	Column 2 Provision of the <i>Migration Act 1958</i>	Column 3 Provision of this Schedule
1	Subsection 252(4)	Subclause 15(3)

Schedule 1 Provisions relating to detention of suspected foreign offenders

Part 1 Preliminary

Division 4 Approval of authorised officers and detention officers

Clause 7

Corresponding provisions of the *Migration Act 1958* and this Schedule

Column 1 Item	Column 2 Provision of the <i>Migration Act 1958</i>	Column 3 Provision of this Schedule
2	Paragraph 252(6)(a)	Paragraph 15(5)(a)
3	Subparagraph 252(6)(b)(i)	Subparagraph 15(5)(b)(i)
4	Subsection 252AA(1)	Subclause 16(1)
5	Subsection 252A(1)	Subclause 17(1)
6	Subsection 252C(1)	Subclause 19(1)
7	Subsection 252D(2)	Subclause 20(2)
8	Subsection 252G(3)	Subclause 22(3)
9	Section 261AA	Clause 28
10	Subsection 261AE(1)	Subclause 32(1)
11	Subsection 261AE(3)	Subclause 32(3)
12	Section 261AG	Clause 34
13	Section 261AJ	Clause 37
14	Subsection 261AK(1) (except paragraph (a))	Subclause 38(1) (except paragraph (a))
15	Subsection 261AK(3)	Subclause 38(3)

Limits on approval

- (2) However, the person is not taken to be approved to carry out an identification test in relation to which section 5D of the *Migration Act 1958* provides that the person is not an authorised officer (for the purposes of that Act).

Note: This is relevant to items 9 to 15 of the table in subclause (1).

Persons specified by Secretary not approved

- (3) The Secretary may, by instrument, specify that the person is not taken to be approved:
- (a) for the purposes of the provision of this Schedule; or
 - (b) for the purposes of carrying out under this Schedule identification tests of a type specified under
-

section 5D of the *Migration Act 1958* in relation to the person.

The instrument has effect according to its terms, despite subclause (1).

- (4) An instrument under subclause (3) may specify one or more persons by reference to their being members of a specified class at or after a time specified in the instrument.
- (5) An instrument made under subclause (3) is not a legislative instrument.

Part 2—Detaining suspected foreign offenders

Division 1—Initial detention by an authorised officer

8 Power to detain

- (1) An authorised officer may detain a person in Australia or a Territory for the purposes of determining during the period of detention whether or not to charge the person with an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, if the authorised officer has reasonable grounds to believe that the person:
 - (a) is not an Australian citizen or an Australian resident; and
 - (b) either or both of the following:
 - (i) was on a foreign vessel when it was used or otherwise involved in the commission of the offence;
 - (ii) committed the offence in the Australian jurisdiction but outside the migration zone.
- (2) Subclause (1) does not authorise an authorised officer to use more force in detaining a person than is reasonably necessary.

9 Relationship with Part IC of the *Crimes Act 1914*

- (1) Part IC of the *Crimes Act 1914* applies in relation to the detainee while detained under this Part as if:
 - (a) he or she were a protected suspect for a Commonwealth offence for the purposes of that Part; and
 - (b) an authorised officer were an investigating official for the purposes of that Part.
- (2) Subclause (1) does not affect the operation of Division 2 of Part IC of the *Crimes Act 1914* as it applies of its own force in relation to a person who is lawfully arrested.

Division 2—Continued detention by a detention officer

10 Detention officer may detain person already detained by authorised officer

- (1) For the purposes of facilitating an authorised officer determining whether or not to charge a person with an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, a detention officer may detain the person in Australia or a Territory if the detention officer has reasonable grounds to believe that the person:
 - (a) has been detained by an authorised officer under Division 1;
and
 - (b) has been presented, while detained by that authorised officer, to a detention officer for detention by a detention officer.
- (2) However, the detention officer may not detain the person if the detention officer has reasonable grounds to believe that the person has ceased to be in detention since the last time the person was detained by an authorised officer under Division 1.
- (3) Subclause (1) does not authorise a detention officer to use more force in detaining a person than is reasonably necessary.

Schedule 1 Provisions relating to detention of suspected foreign offenders

Part 2 Detaining suspected foreign offenders

Division 3 Detention on behalf of an authorised officer or detention officer

Clause 11

Division 3—Detention on behalf of an authorised officer or detention officer

11 Detention on behalf of an authorised officer or detention officer

- (1) A person is taken to be detained by an authorised officer or detention officer under this Part while the person is held, on behalf of the authorised officer or detention officer, in any of the following:
 - (a) a prison or remand centre;
 - (b) a police station or watch house;
 - (c) a hospital or other place where the person is receiving medical treatment;
 - (d) another place approved by the Minister in writing;
 - (e) a vessel.
- (2) This clause has effect even while the authorised officer or detention officer is not present where the person is held on behalf of the authorised officer or detention officer.
- (3) An approval of a place by the Minister is not a legislative instrument.

Division 4—Moving detainees

12 Power to move detainees

- (1) An authorised officer or detention officer may:
 - (a) take a detainee in Australia to another place in Australia or to a place in an external Territory; and
 - (b) take a detainee in an external Territory to another place in the Territory or to a place in Australia or another Territory.
- (2) Subclause (1) does not authorise an authorised officer or detention officer to use more force than is reasonably necessary to take the detainee to the place.
- (3) In exercising the power under subclause (1), the authorised officer or detention officer must have regard to all matters that he or she considers relevant, including:
 - (a) the administration of justice; and
 - (b) the welfare of the detainee.

Division 5—End of detention

13 End of detention

A detainee must be released from detention:

- (a) as soon as an authorised officer or detention officer knows or reasonably believes that the detainee is an Australian citizen or an Australian resident; or
 - (b) at the time the detainee is brought before a magistrate following a decision to charge the detainee with an offence referred to in subclause 8(1); or
 - (c) at the time a decision is made not to charge the detainee with an offence referred to in that subclause; or
 - (d) at the end of 168 hours after the detention began;
- whichever occurs first.

Division 6—Offence of escaping from detention

14 Escape from detention

- (1) A person commits an offence if:
 - (a) the person is in detention; and
 - (b) the person escapes from that detention.
- (2) The offence is punishable on conviction by imprisonment for up to 2 years.

Part 3—Searching and screening detainees and screening their visitors

Division 1—Searches of detainees

15 Searches of detainees

- (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched.
- (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows:
 - (a) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to help the detainee to escape from detention;
 - (b) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a document or other thing that is, or may be, evidence of:
 - (i) an offence against an environmental law; or
 - (ii) an offence against section 6 of the *Crimes Act 1914* relating to an offence described in subparagraph (i).
- (3) If, in the course of a search under this clause, a weapon or other thing referred to in paragraph (2)(a), or a document or other thing referred to in paragraph (2)(b), is found, an approved officer:
 - (a) may take possession of the weapon, document or other thing; and
 - (b) may retain the weapon, document or other thing for such time as he or she thinks necessary for the purposes of this Act, the *Great Barrier Reef Marine Park Act 1975* or the *Migration Act 1958*.

- (4) This clause does not authorise an approved officer, or another person conducting a search pursuant to subclause (5), to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (5) A search under this clause of a detainee, and the detainee's clothing, must be conducted by:
- (a) an approved officer of the same sex as the detainee; or
 - (b) in a case where an approved officer of the same sex as the detainee is not available to conduct the search—any other person who is of the same sex and:
 - (i) is requested by an approved officer; and
 - (ii) agrees;to conduct the search.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an approved officer, conducts a search under this clause if the person acts in good faith and does not contravene subclause (7).
- (7) An approved officer or other person who conducts a search under this clause must not use more force, or subject a detainee to greater indignity, than is reasonably necessary in order to conduct the search.
- (8) To avoid doubt, a search of a detainee may be conducted under this clause irrespective of whether a screening procedure is conducted in relation to the detainee under clause 16 or a strip search of the detainee is conducted under clause 17.

Note: This clause corresponds closely to section 252 of the *Migration Act 1958*.

Division 2—Screening of detainees

16 Power to conduct a screening procedure

- (1) A screening procedure in relation to a detainee, other than a detainee to whom clause 23 applies, may be conducted by an approved officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
 - (a) to inflict bodily injury; or
 - (b) to help the detainee, or any other detainee, to escape from detention.
- (2) An approved officer who conducts a screening procedure under this clause must not use greater force, or subject the detainee to greater indignity, than is reasonably necessary in order to conduct the screening procedure.
- (3) This clause does not authorise an approved officer to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (4) To avoid doubt, a screening procedure may be conducted in relation to a detainee under this clause irrespective of whether a search of the detainee is conducted under clause 15 or 17.
- (5) In this clause:

conducting a screening procedure, in relation to a detainee, means:

 - (a) causing the detainee to walk, or to be moved, through screening equipment; or
 - (b) passing hand-held screening equipment over or around the detainee or around things in the detainee's possession; or

- (c) passing things in the detainee's possession through screening equipment or examining such things by X-ray.

screening equipment means a metal detector or similar device for detecting objects or particular substances.

Note: This clause corresponds closely to section 252AA of the *Migration Act 1958*.

Division 3—Strip searches of detainees

17 Power to conduct a strip search

- (1) A strip search of a detainee, other than a detainee to whom clause 23 applies, may be conducted by an approved officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
 - (a) to inflict bodily injury; or
 - (b) to help the detainee, or any other detainee, to escape from detention.

Note: Clause 18 sets out rules for conducting a strip search under this clause.

- (2) A *strip search* of a detainee means a search of the detainee, of his or her clothing or of a thing in his or her possession. It may include:
 - (a) requiring the detainee to remove some or all of his or her clothing; and
 - (b) an examination of that clothing and of the detainee's body (but not of the detainee's body cavities).
- (3) A strip search of a detainee may be conducted by an approved officer only if:
 - (a) an authorised officer or detention officer suspects on reasonable grounds that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause (1); and
 - (b) the authorised officer, or detention officer, referred to in paragraph (a) suspects on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and
 - (c) the strip search is authorised as follows:
 - (i) if the detainee is at least 18—the Secretary, the Director, the Chief Executive Officer of the Great Barrier Reef Marine Park Authority or an SES Band 3

- employee in the Department (who is not the authorised officer referred to in paragraphs (a) and (b) nor the approved officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions;
- (ii) if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.
- (4) An authorised officer or detention officer may form a suspicion on reasonable grounds for the purposes of paragraph (3)(a) on the basis of:
- (a) a search conducted under clause 15 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or
 - (b) a screening procedure conducted under clause 16 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or
 - (c) any other information that is available to the authorised officer or detention officer.
- (5) An authorisation of a strip search given for the purposes of subparagraph (3)(c)(i):
- (a) may be given by telephone, fax or other electronic means; and
 - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of a strip search conducted on the basis of that authorisation.
- (8) The power to authorise a strip search under subparagraph (3)(c)(i) cannot be delegated to any other person.

Schedule 1 Provisions relating to detention of suspected foreign offenders

Part 3 Searching and screening detainees and screening their visitors

Division 3 Strip searches of detainees

Clause 18

- (9) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (10) The magistrate need not accept the power conferred.
- (11) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.
- (12) To avoid doubt, a strip search of a detainee may be conducted under this clause irrespective of whether a search of the detainee is conducted under clause 15 or a screening procedure is conducted in relation to the detainee under clause 16.
- (13) In this clause:

SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 252A of the *Migration Act 1958*.

18 Rules for conducting a strip search

- (1) A strip search of a detainee under clause 17:
 - (a) must not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search; and
 - (b) must be conducted in a private area; and
 - (c) must be conducted by an approved officer of the same sex as the detainee; and
 - (d) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person who is of the opposite sex to the detainee; and
 - (e) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the strip search; and

- (f) must not be conducted on a detainee who is under 10; and
 - (g) if the detainee is at least 10 but under 18, or is incapable of managing his or her affairs—must be conducted in the presence of:
 - (i) the detainee’s parent or guardian if that person is in detention with the detainee and is readily available at the same place; or
 - (ii) if that is not acceptable to the detainee or subparagraph (i) does not apply—another person (other than an approved officer) who is capable of representing the detainee’s interests and who, as far as is practicable in the circumstances, is acceptable to the detainee; and
 - (h) subject to subclause (4), if the detainee is at least 18, and is not incapable of managing his or her affairs—must be conducted in the presence of another person (if any) nominated by the detainee, if that other person is readily available at the same place as the detainee, and willing to attend the strip search within a reasonable time; and
 - (i) must not involve a search of the detainee’s body cavities; and
 - (j) must not involve the removal of more items of clothing, or more visual inspection, than the approved officer conducting the search believes on reasonable grounds to be necessary to determine whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause 17(1); and
 - (k) must not be conducted with greater force than is reasonably necessary to conduct the strip search.
- (2) Paragraphs (1)(d) and (e) do not apply to a parent or guardian, or person present because of subparagraph (1)(g)(ii), if the detainee has no objection to that person being present.
- (3) Paragraphs (1)(d) and (e) do not apply to a person nominated by the detainee under paragraph (1)(h) to attend the strip search.
- (4) Neither:
- (a) a detainee’s refusal or failure to nominate a person under paragraph (1)(h) within a reasonable time; nor

Schedule 1 Provisions relating to detention of suspected foreign offenders

Part 3 Searching and screening detainees and screening their visitors

Division 3 Strip searches of detainees

Clause 18

- (b) a detainee's inability to nominate a person under that paragraph who is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time;
- prevents a strip search being conducted.
- (5) A strip search of a detainee may be conducted with the assistance of another person if the approved officer conducting the strip search considers that to be necessary for the purposes of conducting it. That person must not be of the opposite sex to the detainee unless:
- (a) the person is a medical practitioner; and
 - (b) a medical practitioner of the same sex as the detainee is not available within a reasonable time.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an approved officer, assists in conducting a strip search if the person acts in good faith and does not contravene this clause.
- (7) A detainee must be provided with adequate clothing if during or as a result of a strip search any of his or her clothing is:
- (a) damaged or destroyed; or
 - (b) retained under clause 19.

Note: This clause corresponds closely to section 252B of the *Migration Act 1958*.

Division 4—Keeping of things found by screening or strip search of detainees

19 Possession and retention of certain things obtained during a screening procedure or strip search

- (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing:
 - (a) might provide evidence of the commission of an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence; or
 - (b) is forfeited or forfeitable to the Commonwealth.
- (2) A weapon or other thing described in subclause 16(1) or 17(1) that is found in the course of conducting a screening procedure under clause 16 or a strip search under clause 17 is forfeited to the Commonwealth.
- (3) An approved officer must not return a thing that is forfeited or forfeitable to the Commonwealth. Instead, the approved officer must, as soon as practicable, give a thing that is forfeited under subclause (2) to a constable (within the meaning of the *Crimes Act 1914*).

Note: See sections 450 and 451 of this Act, which deal with court-ordered forfeiture and how forfeited items are to be dealt with.

- (4) An approved officer must take reasonable steps to return anything that is not forfeited or forfeitable but is retained under subclause (1) to the person from whom it was taken, or to the owner if that person is not entitled to possess it, if one of the following happens:
 - (a) it is decided that the thing is not to be used in evidence;
 - (b) the period of 60 days after the approved officer takes possession of the thing ends.

Clause 20

- (5) However, the approved officer does not have to take those steps if:
- (a) in a paragraph (4)(b) case:
 - (i) proceedings in respect of which the thing might provide evidence have been instituted before the end of the 60 day period and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (ii) the approved officer may retain the thing because of an order under clause 21; or
 - (b) in any case—the approved officer is otherwise authorised (by a law, or an order of a court or a tribunal, of the Commonwealth or a State or Territory) to retain, destroy or dispose of the thing.

Note: This clause corresponds closely to section 252C of the *Migration Act 1958*.

20 Approved officer may apply for a thing to be retained for a further period

- (1) This clause applies if an approved officer has taken possession of a thing referred to in subclause 19(4) and proceedings in respect of which the thing might provide evidence have not commenced before the end of:
 - (a) 60 days after the approved officer takes possession of the thing; or
 - (b) a period previously specified in an order of a magistrate under clause 21.
- (2) The approved officer may apply to a magistrate for an order that the approved officer may retain the thing for a further period.
- (3) Before making the application, the approved officer must:
 - (a) take reasonable steps to discover which persons' interests would be affected by the retention of the thing; and
 - (b) if it is practicable to do so, notify each person who the approved officer believes to be such a person of the proposed application.
- (4) A notice under paragraph (3)(b) is not a legislative instrument.

Note: This clause corresponds closely to section 252D of the *Migration Act 1958*.

21 Magistrate may order that thing be retained

- (1) The magistrate may order that the approved officer who made an application under clause 20 may retain the thing if the magistrate is satisfied that it is necessary for the approved officer to do so:
 - (a) for the purposes of an investigation as to whether an offence has been committed; or
 - (b) to enable evidence of an offence to be secured for the purposes of a prosecution.
- (2) The order must specify the period for which the approved officer may retain the thing.
- (3) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (4) The magistrate need not accept the power conferred.
- (5) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

Note: This clause corresponds closely to section 252E of the *Migration Act 1958*.

Division 5—Screening detainees' visitors

22 Powers concerning entry to premises where detainee is detained

- (1) An authorised officer or detention officer may request that a person about to enter premises where a detainee is in detention do one or more of the following:
 - (a) walk through screening equipment;
 - (b) allow an authorised officer or detention officer to pass hand-held screening equipment over or around the person or around things in the person's possession;
 - (c) allow things in the person's possession to pass through screening equipment or to be examined by X-ray.
- (2) **Screening equipment** means a metal detector or similar device for detecting objects or particular substances.
- (3) If an approved officer suspects on reasonable grounds that a person about to enter premises where a detainee is in detention has in the person's possession a thing that might:
 - (a) endanger the safety of the detainees, staff or other persons on the premises; or
 - (b) disrupt the order or security arrangements on the premises;the approved officer may request that the person do some or all of the things in subclause (4) for the purpose of finding out whether the person has such a thing. A request may be made whether or not a request is also made to the person under subclause (1).
- (4) An approved officer may request that the person do one or more of the following:
 - (a) allow the approved officer to inspect the things in the person's possession;
 - (b) remove some or all of the person's outer clothing such as a coat, jacket or similar item;
 - (c) remove items from the pockets of the person's clothing;

- (d) open a thing in the person's possession, or remove the thing's contents, to allow the approved officer to inspect the thing or its contents;
- (e) leave a thing in the person's possession, or some or all of its contents, in a place specified by the approved officer if he or she suspects on reasonable grounds that the thing or its contents are capable of concealing something that might:
 - (i) endanger the safety of the detainees, staff or other persons on the premises; or
 - (ii) disrupt the order or security arrangements on the premises.
- (5) A person who leaves a thing (including any of its contents) in a place specified by an approved officer is entitled to its return when the person leaves the premises.
- (6) However, if possession of the thing, or any of those contents, by the person is unlawful under a Commonwealth, State or Territory law applying to the premises:
 - (a) the thing or the contents must not be returned to the person; and
 - (b) an approved officer must, as soon as practicable, give the thing or the contents to a constable (within the meaning of the *Crimes Act 1914*).
- (7) A person who is about to enter premises where a detainee is detained may be refused entry if the person does not comply with a request under this clause.

Note: This clause corresponds closely to section 252G of the *Migration Act 1958*.

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Part 3 Searching and screening detainees and screening their visitors

Division 6 Law applying to detainee in State or Territory prison etc.

Clause 23

Division 6—Law applying to detainee in State or Territory prison etc.

23 Detainees held in State or Territory prisons or remand centres

- (1) This clause applies to a detainee if:
 - (a) the detainee is held in detention in a prison or remand centre of a State or Territory; and
 - (b) a law of that State or Territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre.
- (2) To the extent that the State or Territory law confers that power, or affects the exercise of that power, it applies to the detainee as though it were a law of the Commonwealth.
- (3) Clauses 16 and 17 do not apply to a detainee to whom this clause applies.

Note: This clause corresponds closely to section 252F of the *Migration Act 1958*.

Part 4—Detainees' rights to facilities for obtaining legal advice etc.

24 Detainee may have access to certain advice, facilities etc.

The person responsible for detention of a detainee must afford to him or her all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her detention.

Note: This clause corresponds to section 256 of the *Migration Act 1958*.

Part 5—Identifying detainees

Division 1—Preliminary

25 Definitions

In this Part, unless the contrary intention appears:

identification test means a test carried out in order to obtain a personal identifier.

incapable person means a person who is incapable of understanding the general nature and effect of, and purposes of, a requirement to provide a personal identifier.

independent person means a person (other than an authorised officer, detention officer or approved officer) who:

- (a) is capable of representing the interests of a non-citizen who is providing, or is to provide, a personal identifier; and
- (b) as far as practicable, is acceptable to the non-citizen who is providing, or is to provide, the personal identifier; and
- (c) if the non-citizen is a minor—is capable of representing the minor's best interests.

minor means a person who is less than 18 years old.

non-citizen means a person who is not an Australian citizen.

personal identifier has the meaning given by clause 26.

Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 5 of the *Migration Act 1958*.

26 Meaning of *personal identifier*

- (1) In this Part:
-

personal identifier means any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of a person (including those taken using paper and ink or digital liveness scanning technologies);
 - (b) a measurement of a person's height and weight;
 - (c) a photograph or other image of a person's face and shoulders;
 - (d) an audio or a video recording of a person (other than a video recording under clause 37);
 - (e) an iris scan;
 - (f) a person's signature;
 - (g) any other identifier prescribed by the regulations, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.
- (2) Before the Governor-General makes regulations for the purposes of paragraph (g) of the definition of ***personal identifier*** in subclause (1) prescribing an identifier, the Minister must be satisfied that:
- (a) obtaining the identifier would not involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*; and
 - (b) the identifier is an image of, or a measurement or recording of, an external part of the body; and
 - (c) obtaining the identifier will promote one or more of the purposes referred to in subclause (3).
- (3) The purposes are:
- (a) to assist in the identification of, and to authenticate the identity of, any person who can be required under this Schedule to provide a personal identifier; and
 - (b) to assist in identifying, in the future, any such person; and
 - (c) to enhance the ability to identify non-citizens who have a criminal history in matters relating to the environment; and
 - (d) to combat document and identity fraud in matters relating to the environment; and

Schedule 1 Provisions relating to detention of suspected foreign offenders

Part 5 Identifying detainees

Division 1 Preliminary

Clause 27

- (e) to complement anti-people smuggling measures; and
- (f) to inform the governments of foreign countries of the identity of non-citizens who have been detained under, or charged with offences against, an environmental law; and
- (g) to facilitate international cooperation to combat activities that involve a breach of the laws of Australia or of a foreign country.

Note: This clause corresponds closely to section 5A of the *Migration Act 1958*.

27 Limiting the types of identification tests that approved officers may carry out

- (1) The Secretary may, in an instrument authorising an authorised officer or detention officer as an approved officer for the purposes of carrying out identification tests under this Part, specify the types of identification tests that the approved officer may carry out.
- (2) Such an approved officer is not an approved officer in relation to carrying out an identification test that is not of a type so specified.

Note: This clause corresponds closely to section 5D of the *Migration Act 1958*.

Division 2—Identification of detainees

Subdivision A—Provision of personal identifiers

28 Detainees must provide personal identifiers

- (1) A non-citizen in detention must (other than in the prescribed circumstances) provide to an approved officer one or more personal identifiers.

Note: A person who is an Australian citizen, or is a non-citizen but an Australian resident, may be in detention but must be released as soon as an authorised officer or detention officer knows or reasonably believes the person is an Australian citizen or resident. See clause 13.

- (2) An approved officer must not require, for the purposes of subclause (1), a detainee to provide a personal identifier other than any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of the detainee (including those taken using paper and ink or digital liveness scanning technologies);
- (b) a measurement of the detainee's height and weight;
- (c) a photograph or other image of the detainee's face and shoulders;
- (d) the detainee's signature;
- (e) any other personal identifier of a type prescribed for the purposes of this paragraph.

Note: Division 3 sets out further restrictions on the personal identifiers that minors and incapable persons can be required to provide.

- (3) The one or more personal identifiers are to be provided by way of one or more identification tests carried out by the approved officer in accordance with this Division.

Note 1: Subject to certain restrictions, clause 32 allows reasonable force to be used to carry out identification tests under this Division.

Note 2: This clause corresponds closely to section 261AA of the *Migration Act 1958*.

Clause 29

29 Approved officers must require and carry out identification tests

- (1) The approved officer must, other than in the circumstances prescribed for the purposes of subclause 28(1):
 - (a) require the non-citizen to provide one or more personal identifiers, of the type or types prescribed, by way of one or more identification tests carried out by the approved officer; and
 - (b) carry out the one or more identification tests on the non-citizen.
- (2) However:
 - (a) if the types of identification tests that the approved officer may carry out are specified under clause 27—each identification test must be of a type so specified; and
 - (b) each identification test must be carried out in accordance with Subdivision B; and
 - (c) unless the approved officer has reasonable grounds to believe that the non-citizen is not a minor or an incapable person—each identification test must be carried out in accordance with the additional requirements of Division 3.

Note: Subclauses (1) and (2) correspond closely to section 261AB of the *Migration Act 1958*.

- (3) If:
 - (a) the approved officer is authorised because of clause 7 (which effectively treats as approved officers for the purposes of certain provisions of this Schedule certain persons who are authorised Migration Act officers for the purposes of certain provisions of the *Migration Act 1958*); and
 - (b) an instrument under section 5D of that Act specifies the types of identification test the authorised Migration Act officer may carry out;paragraph (2)(a) of this clause has effect as if the specified types (except any specified under subclause 7(3) in relation to the authorised Migration Act officer) had been specified under clause 27.

30 Information to be provided before carrying out identification tests

- (1) Before carrying out an identification test, the approved officer must:
 - (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and
 - (b) inform the non-citizen of such other matters as are specified in the regulations.
- (2) For the purposes of subclause (1), the approved officer *informs* the non-citizen of a matter if the approved officer informs the non-citizen of the matter, through an interpreter if necessary, in a language (including sign language or braille) in which the non-citizen is able to communicate with reasonable fluency.
- (3) The approved officer may comply with this clause by giving to the non-citizen, in accordance with the regulations, a form setting out the information specified in the regulations. However, the information must be in a language (including braille) in which the non-citizen is able to communicate with reasonable fluency.
- (4) A form mentioned in subclause (3) is not a legislative instrument.

Note: This clause corresponds closely to section 261AC of the *Migration Act 1958*.

Subdivision B—How identification tests are carried out

31 General rules for carrying out identification tests

An identification test under this Division:

- (a) must be carried out in circumstances affording reasonable privacy to the non-citizen; and
- (b) if the non-citizen so requests and it is practicable to comply with the request—must not be carried out in the presence or

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Division 2 Identification of detainees

Clause 32

view of a person who is of the opposite sex to the non-citizen; and

- (c) must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the identification test or is not required or permitted by another provision of this Schedule; and
- (d) must not involve the removal of more clothing than is necessary for carrying out the test; and
- (e) must not involve more visual inspection than is necessary for carrying out the test; and
- (f) if the test is one of 2 or more identification tests to be carried out on the non-citizen—must be carried out at the same time as the other identification tests, if it is practicable to do so.

Note: This clause corresponds closely to section 261AD of the *Migration Act 1958*.

32 Use of force in carrying out identification tests

When use of force is permitted

- (1) Subject to subclause (2) and clause 33, an approved officer, or a person authorised under clause 34 to help the approved officer, may use reasonable force:
 - (a) to enable the identification test to be carried out; or
 - (b) to prevent the loss, destruction or contamination of any personal identifier or any meaningful identifier derived from the personal identifier.However, this clause does not authorise the use of force against a minor or an incapable person, or if the personal identifier in question is a person's signature.
- (2) The approved officer or person must not use force unless:
 - (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
 - (b) all reasonable measures to carry out the identification test without the use of force have been exhausted; and

- (c) the use of force in carrying out the identification test is authorised under subclause (4).

Applications for authorisation to use force

- (3) An approved officer may apply to a senior authorising officer (who is not an approved officer referred to in subclause (1)) for an authorisation to use force in carrying out the identification test.

Authorisation to use force

- (4) The senior authorising officer may authorise the use of force in carrying out the identification test if he or she is reasonably satisfied that:
- (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
 - (b) all reasonable measures to carry out the identification test without the use of force have been exhausted.
- (5) An authorisation under subclause (4):
- (a) may be given by telephone, fax or other electronic means; and
 - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.
- (8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

Definition

- (9) In this clause:
-

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Clause 33

senior authorising officer means an authorised officer, or detention officer, whom the Secretary has authorised, or who is included in a class of authorised officers or detention officers whom the Secretary has authorised, to perform the functions of a senior authorising officer under this clause.

Note: This clause corresponds closely to section 261AE of the *Migration Act 1958*.

33 Identification tests not to be carried out in cruel, inhuman or degrading manner etc.

For the purposes of this Schedule, the carrying out of the identification test is not of itself taken:

- (a) to be cruel, inhuman or degrading; or
- (b) to be a failure to treat a person with humanity and with respect for human dignity.

However, nothing in this Schedule authorises the carrying out of the identification test in a cruel, inhuman or degrading manner, or in a manner that fails to treat a person with humanity and with respect for human dignity.

Note: This clause corresponds closely to section 261AF of the *Migration Act 1958*.

34 Approved officer may get help to carry out identification tests

An approved officer may ask another approved officer or an authorised officer or detention officer to help him or her to carry out the identification test, and the other person may give that help.

Note: This clause corresponds closely to section 261AG of the *Migration Act 1958*.

35 Identification tests to be carried out by approved officer of same sex as non-citizen

If the non-citizen requests that the identification test be carried out by an approved officer of the same sex as the non-citizen, the test

must only be carried out by an approved officer of the same sex as the non-citizen.

Note: This clause corresponds closely to section 261AH of the *Migration Act 1958*.

36 Independent person to be present

The identification test must be carried out in the presence of an independent person if:

- (a) force is used in carrying out the identification test; or
- (b) both of the following apply:
 - (i) the non-citizen requests that an independent person be present while the identification test is being carried out;
 - (ii) an independent person is readily available at the same place as the non-citizen and is willing to attend the test within a reasonable time.

Note: This clause corresponds closely to section 261AI of the *Migration Act 1958*.

37 Recording of identification tests

- (1) An approved officer may video record the carrying out of the identification test.
- (2) If the carrying out of the identification test is not video recorded, the approved officer may decide that the identification test must be carried out in the presence of an independent person.

Note: This clause corresponds closely to section 261AJ of the *Migration Act 1958*.

38 Retesting

When retesting is permitted

- (1) If:
 - (a) an approved officer has carried out an identification test (the ***earlier test***) on a non-citizen in accordance with this

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Clause 38

Division (including a test authorised under subclause (4));
and

(b) either:

- (i) a personal identifier that is provided as a result of the earlier test being carried out is unusable; or
- (ii) an approved officer, authorised officer or detention officer is not satisfied about the integrity of that personal identifier;

the approved officer who carried out the earlier test or another approved officer may require the non-citizen to provide the personal identifier again, and may carry out the test again in accordance with this Division, if:

- (c) the requirement is made while the earlier test is being carried out or immediately after it was carried out; or
 - (d) carrying out the test again is authorised under subclause (4).
- (2) If the non-citizen is required under subclause (1) to provide the personal identifier again, the non-citizen is taken, for the purposes of this Division, not to have provided the personal identifier as a result of the earlier test being carried out.

Applications for authorisation to retest

- (3) An approved officer may apply for an authorisation to carry out the test again. The application is to be made to:
- (a) if the earlier test was not a test authorised under subclause (4)—a senior authorising officer (who is not an approved officer, authorised officer or detention officer referred to in subclause (1)); or
 - (b) if the earlier test was a test authorised under subclause (4) by a senior authorising officer—the Secretary, the Director, the Chief Executive Officer of the Great Barrier Reef Marine Park Authority or an SES Band 3 employee in the Department (who is not an approved officer, authorised officer or detention officer referred to in subclause (1)).

Authorisation to retest

- (4) The senior authorising officer, Secretary, Director, Chief Executive Officer or SES Band 3 employee (as the case requires) may authorise the test to be carried out again if:
- (a) he or she is reasonably satisfied that the personal identifier that is provided as a result of the earlier test being carried out is unusable; or
 - (b) he or she is not reasonably satisfied about the integrity of that personal identifier.
- (5) An authorisation under subclause (4):
- (a) may be given by telephone, fax or other electronic means; and
 - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.
- (8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

Use of force

- (9) An authorisation under subclause (4) does not authorise the use of force in carrying out an identification test.

Note: See clause 32 on the use of force in carrying out identification tests.

Effect of refusing to authorise retesting

- (10) If an application for an authorisation to carry out an identification test again on a non-citizen is refused, the non-citizen is taken, for the purposes of this Schedule, to have complied with any

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Clause 39

requirement under this Schedule to provide the personal identifier in question.

Definitions

(11) In this clause:

senior authorising officer means an authorised officer, or detention officer, who:

- (a) has been authorised, or is included in a class of authorised officers or detention officers who have been authorised, by the Secretary to perform the functions of a senior authorising officer under this clause; and
- (b) is not the Secretary or an SES Band 3 employee in the Department.

SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 261AK of the *Migration Act 1958*.

Subdivision C—Obligations relating to video recordings of identification tests

39 Definitions

In this Subdivision, unless the contrary intention appears:

permitted provision, of a video recording, has the meaning given by subclause 42(2).

provide, in relation to a video recording, includes provide access to the recording.

related document means a document that contains information, derived from a video recording made under clause 37 or from a copy of such a recording, from which the identity of the individual

on whom the identification test in question was carried out is apparent or can reasonably be ascertained.

video recording means a video recording made under clause 37 or a copy of such a recording, and includes a related document.

Note: This clause corresponds closely to section 261AKA of the *Migration Act 1958*.

40 Accessing video recordings

- (1) A person commits an offence if:
 - (a) the person accesses a video recording; and
 - (b) the person is not authorised under clause 41 to access the video recording for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

- (2) This clause does not apply if the access is through the provision of a video recording that is a permitted provision.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 261AKB of the *Migration Act 1958*.

41 Authorising access to video recordings

- (1) The Secretary may, in writing, authorise a specified person, or any person included in a specified class of persons, to access:
 - (a) all video recordings; or
 - (b) a specified video recording, or video recordings of a specified kind.
- (2) The Secretary must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
 - (a) providing a video recording to another person in accordance with this Subdivision;

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Clause 42

- (b) administering or managing the storage of video recordings;
 - (c) making a video recording available to the person to whom it relates;
 - (d) modifying related documents in order to correct errors or ensure compliance with appropriate standards;
 - (e) any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Schedule;
 - (f) complying with laws of the Commonwealth or the States or Territories;
 - (g) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, the Secretary must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
- (a) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
 - (b) prosecuting a person for such an offence;
- if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 261AKC of the *Migration Act 1958*.

42 Providing video recordings

- (1) A person commits an offence if:
- (a) the person's conduct causes a video recording to be provided to another person; and
 - (b) the provision of the recording is not a permitted provision of the recording.

Penalty: Imprisonment for 2 years.

- (2) A **permitted provision** of a video recording is a provision of the recording that:
- (a) is for the purpose of administering or managing the storage of video recordings; or
 - (b) is for the purpose of making the video recording in question available to the non-citizen to whom it relates; or
 - (c) is for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the video recording in question relates; or
 - (d) is for any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Schedule; or
 - (e) is for the purpose of an investigation by the Information Commissioner under the *Privacy Act 1988* or the Ombudsman relating to carrying out an identification test; or
 - (f) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Schedule relating to carrying out an identification test; or
 - (g) takes place with the written consent of the non-citizen to whom the video recording in question relates; or
 - (h) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, a provision of a video recording is not a permitted provision of the recording if:
- (a) it constitutes a disclosure of identifying information relating to a personal identifier of a prescribed type; and
 - (b) it is for the purpose of:
 - (i) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
 - (ii) prosecuting a person for such an offence.

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Note: This clause corresponds closely to section 261AKD of the *Migration Act 1958*.

43 Unauthorised modification of video recordings

A person commits an offence if:

- (a) the person causes any unauthorised modification of a video recording; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

44 Unauthorised impairment of video recordings

A person commits an offence if:

- (a) the person causes any unauthorised impairment of:
 - (i) the reliability of a video recording; or
 - (ii) the security of the storage of a video recording; or
 - (iii) the operation of a system by which a video recording is stored; and
- (b) the person intends to cause the impairment; and
- (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

45 Meanings of *unauthorised modification* and *unauthorised impairment* etc.

(1) In this Subdivision:

- (a) modification of a video recording; or
- (b) impairment of the reliability of a video recording; or
- (c) impairment of the security of the storage of a video recording; or
- (d) impairment of the operation of a system by which a video recording is stored;

by a person is unauthorised if the person is not entitled to cause that modification or impairment.

- (2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Subdivision, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subclause (1), if:
 - (a) a person causes any modification or impairment of a kind mentioned in that subclause; and
 - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 261AKG of the *Migration Act 1958*.

46 Destroying video recordings

A person commits an offence if:

- (a) the person is the person who has day-to-day responsibility for the system under which a video recording is stored; and
- (b) the person fails physically to destroy the recording, and all copies of the recording, within 10 years after it was made.

Penalty: Imprisonment for 2 years.

Division 3—Identification of minors and incapable persons

47 Minors

Minors less than 15 years old

- (1) A non-citizen who is less than 15 years old must not be required under this Schedule to provide a personal identifier other than a personal identifier consisting of:
 - (a) a measurement of the non-citizen's height and weight; or
 - (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

Persons present while identification test is carried out

- (2) If a non-citizen who is a minor provides a personal identifier, in accordance with a requirement under this Schedule, by way of an identification test carried out by an approved officer, the test must be carried out in the presence of:
 - (a) a parent or guardian of the minor; or
 - (b) an independent person.
- (3) However, if the Minister administering the *Immigration (Guardianship of Children) Act 1946* is the guardian of the minor, the test must be carried out in the presence of an independent person other than that Minister.

Note: This clause corresponds closely to subsections 261AL(1), (5) and (6) of the *Migration Act 1958*.

48 Incapable persons

Incapable persons

- (1) A non-citizen who is an incapable person must not be required under this Schedule to provide a personal identifier other than a personal identifier consisting of:
 - (a) a measurement of the non-citizen's height and weight; or

- (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

Persons present while identification test is carried out

- (2) If a non-citizen who is an incapable person provides a personal identifier, in accordance with a requirement under this Schedule, by way of an identification test carried out by an approved officer, the test must be carried out in the presence of:
 - (a) a parent or guardian of the incapable person; or
 - (b) an independent person.

Note: This clause corresponds closely to subsections 261AM(1) and (4) of the *Migration Act 1958*.

Division 4—Obligations relating to detainees' identifying information

Subdivision A—Preliminary

49 Definitions

In this Division:

disclose, in relation to identifying information that is a personal identifier provided under clause 28, includes provide unauthorised access to the personal identifier.

Note: Clause 52 deals with authorised access to identifying information.

identifying information means the following:

- (a) any personal identifier provided under clause 28;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;
- (d) any other information, derived from any such personal identifier, from any meaningful identifier derived from any such personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.

permitted disclosure has the meaning given by subclauses 53(2) and (3).

unauthorised impairment has the meaning given by clause 57.

unauthorised modification has the meaning given by clause 57.

Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 336A of the *Migration Act 1958*.

50 Application

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Division.

Note: This clause corresponds closely to section 336B of the *Migration Act 1958*.

Subdivision B—Accessing identifying information

51 Accessing identifying information

- (1) A person commits an offence if:
- (a) the person accesses identifying information; and
 - (b) the person is not authorised under clause 52 to access the identifying information for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

- (1A) This clause does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) This clause does not apply if the access is through a disclosure that is a permitted disclosure.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 336C of the *Migration Act 1958*.

52 Authorising access to identifying information

- (1) The Secretary may, in writing, authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation.
- (2) The Secretary must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
 - (a) one or more of the purposes set out in subclause 26(3);
 - (b) disclosing identifying information in accordance with this Division;
 - (c) administering or managing the storage of identifying information;
 - (d) making identifying information available to the person to whom it relates;
 - (e) modifying identifying information to enable it to be matched with other identifying information;
 - (f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;
 - (g) the purposes of this Act;
 - (h) complying with laws of the Commonwealth or the States or Territories;
 - (i) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, the Secretary must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
 - (a) investigating an offence against a law of the Commonwealth or a State or Territory; or
 - (b) prosecuting a person for such an offence;if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 336D of the *Migration Act 1958*.

Subdivision C—Disclosing identifying information

53 Disclosing identifying information

- (1) A person commits an offence if:
- (a) the person's conduct causes disclosure of identifying information; and
 - (b) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 2 years.

- (1A) This clause does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A **permitted disclosure** is a disclosure that:
- (a) is for the purpose of data-matching in order to:
 - (i) identify, or authenticate the identity of, a person; or
 - (ii) facilitate the processing of persons entering or departing from Australia; or
 - (iii) identify non-citizens who have a criminal history, who are of character concern (as defined in the *Migration Act 1958*) or who are of national security concern; or
 - (iv) combat document and identity fraud in immigration matters; or
 - (v) ascertain whether an applicant for a protection visa had sufficient opportunity to avail himself or herself of protection before arriving in Australia; or
 - (vi) inform the governments of foreign countries of the identity of non-citizens who are, or are to be, removed from Australia; or

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Clause 53

- (b) is for the purpose of administering or managing the storage of identifying information; or
- (c) is authorised under clause 54 and is for the purpose, or one or more of the purposes, for which the disclosure is authorised; or
- (d) is for the purpose of making the identifying information in question available to the person to whom it relates; or
- (da) is to an agency of the Commonwealth or of a State or Territory in order to verify that a person is an Australian citizen or holds a visa of a particular class; or
- (e) takes place under an arrangement entered into with an agency of the Commonwealth, or with a State or Territory or an agency of a State or Territory, for the exchange of identifying information; or
- (ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth or of a State or Territory; or
- (eb) is required by or under a law of the Commonwealth or of a State or Territory; or
- (f) is for the purpose of a proceeding, before a court or tribunal, relating to the person to whom the identifying information in question relates; or
- (g) is for the purpose of an investigation by the Information Commissioner or the Ombudsman relating to action taken by the Department; or
- (h) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Schedule relating to:
 - (i) carrying out an identification test; or
 - (ii) requiring the provision of a personal identifier; or
- (ha) is a disclosure of an audio or a video recording for the purposes of:
 - (i) this Act or the regulations; and
 - (ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or
- (i) takes place with the written consent of the person to whom the identifying information in question relates; or

- (j) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, a disclosure is not a permitted disclosure if:
- (a) it is a disclosure of identifying information relating to a personal identifier of a prescribed type; and
 - (b) it is for the purpose of:
 - (i) investigating an offence against a law of the Commonwealth or a State or Territory; or
 - (ii) prosecuting a person for such an offence.

Note: This clause corresponds closely to section 336E of the *Migration Act 1958*.

54 Authorising disclosure of identifying information to foreign countries etc.

- (1) The Secretary may, in writing, authorise a specified authorised officer or detention officer, any authorised officer or detention officer included in a specified class of authorised officers or detention officers, or an Agency (as defined in the *Public Service Act 1999*) prescribed by the regulations, to disclose identifying information of the kind specified in the authorisation to one or more of the following:
- (a) one or more specified foreign countries;
 - (b) one or more specified bodies each of which is:
 - (i) a police force or police service of a foreign country; or
 - (ii) a law enforcement body of a foreign country; or
 - (iii) a border control body of a foreign country;
 - (c) one or more specified international organisations, or specified organisations of foreign countries, that are responsible for matters relating to the environment;
 - (d) one or more prescribed bodies of a foreign country, of the Commonwealth or of a State or Territory;
 - (e) one or more prescribed international organisations.

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Clause 55

- (2) The Secretary must specify in the authorisation, as the purpose or purposes for which disclosure is authorised, one or more of the purposes set out in subclause 26(3).

Note: This clause corresponds closely to subsections 336F(1) and (2) of the *Migration Act 1958*.

Subdivision D—Modifying and impairing identifying information

55 Unauthorised modification of identifying information

A person commits an offence if:

- (a) the person causes any unauthorised modification of identifying information; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

Note: This clause corresponds closely to section 336G of the *Migration Act 1958*.

56 Unauthorised impairment of identifying information

A person commits an offence if:

- (a) the person causes any unauthorised impairment of:
 - (i) the reliability of identifying information; or
 - (ii) the security of the storage of identifying information; or
 - (iii) the operation of a system by which identifying information is stored; and
- (b) the person intends to cause the impairment; and
- (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

Note: This clause corresponds closely to section 336H of the *Migration Act 1958*.

57 Meanings of *unauthorised modification and unauthorised impairment* etc.

- (1) In this Division:
- (a) modification of identifying information; or
 - (b) impairment of the reliability of identifying information; or
 - (c) impairment of the security of the storage of identifying information; or
 - (d) impairment of the operation of a system by which identifying information is stored;
- by a person is unauthorised if the person is not entitled to cause that modification or impairment.
- (2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Division, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subclause (1), if:
- (a) a person causes any modification or impairment of a kind mentioned in that subclause; and
 - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;
- the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 336J of the *Migration Act 1958*.

Subdivision E—Retaining identifying information

58 Identifying information may be indefinitely retained

Identifying information may be indefinitely retained.

Note: This clause corresponds closely to paragraph 336L(1)(a) of the *Migration Act 1958*, because under this Schedule identifying

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Clause 58

information will always be about someone who is or has been in detention.

Part 6—Disclosure of detainees' personal information

59 Disclosure of detainees' personal information

- (1) For the purposes described in subclause (2), an agency or organisation that is or has been responsible for the detention of an individual may disclose personal information about the individual to an agency, or organisation, that is or will be responsible for:
 - (a) taking the individual into immigration detention; or
 - (b) keeping the individual in immigration detention; or
 - (c) causing the individual to be kept in immigration detention; or
 - (d) the removal of the individual.
- (2) The purposes are:
 - (a) the immigration detention of the individual; and
 - (b) the removal of the individual; and
 - (c) the welfare of the individual while in immigration detention or being removed.

- (3) In this clause:

agency has the same meaning as in the *Privacy Act 1988*.

immigration detention has the same meaning as in the *Migration Act 1958*.

organisation has the same meaning as in the *Privacy Act 1988*.

personal information has the same meaning as in the *Privacy Act 1988*.

removal has the same meaning as in the *Migration Act 1958*.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment Protection and Biodiversity Conservation Act 1999	91, 1999	16 July 1999	16 July 2000 (s 2(2))	
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Sch 8 and 9 (item 1): 16 July 2000 (s 2(1))	Sch 9 (item 1)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 422, 423): 16 July 2000 (s 2(3))	—
Corporations (Repeals, Consequential and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (item 172): 15 July 2001 (s 2(3))	s 4–14
Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001	82, 2001	11 July 2001	Sch 1 (items 1–82): 11 Jan 2002 (s 2(3)) Sch 1 (items 83–86): 11 July 2001 (s 2(1)(b))	Sch 1 (items 70– 82)
Regional Forest Agreements Act 2002	30, 2002	5 Apr 2002	Sch 1: 3 May 2002 (s 2(1) item 3)	—
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 1 (items 15, 16, 18): 16 July 2000 (s 2(1) items 10, 11, 13) Sch 1 (item 17): 11 Jan 2002 (s 2(1) item 12)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Enhancement Act 2003	41, 2003	3 June 2003	Sch 3 (items 31, 32): 16 July 2000 (s 2(1) item 21) Sch 3 (item 42): 3 June 2003 (s 2(1) item 1)	Sch 3 (item 42)
Australian Heritage Council (Consequential and Transitional Provisions) Act 2003	86, 2003	23 Sept 2003	Sch 1 (item 2): 1 Jan 2004 (s 2(1) item 2)	—
Environment and Heritage Legislation Amendment Act (No. 1) 2003	88, 2003	23 Sept 2003	Sch 1 and 3: 1 Jan 2004 (s 2(1) items 2, 4 and gaz 2003, No. GN47) Sch 2: <u>awaiting commencement (s 2(1) item 3)</u> Remainder: 23 Sept 2003 (s 2(1) items 1, 5)	Sch 1 (items 8, 24, 25), Sch 3 (item 1) and Sch 4 (item 1G) Sch 3 (item 1A)
as amended by				
Environment and Heritage Legislation Amendment Act (No. 1) 2006	165, 2006	12 Dec 2006	Sch 1 (items 846, 847): 19 Feb 2007 (s 2(1) item 15 and F2007L00411)	—
Aboriginal and Torres Strait Islander Commission Amendment Act 2005	32, 2005	22 Mar 2005	Sch 4 (item 23): 24 Mar 2005 (s 2(1) item 4)	—
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Sch 1 (item 207): 16 May 2005 (s 2(1) item 6)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 1 (items 13–15): 16 July 2000 (s 2(1) item 9)	—
Offshore Petroleum (Repeals and Consequential Amendments) Act 2006	17, 2006	29 Mar 2006	Sch 2 (item 21): 1 July 2008 (s 2(1) item 2)	—
Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006	125, 2006	4 Nov 2006	Sch 2 (item 97): 1 July 2007 (s 2(1) item 2)	—
Environment and Heritage Legislation Amendment Act (No. 1) 2006	165, 2006	12 Dec 2006	Sch 1 (items 1–604, 606–762, 764–780, 783–835): 19 Feb 2007 (s 2(1) items 2–4, 7–9) Sch 1 (item 605): 1 Jan 2007 (s 2(1) item 2) Sch 1 (item 763): 15 Jan 2007 (s 2(1) item 4) Sch 1 (items 781, 782): <u>awaiting commencement (s 2(1) items 5, 6)</u> Sch 2: 12 Dec 2006 (s 2(1) item 16)	Sch 2

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 2 (item 14): 19 Feb 2007 (s 2(1) item 50) Sch 2 (item 15): 12 Dec 2006 (s 2(1) item 51)	—
Migration Legislation Amendment (Information and Other Measures) Act 2007	63, 2007	15 Apr 2007	Sch 1 (items 1–15, 60, 61): 1 May 2007 (s 2(1) item 2)	Sch 1 (items 60, 61)
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 1 (items 21–26): 19 Feb 2007 (s 2(1) items 13–18)	—
Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008	117, 2008	21 Nov 2008	Sch 3 (item 14): 22 Nov 2008 (s 2(1) item 4)	—
Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008	125, 2008	25 Nov 2008	Sch 3 (items 1, 2): 26 Nov 2008 (s 2(1) item 2) Sch 4 (items 1–37, 42–44) and Sch 5 (items 1–87): 25 Nov 2009 (s 2(1) item 3)	Sch 4 (items 42–44)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (item 25) and Sch 5 (item 47): 1 Mar 2010 (s 2(1) items 2, 31) Sch 5 (item 137): 1 Mar 2010 (s 2(1) item 38)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 5 (items 32, 33), Sch 6 (items 43–48) and Sch 7: 1 Nov 2010 (s 2(1) item 7)	Sch 7
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 55): 1 Jan 2011 (s 2(1) items 3, 5)	—
Environment Protection and Biodiversity Conservation Amendment (Recreational Fishing for Mako and Porbeagle Sharks) Act 2010	107, 2010	14 July 2010	15 July 2010 (s 2)	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Sch 1 (items 62–65): 11 Dec 2010 (s 2(1) item 2)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 54): 19 Apr 2011 (s 2(1) item 18)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 551–562) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012	131, 2012	19 Sept 2012	19 Sept 2012 (s 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (item 50): 22 Sept 2012 (s 2(1) item 2)	—
Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Act 2012	145, 2012	24 Oct 2012	Sch 1: 9 Nov 2012 (s 2(1) item 2)	—
Financial Framework Legislation Amendment Act (No. 1) 2013	8, 2013	14 Mar 2013	Sch 1 (items 3, 4): 15 Mar 2013 (s 2)	Sch 1 (item 4)
Maritime Powers (Consequential Amendments) Act 2013	16, 2013	27 Mar 2013	Sch 2: 27 Mar 2014 (s 2(1) item 2)	—
Environment Protection and Biodiversity Conservation Amendment Act 2013	60, 2013	21 June 2013	Sch 1: 22 June 2013 (s 2(1) item 2)	Sch 1 (items 19, 20, 22–25)
Aboriginal Land Rights and Other Legislation Amendment Act 2013	93, 2013	28 June 2013	Sch 1 (items 28–36): 29 June 2013 (s 2)	Sch 1 (items 35, 36)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (items 22–24) and Sch 4 (item 80): 24 June 2014 (s 2(1) items 2, 9)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 144–156) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Act 2014	75, 2014	30 June 2014	Sch 1: 1 July 2014 (s 2(1) item 2)	Sch 1 (item 20)
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (items 81–136, 348, 349): 5 Mar 2016 (s 2(1) item 2)	Sch 3 (items 348, 349)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment Legislation Amendment Act 2015	11, 2015	5 Mar 2015	Sch 2 (items 1–42): 6 Mar 2015 (s 2)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (item 63) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 9
as amended by Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (items 102–105) Sch 2 (items 356–396): 18 June 2015 (s 2(1) items 2, 6) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3) Sch 2 (items 131–137): 1 July 2016 (s 2(1) item 5)	Sch 1 (items 184–203) and Sch 2 (items 356–396)
as amended by Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 3: 16 June 2015 (s 2(1) item 3) Sch 2 (items 11–21) and Sch 4: 16 June 2016 (s 2(1) items 2, 4)	Sch 3 and Sch 4

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (item 9): 20 Sept 2017 (s 2(1) item 4)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 180–199): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 147–159, 373–383): 10 Mar 2016 (s 2(1) item 6)	—
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016	26, 2016	23 Mar 2016	Sch 1 (items 16, 34, 35): 1 May 2016 (s 2(1) item 2)	Sch 1 (items 34, 35)
Omnibus Repeal Day (Autumn 2015) Act 2016	47, 2016	5 May 2016	Sch 2 (items 5–13): 6 May 2016 (s 2(1) item 2)	—
Great Barrier Reef Marine Park Amendment (Authority Governance and Other Matters) Act 2018	12, 2018	5 Mar 2018	Sch 1 (items 39–49): 29 Oct 2018 (s 2(1) item 2)	Sch 1 (items 45–49)
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (items 61–67): 30 Aug 2019 (s 2(1) item 2)	—
Export Control (Consequential Amendments and Transitional Provisions) Act 2020	13, 2020	6 Mar 2020	Sch 2 (items 10, 11) and Sch 3 (items 1–91): <u>awaiting commencement (s 2(1) item 2)</u>	<u>Sch 2 (item 11) and Sch 3 (items 1–91)</u>

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aboriginal Land Rights (Northern Territory) Amendment (Jabiru) Act 2020	87, 2020	17 Sept 2020	Sch 1 (item 13): 18 Sept 2020 (s 2(1) item 1)	—
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (items 21, 22): 16 Dec 2020 (s 2(1) item 2)	—

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1	
s 3	am No 88, 2003
s 5	am No 57, 2019
s 6	ad No 165, 2006
s 7	am No 165, 2006
s 9	am No 86, 2003
Chapter 2	
Part 2	
s 11	am No 125, 2008
Part 3	
Division 1	
Subdivision A	
s 12	am No 88, 2003
s 15A.....	am No 165, 2006; No 4, 2016
Subdivision AA	
Subdivision AA	ad No 88, 2003
s 15B.....	ad No 88, 2003 am No 165, 2006
s 15C.....	ad No 88, 2003 am No 165, 2006; No 4, 2016
Subdivision B	
s 17B.....	am No 165, 2006; No 4, 2016
Subdivision C	
s 18A.....	am No 165, 2006; No 4, 2016
s 19	am No 165, 2006
Subdivision D	
s 20A.....	am No 165, 2006; No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s 20B.....	ad No 165, 2006
Subdivision E	
s 22A.....	am No 165, 2006; No 4, 2016
Subdivision F	
s 24	am No 165, 2006
s 24A.....	am No 165, 2006; No 4, 2016
Subdivision FA	
Subdivision FA	ad No 125, 2008
s 24B.....	ad No 125, 2008
s 24C.....	ad No 125, 2008
Subdivision FB	
Subdivision FB	ad No 60, 2013
s 24D.....	ad No 60, 2013
s 24E.....	ad No 60, 2013
Subdivision H	
Subdivision H.....	ad No 82, 2001
s 25A.....	ad No 82, 2001
	am No 46, 2011; No 126, 2015
Subdivision HA	
Subdivision HA	ad No 165, 2006
s 25AA.....	ad No 165, 2006
	am No 125, 2008; No 60, 2013
Subdivision I	
Subdivision I.....	ad No 82, 2001
s 25B.....	ad No 82, 2001
	am No 165, 2006
s 25C.....	ad No 82, 2001
s 25D.....	ad No 82, 2001
	am No 165, 2006
s 25E.....	ad No 82, 2001
s 25F	ad No 82, 2001

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
Subdivision A	
s 26	am No 88, 2003
s 27A.....	am No 88, 2003; No 165, 2006; No 4, 2016
Subdivision AA	
Subdivision AA	ad No 88, 2003
s 27B.....	ad No 88, 2003
s 27C.....	ad No 88, 2003 am No 165, 2006; No 4, 2016
Subdivision B	
s 28	am No 88, 2003; No 165, 2006; No 129, 2020
Subdivision C	
Subdivision C	ad No 88, 2003
s 28AA.....	ad No 88, 2003 am No 46, 2011; No 126, 2015
Subdivision D	
Subdivision D	ad No 165, 2006
s 28AB.....	ad No 165, 2006
Division 3	rep No 165, 2006
s 28A.....	rep No 165, 2006
Part 4	
Division 1	
s 29	am No 165, 2006; No 125, 2008; No 60, 2013
s 30	am No 125, 2008
s 31	am No 165, 2006
Division 2	
Division 2 heading.....	rs No 165, 2006
Subdivision A	
s 32	am No 165, 2006
Subdivision B	
s 33	am No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 34	am No 88, 2003; No 125, 2008; No 60, 2013
Subdivision C	
s 34B	am No 165, 2006
s 34BA	ad No 88, 2003 am No 165, 2006
s 34C	am No 165, 2006
s 34D.....	am No 165, 2006
s 34E	am No 165, 2006
s 34F	ad No 88, 2003 am No 165, 2006
Subdivision D	
s 35	am No 165, 2006
s 36	am No 165, 2006
s 36A	ad No 165, 2006
Division 3	
Division 3	ad No 165, 2006
Subdivision A	
s 37	ad No 165, 2006
Subdivision B	
s 37A	ad No 165, 2006
Subdivision C	
s 37B.....	ad No 165, 2006
s 37C.....	ad No 165, 2006
s 37D	ad No 165, 2006
s 37E	ad No 165, 2006
s 37F	ad No 165, 2006
s 37G	ad No 165, 2006
s 37H.....	ad No 165, 2006
s 37J	ad No 165, 2006
Subdivision D	
s 37K	ad No 165, 2006

Endnote 4—Amendment history

Provision affected	How affected
s 37L	ad No 165, 2006
Division 3A	
Division 3A.....	ad No 165, 2006
s 37M	ad No 165, 2006
Division 4	
Subdivision A	
s 38	rs No 30, 2002
Subdivision B	
s 40	am No 30, 2002; No 10, 2015
Subdivision C	
s 42	am No 30, 2002
Division 5	
s 43	am No 125, 2008
Division 6	
Division 6	ad No 82, 2001
s 43A	ad No 82, 2001
	am No 165, 2006
s 43B	ad No 82, 2001
	am No 165, 2006
Chapter 3	
Part 5	
Division 2	
Subdivision A	
s 46	am No 165, 2006; No 60, 2013
s 49	am No 125, 2008
Subdivision B	
s 51	am No 165, 2006
s 51A	ad No 88, 2003
	am No 165, 2006
s 52	am No 165, 2006
s 53	am No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 54	am No 165, 2006
s 55	am No 165, 2006
Subdivision C	
Subdivision C	ad No 165, 2006
s 56A	ad No 165, 2006
Division 3	
Subdivision A	
s 63	am No 63, 2002
s 64	am No 165, 2006
Subdivision B	
s 65	am No 165, 2006
s 65A	am No 165, 2006
Chapter 4	
Part 6	
s 66	am No 165, 2006
Part 7	
Division 1	
s 67	am No 165, 2006
s 67A	ad No 165, 2006
s 68	am No 165, 2006
s 68A	ad No 165, 2006
s 70	am No 82, 2001; No 165, 2006
s 71	am No 165, 2006
s 72	am No 165, 2006
s 73A	ad No 125, 2008
s 74	am No 88, 2003; No 32, 2005; No 165, 2006; No 125, 2008; No 8, 2010
s 74A.....	ad No 88, 2003
s 74AA	ad No 165, 2006
Division 1A	
Division 1A.....	ad No 165, 2006

Endnote 4—Amendment history

Provision affected	How affected
s 74B.....	ad No 165, 2006
s 74C.....	ad No 165, 2006
s 74D.....	ad No 165, 2006 am No 8, 2010
Division 2	
s 75.....	am No 88, 2003; No 165, 2006; No 125, 2008; No 60, 2013
s 76.....	am No 165, 2006
s 77.....	am No 88, 2003
s 77A.....	ad No 88, 2003 am No 165, 2006
Division 3	
Division 3 heading.....	ad No 165, 2006
s 78.....	am No 88, 2003; No 165, 2006
s 78A.....	ad No 165, 2006
s 78B.....	ad No 165, 2006 am No 8, 2010
s 78C.....	ad No 165, 2006
s 79.....	am No 165, 2006
Part 8	
Division 1	
s 80.....	am No 165, 2006
Division 2	
s 82.....	am No 165, 2006; No 125, 2008; No 60, 2013
s 83.....	am No 125, 2008
s 84.....	am No 88, 2003
Division 3	
Subdivision A	
s 85.....	am No 165, 2006
Subdivision B	
s 86.....	rep No 165, 2006
s 87.....	am No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 88	am No 165, 2006
s 89	am No 165, 2006
s 91	am No 165, 2006; No 75, 2014
Division 3A	
Division 3A.....	ad No 165, 2006
s 92	rs No 165, 2006
s 93	rs No 165, 2006 am No 8, 2010; No 51, 2010
Division 4	
Division 4.....	rs No 165, 2006
s 94	rs No 165, 2006
s 95	rs No 165, 2006
s 95A.....	ad No 165, 2006
s 95B.....	ad No 165, 2006 am No 75, 2014
s 95C.....	ad No 165, 2006
Division 5	
s 96A.....	ad No 165, 2006
s 96B.....	ad No 165, 2006
s 97	am No 165, 2006; No 125, 2008
s 98	am No 165, 2006
s 99	rs No 165, 2006 am No 75, 2014
s 100	rs No 165, 2006
Division 6	
s 101A	ad No 165, 2006
s 101B	ad No 165, 2006
s 102	am No 165, 2006; No 125, 2008
s 103	am No 165, 2006
s 104	rs No 165, 2006 am No 75, 2014

Endnote 4—Amendment history

Provision affected	How affected
s 105	rs No 165, 2006
Division 7	
Subdivision B	
s 107	am No 125, 2008
Subdivision C	
s 111	am No 4, 2016
s 112	am No 4, 2016
s 114	am No 4, 2016
s 117	am No 31, 2014
s 119	am No 4, 2016
s 120	am No 4, 2016
Subdivision E	
s 124	am No 92, 1999
s 125	am No 92, 1999
Part 9	
Division 1	
Subdivision A	
s 130	am No 165, 2006; No 145, 2012
s 131	am No 165, 2006
s 131AA	ad No 165, 2006 am No 51, 2010; No 31, 2014
s 131AB	ad No 145, 2012
s 131A	ad No 165, 2006 am No 8, 2010
s 132	am No 165, 2006
s 132A	ad No 165, 2006
s 132B	ad No 75, 2014
s 133	am No 165, 2006; No 51, 2010
s 134	am No 165, 2006; No 75, 2014
s 134A	ad No 75, 2014
s 135A	ad No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
	am No 51, 2010
Subdivision B	
s 136	am No 165, 2006; No 145, 2012
s 137	rs No 88, 2003
s 137A	ad No 88, 2003
s 139	am No 165, 2006
Division 2	
s 142	am No 165, 2006
s 142A	am No 9, 2006; No 165, 2006; No 4, 2016
s 142B	ad No 165, 2006 am No 4, 2016
Division 3	
s 143	am No 165, 2006; No 51, 2010; No 75, 2014
s 143A	ad No 75, 2014
s 144	am No 165, 2006
s 145	am No 165, 2006
s 145A	am No 165, 2006
Division 4	
s 145B	am No 165, 2006
Division 5	
Division 5	ad No 165, 2006
s 145C	ad No 165, 2006
s 145D	ad No 165, 2006
s 145E	ad No 165, 2006
Part 10	
Division 1	
Subdivision A	
Subdivision A heading	ad No 165, 2006
s 146	am No 82, 2001; No 165, 2006
Subdivision B	
Subdivision B	ad No 165, 2006

Endnote 4—Amendment history

Provision affected	How affected
s 146A.....	ad No 165, 2006
s 146B.....	ad No 165, 2006 am No 51, 2010
s 146C.....	ad No 165, 2006
s 146D.....	ad No 165, 2006
Subdivision C	
Subdivision C	ad No 165, 2006
s 146E.....	ad No 165, 2006
s 146F.....	ad No 165, 2006
s 146G.....	ad No 165, 2006
s 146H.....	ad No 165, 2006
s 146F.....	ad No 165, 2006
s 146G.....	ad No 165, 2006
s 146H.....	ad No 165, 2006
s 146J.....	ad No 165, 2006
s 146K.....	ad No 165, 2006
s 146L.....	ad No 165, 2006
s 146M.....	ad No 165, 2006
Division 2	
s 148	am No 82, 2001
s 149	am No 82, 2001
s 150	am No 82, 2001
s 151	am No 82, 2001; No 63, 2002
s 152	am No 165, 2006
s 153	rs No 165, 2006
Part 11	
Division 1A	
Division 1A.....	ad No 165, 2006
s 156A.....	ad No 165, 2006
s 156B.....	ad No 165, 2006
s 156C.....	ad No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 156D	ad No 165, 2006
s 156E	ad No 165, 2006
Division 1B	
Division 1B.....	ad No 165, 2006
s 156F	ad No 165, 2006 am No 75, 2014
Division 3	
s 158	am No 129, 2020
Division 3A	
Division 3A.....	ad No 165, 2006
s 158A.....	ad No 165, 2006 am No 125, 2008
Division 4	
Subdivision A	
s 159	am No 165, 2006
s 160	am No 165, 2006
s 161	am No 165, 2006
s 161A.....	ad No 165, 2006
s 161B.....	ad No 165, 2006
s 163	am No 165, 2006
Subdivision B	rep No 165, 2006
s 165	rep No 165, 2006
Subdivision C	
s 168	am No 165, 2006
s 169	am No 165, 2006
s 170	am No 165, 2006
Division 5	
s 170A.....	am No 165, 2006; No 8, 2010
s 170B.....	ad No 165, 2006
s 170BA.....	ad No 165, 2006

Endnote 4—Amendment history

Provision affected	How affected
Division 6	
Division 6	ad No 165, 2006
s 170C	ad No 165, 2006
Division 7	
Division 7	ad No 75, 2014
s 170CA	ad No 75, 2014
Chapter 5	
Chapter 5 heading	rs No 88, 2003
Part 11A	
Part 11A	ad No 165, 2006
s 170D	ad No 165, 2006
	am No 46, 2011
Part 12	
Division 1	
s 172	rs No 165, 2006
s 173	rs No 165, 2006
s 175	rep No 165, 2006
Division 2	
s 176	am No 88, 2003; No 165, 2006
Part 13	
Division 1	
Subdivision A	
s 178	am No 10, 2015
s 179	am No 165, 2006
s 181	am No 10, 2015
s 183	am No 10, 2015
s 184	am No 165, 2006; No 126, 2015
s 185	rep No 165, 2006
s 186	am No 165, 2006
s 187	rs No 165, 2006
s 189	am No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s 189A	ad No 165, 2006
s 189B	ad No 165, 2006
s 191	rep No 165, 2006
s 193	am No 10, 2015
s 194	rs No 165, 2006 am No 8, 2010; No 10, 2015
Subdivision AA	
Subdivision AA	ad No 165, 2006
s 194A	ad No 165, 2006
s 194B	ad No 165, 2006
s 194C	ad No 165, 2006 am No 126, 2015
s 194D	ad No 165, 2006 am No 126, 2015
s 194E	ad No 165, 2006
s 194F	ad No 165, 2006
s 194G	ad No 165, 2006
s 194H	ad No 165, 2006
s 194J	ad No 165, 2006
s 194K	ad No 165, 2006
s 194L	ad No 165, 2006 am No 8, 2010
s 194M	ad No 165, 2006
s 194N	ad No 165, 2006 am No 73, 2008
s 194P	ad No 165, 2006
s 194Q	ad No 165, 2006 am No 73, 2008; No 8, 2010
s 194R	ad No 165, 2006
s 194S	ad No 165, 2006
s 194T	ad No 165, 2006

Endnote 4—Amendment history

Provision affected	How affected
Subdivision B	
s 196	am No 165, 2006; No 11, 2015; No 4, 2016
s 196A.....	am No 11, 2015; No 4, 2016
s 196B	am No 165, 2006; No 11, 2015; No 4, 2016
s 196C.....	am No 11, 2015; No 4, 2016
s 196D	am No 165, 2006; No 11, 2015; No 4, 2016
s 196E.....	am No 11, 2015; No 4, 2016
s 196F.....	ad No 11, 2015
s 198	am No 11, 2015
s 197	am No 82, 2001; No 165, 2006
s 199	am No 165, 2006; No 4, 2016
s 200	am No 165, 2006; No 8, 2010
s 201	am No 165, 2006
s 203	am No 4, 2016
s 206A	am No 165, 2006
Subdivision BA	
s 207A	am No 165, 2006
s 207B.....	am No 4, 2016
Subdivision C	
s 208A	ad No 82, 2001 rs No 165, 2006
Division 2	
Subdivision A	
s 209	am No 165, 2006; No 126, 2015
Subdivision B	
s 211	am No 165, 2006; No 11, 2015; No 4, 2016
s 211A.....	am No 11, 2015; No 4, 2016
s 211B	am No 165, 2006; No 11, 2015; No 4, 2016
s 211C.....	am No 11, 2015; No 4, 2016
s 211D	am No 165, 2006; No 11, 2015; No 4, 2016
s 211E.....	am No 11, 2015; No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s 211F	ad No 11, 2015
s 212	am No 82, 2001; No 165, 2006; No 107, 2010
s 213	am No 11, 2015
s 214	am No 165, 2006; No 107, 2010; No 4, 2016
s 215	am No 165, 2006; No 8, 2010
s 216	am No 165, 2006
s 218	am No 4, 2016
s 221A	am No 165, 2006
Subdivision C	
s 222A	ad No 82, 2001
	rs No 165, 2006
Division 3	
Subdivision A	
s 224	am No 82, 2001; No 165, 2006; No 57, 2019
Subdivision B	
Subdivision B heading	rs No 165, 2006
s 225	am No 165, 2006
s 228A	ad No 165, 2006
Subdivision C	
s 229	am No 165, 2006; No 4, 2016
s 229A	am No 4, 2016
s 229B	am No 165, 2006; No 4, 2016
s 229C	am No 4, 2016
s 229D	am No 165, 2006; No 4, 2016
s 230	am No 165, 2006; No 4, 2016
s 231	am No 82, 2001; No 165, 2006; No 125, 2008
s 232	am No 165, 2006; No 4, 2016
Subdivision D heading	rs No 82, 2001
	rep No 165, 2006
Subdivision D	rep No 165, 2006

Endnote 4—Amendment history

Provision affected	How affected
s 232A.....	ad No 82, 2001 rep No 165, 2006
s 232B.....	ad No 82, 2001 rep No 165, 2006
s 233	am No 82, 2001 rep No 165, 2006
s 234	am No 82, 2001 rep No 165, 2006
s 235	am No 82, 2001 rep No 165, 2006
Subdivision E	
s 236	am No 165, 2006; No 4, 2016
Subdivision F	
s 237	am No 165, 2006; No 8, 2010
s 238	am No 82, 2001; No 165, 2006
s 240	am No 4, 2016
s 243A.....	am No 165, 2006
Subdivision G	
s 245	am No 82, 2001 rs No 165, 2006
Division 4	
Subdivision A	
s 248	am No 10, 2015
s 249	am No 10, 2015
s 251	am No 10, 2015
Subdivision B	
s 254	am No 165, 2006; No 11, 2015; No 4, 2016
s 254A.....	am No 11, 2015; No 4, 2016
s 254B.....	am No 165, 2006; No 11, 2015; No 4, 2016
s 254C.....	am No 11, 2015; No 4, 2016
s 254D.....	am No 165, 2006; No 11, 2015; No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s 254E	am No 11, 2015; No 4, 2016
s 254F	ad No 11, 2015
s 255	am No 82, 2001; No 165, 2006; No 125, 2008
s 256	am No 165, 2006; No 4, 2016
s 257	am No 165, 2006; No 8, 2010
s 258	am No 165, 2006; No 8, 2010
s 260	am No 4, 2016
s 263A.....	am No 165, 2006
Subdivision C	
s 265	am No 82, 2001
	rs No 165, 2006
Division 4A.....	rep No 165, 2006
s 266A	rep No 165, 2006
Division 5	
Division 5 heading.....	rs No 165, 2006
Subdivision AA	
Subdivision AA	ad No 165, 2006
s 266B	ad No 165, 2006
	am No 8, 2010
Subdivision A	
s 267	am No 165, 2006
s 269AA	ad No 165, 2006
	am No 73, 2008
s 269A	am No 165, 2006
s 270	am No 165, 2006
s 271	am No 165, 2006
s 273	am No 165, 2006
s 278	am No 165, 2006
s 282	am No 31, 2014
s 283A	am No 165, 2006

Endnote 4—Amendment history

Provision affected	How affected
Subdivision C	
s 299	am No 165, 2006
s 300B	ad No 165, 2006
Division 8	
s 303AA	ad No 165, 2006
s 303AB	ad No 165, 2006
Part 13A	
Part 13A.....	ad No 82, 2001
Division 1	
s 303BA	ad No 82, 2001
s 303BAA	ad No 82, 2001
s 303BB	ad No 82, 2001
s 303BC	ad No 82, 2001
Division 2	
Subdivision A	
s 303CA	ad No 82, 2001
	am No 8, 2010; No 10, 2015
s 303CB	ad No 82, 2001
	am No 8, 2010; No 10, 2015
Subdivision B	
s 303CC	ad No 82, 2001
	am No 4, 2016
s 303CD.....	ad No 82, 2001
	am No 4, 2016
s 303CE	ad No 82, 2001
s 303CF.....	ad No 82, 2001
s 303CG.....	ad No 82, 2001
	am No 165, 2006
s 303CH.....	ad No 82, 2001
	am No 165, 2006; No 10, 2015
s 303CI.....	ad No 82, 2001

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Endnote 4—Amendment history

Provision affected	How affected
s 303CJ	ad No 82, 2001 am No 165, 2006
s 303CK	ad No 82, 2001 am No 8, 2010
Subdivision C	
s 303CL	ad No 82, 2001
s 303CM	ad No 82, 2001
s 303CN	ad No 82, 2001
Division 3	
Subdivision A	
s 303DA	ad No 82, 2001
s 303DB	ad No 82, 2001 am No 165, 2006; No 8, 2010; No 10, 2015
s 303DC	ad No 82, 2001 am No 8, 2010; No 10, 2015
Subdivision B	
s 303DD	ad No 82, 2001 am No 4, 2016
s 303DE	ad No 82, 2001
s 303DF	ad No 82, 2001
s 303DG	ad No 82, 2001 am No 165, 2006
s 303DH	ad No 82, 2001
s 303DI	ad No 82, 2001 am No 165, 2006
s 303DJ	ad No 82, 2001 am No 8, 2010
Division 4	
Subdivision A	
s 303EA	ad No 82, 2001
s 303EB	ad No 82, 2001

Endnote 4—Amendment history

Provision affected	How affected
	am No 165, 2006; No 8, 2010; No 10, 2015; No 62, 2015
s 303EC	ad No 82, 2001
	am No 8, 2010; No 10, 2015
Subdivision B	
s 303ED	ad No 82, 2001
	am No 165, 2006
s 303EE.....	ad No 82, 2001
	am No 165, 2006
s 303EF	ad No 82, 2001
	rs No 165, 2006
s 303EG	ad No 82, 2001
s 303EH.....	ad No 82, 2001
s 303EI.....	ad No 82, 2001
s 303EJ.....	ad No 82, 2001
Subdivision C	
s 303EK.....	ad No 82, 2001
	am No 4, 2016
s 303EL.....	ad No 82, 2001
s 303EM.....	ad No 82, 2001
s 303EN	ad No 82, 2001
	am No 165, 2006
s 303EO	ad No 82, 2001
s 303EP.....	ad No 82, 2001
	am No 165, 2006
s 303EQ	ad No 82, 2001
	am No 8, 2010
Subdivision D	
s 303ER	ad No 82, 2001
s 303ES.....	ad No 82, 2001
s 303ET.....	ad No 82, 2001
s 303EU	ad No 82, 2001

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Endnote 4—Amendment history

Provision affected	How affected
	am No 10, 2015
s 303EV	ad No 82, 2001
	am No 4, 2016
s 303EW	ad No 82, 2001
Division 5	
Subdivision A	
s 303FA	ad No 82, 2001
s 303FB.....	ad No 82, 2001
s 303FC.....	ad No 82, 2001
s 303FD	ad No 82, 2001
s 303FE	ad No 82, 2001
s 303FF	ad No 82, 2001
s 303FG	ad No 82, 2001
	am No 10, 2015
s 303FH	ad No 82, 2001
s 303FI.....	ad No 82, 2001
Subdivision B	
s 303FJ.....	ad No 82, 2001
	am No 165, 2006
s 303FK	ad No 82, 2001
s 303FL.....	ad No 82, 2001
s 303FLA	ad No 165, 2006
s 303FM.....	ad No 82, 2001
s 303FN	ad No 82, 2001
s 303FO	ad No 82, 2001
s 303FP	ad No 82, 2001
	am No 8, 2010
s 303FQ	ad No 82, 2001
s 303FR.....	ad No 82, 2001
	am No 8, 2010
s 303FRA	ad No 82, 2001

Endnote 4—Amendment history

Provision affected	How affected
	am No 46, 2011
s 303FS	ad No 82, 2001
	am No 8, 2010
s 303FT	ad No 82, 2001
	am No 8, 2010
s 303FU	ad No 82, 2001
Division 6	
s 303GA	ad No 82, 2001
s 303GB	ad No 82, 2001
	am No 165, 2006; No 8, 2010
s 303GC	ad No 82, 2001
	am No 165, 2006
s 303GD	ad No 82, 2001
	am No 165, 2006
s 303GE	ad No 82, 2001
	am No 165, 2006
s 303GF	ad No 82, 2001
	am No 4, 2016
s 303GG	ad No 82, 2001
s 303GH	ad No 82, 2001
s 303GI	ad No 82, 2001
s 303GJ	ad No 82, 2001
	am No 38, 2005; No 165, 2006
s 303GK	ad No 82, 2001
s 303GL	ad No 82, 2001
s 303GM	ad No 82, 2001
s 303GN	ad No 82, 2001
	am No 4, 2016
s 303GO	ad No 82, 2001
s 303GP	ad No 82, 2001
	am No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s 303GQ.....	ad No 82, 2001
s 303GR.....	ad No 82, 2001
s 303GS	ad No 82, 2001
s 303GT	ad No 82, 2001
s 303GU.....	ad No 82, 2001
s 303GV.....	ad No 82, 2001
	am No 62, 2015
s 303GW	ad No 82, 2001
	am No 41, 2015; No 62, 2015
s 303GX.....	ad No 82, 2001
	am No 10, 2015
s 303GY.....	ad No 82, 2001
Part 14	
s 304	am No 88, 2003
	rs No 165, 2006
	am No 60, 2013
s 305	am No 88, 2003; No 165, 2006; No 60, 2013
s 306	am No 88, 2003; No 165, 2006; No 60, 2013
s 306A.....	ad No 165, 2006
s 307A.....	ad No 165, 2006
s 309	am No 88, 2003
Part 15	
Division 1	
Subdivision D	
s 316	am No 47, 2016
s 318	rs No 88, 2003
Subdivision E	
s 321	am No 125, 2008
Subdivision F	
s 323	am No 88, 2003

Endnote 4—Amendment history

Provision affected	How affected
Division 1A	
Division 1A.....	ad No 88, 2003
Subdivision A	
s 324A.....	ad No 88, 2003
s 324B.....	ad No 88, 2003
	rep No 165, 2006
Subdivision B	
s 324C.....	ad No 88, 2003
	am No 165, 2006
s 324D.....	ad No 88, 2003
Subdivision BA	
Subdivision BA.....	ad No 165, 2006
s 324E.....	ad No 88, 2003
	rs No 165, 2006
s 324F.....	ad No 88, 2003
	rs No 165, 2006
s 324G.....	ad No 88, 2003
	rs No 165, 2006
	am <u>No 88, 2003</u> ; No 126, 2015
s 324H.....	ad No 88, 2003
	rs No 165, 2006
	am No 126, 2015
s 324J.....	ad No 88, 2003
	rs No 165, 2006
	am <u>No 88, 2003</u>
s 324JA.....	ad No 165, 2006
s 324JB.....	ad No 165, 2006
s 324JC.....	ad No 165, 2006
s 324JD.....	ad No 165, 2006
s 324JE.....	ad No 165, 2006
s 324JF.....	ad No 165, 2006

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Endnote 4—Amendment history

Provision affected	How affected
	am No 8, 2010
s 324JG	ad No 165, 2006
s 324JH	ad No 165, 2006
s 324JI	ad No 165, 2006
s 324JJ	ad No 165, 2006
	am No 8, 2010
Subdivision BB	
Subdivision BB	ad No 165, 2006
s 324JK	ad No 165, 2006
s 324JL	ad No 165, 2006
	am No 8, 2010
s 324JM	ad No 165, 2006
s 324JN	ad No 165, 2006
s 324JO	ad No 165, 2006
s 324JP	ad No 165, 2006
s 324JQ	ad No 165, 2006
	am No 8, 2010
Subdivision BC	
Subdivision BC	ad No 165, 2006
s 324JR	ad No 165, 2006
s 324JS	ad No 165, 2006
s 324K	ad No 88, 2003
	am No 165, 2006
s 324L	ad No 88, 2003
	am No 165, 2006; No 8, 2010; No 10, 2015
s 324M	ad No 88, 2003
	am No 165, 2006; No 8, 2010; No 10, 2015
s 324N	ad No 88, 2003
	rs No 165, 2006
	am No 46, 2011

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Provision affected	How affected
s 324P	ad No 88, 2003 am No 8, 2010
s 324Q.....	ad No 88, 2003
s 324R.....	ad No 88, 2003 am No 165, 2006; No 10, 2015
Subdivision C	
s 324S	ad No 88, 2003 am No 165, 2006
s 324T	ad No 88, 2003 am No 47, 2016
s 324U.....	ad No 88, 2003
s 324V.....	ad No 88, 2003
s 324W.....	ad No 88, 2003 am No 8, 2010
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s 324X.....	ad No 88, 2003 am No 125, 2008
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s 324Y.....	ad No 88, 2003 am No 165, 2006
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s 324Z.....	ad No 88, 2003
s 324ZA	ad No 88, 2003
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s 324ZB	ad No 88, 2003
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s 324ZC	ad No 88, 2003
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s 328	am No 47, 2016

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Provision affected	How affected
s 330	rs No 88, 2003
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Division 3A.....	ad No 88, 2003
Subdivision A	
s 341A.....	ad No 88, 2003
s 341B.....	ad No 88, 2003
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s 341C	ad No 88, 2003
	am No 165, 2006
s 341D	ad No 88, 2003
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s 341E.....	ad No 88, 2003
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s 341F	ad No 88, 2003
	rs No 165, 2006
s 341G.....	ad No 88, 2003
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	am <u>No 88, 2003</u>
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s 341JB	ad No 165, 2006
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s 341JE.....	ad No 165, 2006
	am No 8, 2010
s 341JF.....	ad No 165, 2006

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Provision affected	How affected
s 341JG	ad No 165, 2006
s 341JH	ad No 165, 2006
s 341JL	ad No 165, 2006 am No 8, 2010
Subdivision BB	
Subdivision BB	ad No 165, 2006
s 341JJ	ad No 165, 2006
s 341JK	ad No 165, 2006 am No 8, 2010
s 341JL	ad No 165, 2006
s 341JM	ad No 165, 2006
s 341JN	ad No 165, 2006
s 341JO	ad No 165, 2006
s 341JP	ad No 165, 2006 am No 8, 2010
Subdivision BC	
Subdivision BC	ad No 165, 2006
s 341JQ	ad No 165, 2006
s 341JR	ad No 165, 2006
s 341K	ad No 88, 2003 am No 165, 2006
s 341L	ad No 88, 2003 am No 165, 2006; No 8, 2010; No 10, 2015
s 341M	ad No 88, 2003 am No 8, 2010; No 10, 2015
s 341N	ad No 88, 2003 rs No 165, 2006 am No 46, 2011
s 341P	ad No 88, 2003 am No 8, 2010
s 341Q	ad No 88, 2003

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Endnote 4—Amendment history

Provision affected	How affected
s 341R	ad No 88, 2003 am No 165, 2006; No 10, 2015
Subdivision C	
s 341S	ad No 88, 2003 am No 165, 2006
s 341T	ad No 88, 2003 am No 165, 2006; No 8, 2010
s 341U.....	ad No 88, 2003 am No 47, 2016
s 341V.....	ad No 88, 2003
s 341W.....	ad No 88, 2003
s 341X.....	ad No 88, 2003 am No 8, 2010
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s 341Y	ad No 88, 2003
Subdivision E	
s 341Z	ad No 88, 2003
s 341ZA	ad No 88, 2003
s 341ZB	ad No 88, 2003
s 341ZC	ad No 88, 2003
s 341ZD	ad No 88, 2003 rep No 165, 2006
s 341ZE	ad No 88, 2003
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s 341ZF	ad No 88, 2003 rep No 165, 2006
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s 341ZG	ad No 88, 2003
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s 341ZH	ad No 88, 2003

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s 356	am No 165, 2006
s 359B	ad No 165, 2006
s 360	rep No 165, 2006
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s 373	am No 165, 2006
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s 410	am No 165, 2006
s 411	am No 41, 2003
s 412	am No 165, 2006
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Provision affected	How affected
s 417	am No 165, 2006; No 125, 2008
s 418A	ad No 165, 2006
s 422	am No 165, 2006; No 125, 2008
s 425	am No 41, 2003
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s 444B	ad No 82, 2001
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s 446	am No 165, 2006; No 125, 2008; No 59, 2015
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Subdivision AC.....	ad No 125, 2008
s 447	rep No 165, 2006 ad No 125, 2008
s 448	rep No 165, 2006
Subdivision B	
Subdivision B heading.....	rs No 165, 2006
s 449	am No 165, 2006

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Provision affected	How affected
s 449A	ad No 165, 2006
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Subdivision BA	ad No 165, 2006
s 449BA	ad No 165, 2006
	am No 125, 2008
s 449BB	ad No 165, 2006
	am No 46, 2011
Subdivision C	
Subdivision C heading	rs No 165, 2006
s 450	am No 82, 2001; No 165, 2006; No 125, 2008
s 450A	ad No 165, 2006
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s 450B	ad No 165, 2006
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s 451	am No 82, 2001
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Subdivision F heading	rs No 165, 2006
s 453	am No 165, 2006
s 454	am No 165, 2006
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Subdivision G heading	rs No 165, 2006
s 455	am No 165, 2006; No 4, 2016
s 456	am No 165, 2006; No 125, 2008
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Subdivision H heading	ad No 165, 2006
s 456AA	ad No 165, 2006
s 456AB	ad No 165, 2006
s 456AC	ad No 165, 2006
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Provision affected	How affected
s 457	rep No 16, 2013
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s 460	am No 4, 2016
s 461	am No 4, 2016
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s 472	am No 165, 2006
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Provision affected	How affected
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s 486	rep No 165, 2006
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s 514G	am No 46, 2011
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s 514L.....	rep No 62, 2014

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Provision affected	How affected
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s 514P.....	am No 62, 2014
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s 514S.....	am No 62, 2014
s 514T.....	am No 62, 2014
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Endnote 4—Amendment history

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s 520	am No 82, 2001; No 63, 2002; No 75, 2014
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Endnote 4—Amendment history

Provision affected	How affected
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c 53	am No 63, 2007; No 51, 2010



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No. 162, 1991

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About this compilation

This compilation

This is a compilation of the *Fisheries Management Act 1991* that shows the text of the law as amended and in force on 18 December 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

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For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to fisheries

Part 1—Preliminary

1 Short title

This Act may be cited as the *Fisheries Management Act 1991*.

2 Commencement

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Part 5 commences upon the repeal or the ceasing to have effect (as the case may be) of Part IVA of the *Fisheries Act 1952*.
- (3) Subject to subsection (4), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (4) If a provision mentioned in subsection (3) does not commence under that subsection within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Objectives

- (1) The following objectives must be pursued by the Minister in the administration of this Act and by AFMA in the performance of its functions:
 - (a) implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and
 - (b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard

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- to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and
- (c) maximising the net economic returns to the Australian community from the management of Australian fisheries; and
 - (d) ensuring accountability to the fishing industry and to the Australian community in AFMA's management of fisheries resources; and
 - (e) achieving government targets in relation to the recovery of the costs of AFMA.
- (2) In addition to the objectives mentioned in subsection (1), or in section 78 of this Act, the Minister, AFMA and Joint Authorities are to have regard to the objectives of:
- (a) ensuring, through proper conservation and management measures, that the living resources of the AFZ are not endangered by over-exploitation; and
 - (b) achieving the optimum utilisation of the living resources of the AFZ; and
 - (c) ensuring that conservation and management measures in the AFZ and the high seas implement Australia's obligations under international agreements that deal with fish stocks; and
 - (d) to the extent that Australia has obligations:
 - (i) under international law; or
 - (ii) under the Compliance Agreement or any other international agreement;in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (c)—ensuring that Australia implements those first-mentioned obligations; and
 - (e) ensuring that the interests of commercial, recreational and Indigenous fishers are taken into account;
- but must ensure, as far as practicable, that measures adopted in pursuit of those objectives must not be inconsistent with the preservation, conservation and protection of all species of whales.

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 equity considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

Administrator means the person or organisation that is the Administrator within the meaning of the Treaty.

AFMA means the Australian Fisheries Management Authority.

AFMA staff member has the same meaning as in the *Fisheries Administration Act 1991*.

AFZ means the Australian fishing zone.

approved means approved by AFMA or, in relation to a Joint Authority fishery, by the Joint Authority.

Australian boat means:

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- (a) a boat:
 - (i) the operations of which are based on a place in Australia or an external Territory; and
 - (ii) that is wholly-owned by a natural person who is a resident of, or by a company incorporated in, Australia or an external Territory; and
 - (iii) that was built in Australia or an external Territory; or
- (b) a boat, not being a boat mentioned in paragraph (a) or a boat owned by a foreign resident that is under a demise charter, that is registered under the *Shipping Registration Act 1981*; or
- (c) a boat the subject of a declaration under subsection (2).

Australian continental shelf means the continental shelf adjacent to the coast of Australia and the continental shelf adjacent to each of the external Territories.

Australian fishing zone means:

- (a) the waters adjacent to Australia within the outer limits of the exclusive economic zone adjacent to the coast of Australia; and
- (b) the waters adjacent to each external territory within the outer limits of the exclusive economic zone adjacent to the coast of the external Territory;

but does not include:

- (c) coastal waters of, or waters within the limits of, a State or internal Territory; or
- (d) waters that are excepted waters.

Australian-flagged boat means a boat that:

- (a) is an Australian ship as defined in the *Shipping Registration Act 1981*; or
- (b) would be an Australian ship as defined in the *Shipping Registration Act 1981* if it were a ship as defined in that Act.

Australian national means:

- (a) an Australian citizen; or

- (b) a resident of Australia; or
- (c) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
- (d) any other body corporate that carries on its activities principally in Australia.

Australian resident means:

- (a) a person who holds a permanent visa (as defined in the *Migration Act 1958*) that is in effect; or
- (b) a New Zealand citizen who is usually resident in Australia or a Territory and who holds a special category visa (as defined in the *Migration Act 1958*) that is in effect; or
- (c) any other person who is usually resident in Australia or a Territory and whose continued presence in Australia or a Territory is not subject to a limitation as to time imposed by law.

being investigated for a fisheries offence, in relation to the holder of a fishing concession, means:

- (a) AFMA is investigating whether the holder has committed a fisheries offence; or
- (b) a law enforcement agency has notified AFMA that the agency is investigating whether the holder has committed a fisheries offence; or
- (c) the holder is charged with a fisheries offence.

boat means launch, vessel or floating craft of any description.

CEO has the same meaning as in the *Fisheries Administration Act 1991*.

charter boat means a boat that is being used exclusively for recreational fishing in the course of an arrangement under which money or some other consideration is, or is required to be, paid or given by or on behalf of a person or persons for the right to fish from that boat.

coastal waters has the meaning given by section 5.

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Commission has the same meaning as in the *Fisheries Administration Act 1991*.

Compliance Agreement means the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas done at Rome on 24 November 1993, a copy of the English text of which is set out in Schedule 3.

computer function notice has the meaning given by section 163D.

conservation area, for a conserved fish stock, means the area to which the international fisheries management measure that covers the fish stock relates.

conserved fish stock means a fish stock covered by an international fisheries management measure.

conveyance includes an aircraft, vehicle or vessel.

cooperative enforcement has the meaning given by section 84B.

Cooperative Enforcement Agreement has the meaning given by section 84B.

dealing includes a transmission by operation of law.

defensive equipment has the meaning given by section 89A.

electronic decision has the meaning given by section 163B.

e-monitoring means electronic monitoring.

e-monitoring data means any data (whether or not that data is also personal information, within the meaning of the *Privacy Act 1988*) that is, or was:

- (a) generated by; or
- (b) transmitted by; or
- (c) stored by;

e-monitoring equipment installed, carried or used in compliance with a condition imposed under section 40C of this Act on a fishing concession or scientific permit.

e-monitoring equipment means:

- (a) a thing used for, intended to be used for, or capable of being used for, generating, transmitting or storing data; or
- (b) a thing that makes, is intended to make, or is capable of making, a thing covered by paragraph (a) operational.

evidential material means a thing relevant to an indictable offence, or a thing relevant to a summary offence, against this Act or the regulations, including such a thing in electronic form.

excepted waters means waters specified by Proclamation under section 11.

executing officer, in relation to a warrant, means:

- (a) the officer named in the warrant by the magistrate who issued the warrant as being responsible for executing the warrant; or
- (b) if the officer so named does not intend to be present at the execution of the warrant—another officer whose name has been written in the warrant by the officer so named; or
- (c) another officer whose name has been written in the warrant by the officer last named in the warrant.

FAO means the Food and Agriculture Organization of the United Nations.

fish includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

fisheries legislation means:

- (a) this Act or the regulations; or
- (b) another Act or regulations that are:
 - (i) administered by the Minister; and
 - (ii) prescribed under the regulations.

Section 4

fisheries offence means:

- (a) an offence against this Act or the regulations; or
- (b) an offence against another Act that relates to a fishing concession (including an offence for unlawfully obtaining a fishing concession, for example).

fishery means a class of activities by way of fishing, including activities identified by reference to all or any of the following:

- (a) a species or type of fish;
- (b) a description of fish by reference to sex or any other characteristic;
- (c) an area of waters or of seabed;
- (d) a method of fishing;
- (e) a class of boats;
- (f) a class of persons;
- (g) a purpose of activities.

fishing means:

- (a) searching for, or taking, fish; or
- (b) attempting to search for, or take, fish; or
- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish; or
- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons; or
- (e) any operations at sea directly in support of, or in preparation for, any activity described in this definition; or
- (f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat; or
- (g) the processing, carrying or transshipping of fish that have been taken.

fishing concession means:

- (a) a statutory fishing right; or
- (b) a fishing permit; or
- (c) a foreign fishing licence.

fishing concession certificate has the meaning given by section 163E.

fishing permit means a fishing permit granted under section 32.

fishing-related activity means any of the following:

- (a) searching for, or taking, fish;
- (b) attempting to search for, or take, fish;
- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;
- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) the processing, carrying or transshipping of fish that have been taken;
- (f) the discarding from a boat of fish, marine mammals, marine reptiles or seabirds;
- (g) any other activity prescribed by the regulations for the purposes of this definition;
- (h) any operations on a boat directly in support of, or in preparation for, any activity covered by another paragraph of this definition;
- (i) any other encounters with fish, marine mammals, marine reptiles or seabirds while engaging in any activity or operation covered by another paragraph of this definition;
- (j) any other encounters with the marine environment while engaging in any activity or operation covered by another paragraph of this definition.

Note: If an activity is prescribed by the regulations under paragraph (g) it is an activity covered by paragraph (g) for the purposes of paragraphs (h), (i) and (j). So, for example, an encounter with the marine environment while engaging in an activity prescribed under paragraph (g) is also a fishing-related activity.

fishing right means a statutory fishing right.

fishing vessel of the United States has the same meaning as in the Treaty.

Section 4

fish receiver permit means a fish receiver permit granted under section 91.

Fish Stocks Agreement means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, a copy of the English text of which is set out in Schedule 2.

foreign boat means a boat other than an Australian boat.

foreign fishing licence means a foreign fishing licence granted under section 34.

foreign master fishing licence means a foreign master fishing licence granted under section 40.

highly migratory fish stock has the same meaning as in the Fish Stocks Agreement.

high seas means the waters that are:

- (a) outside the outer limits of the exclusive economic zones of all countries, including Australia and its external Territories; or
- (b) inside the outer limits of the exclusive economic zone adjacent to the coast of the Australian Antarctic Territory.

holder of a licence, permit or right:

- (a) means:
 - (i) the person to whom the licence, permit or right was granted; or
 - (ii) if the permit or right has been transferred—the person to whom the permit or right was last transferred; and
- (b) in the case of a statutory fishing right that is leased to another person by a lease registered under section 46—includes the lessee of the statutory fishing right.

international conservation and management measure means a measure to conserve and manage one or more species of living marine resources that is adopted and applied, in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea:

- (a) by a global, regional or subregional fisheries organisation; or
- (b) by treaty or other international agreement.

Note: The English text of the United Nations Convention on the Law of the Sea is set out in Australian Treaty Series 1994 No. 31.

international fisheries management measure means a measure prescribed by the regulations to give effect to a measure established by an international fisheries management organisation.

international fisheries management organisation means a global, regional or subregional fisheries organisation or arrangement prescribed by the regulations.

international officer has the meaning given by section 84B.

Joint Authority means an authority established by or under section 61.

law enforcement agency means a government body that has responsibility for the enforcement of the laws of:

- (a) the Commonwealth; or
- (b) a State or Territory.

lease, of a fishing right, means a temporary assignment of the fishing right.

magistrate includes a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants.

managed fishery means a fishery to which a plan of management relates.

master, in relation to a boat, means the master or other person in charge of the boat.

Section 4

member, in relation to the Panel, means a member of the Panel.

Ministerial Council means:

- (a) subject to paragraph (b)—the Ministerial Council on Forestry, Fisheries and Aquaculture, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition—that other body.

modification includes addition, omission and substitution.

offence against this Act includes an offence against section 136.1, 137.1, 137.2, 148.1, 148.2, 147.1 or 149.1 of the *Criminal Code* that relates to this Act.

officer means:

- (a) a person appointed under section 83 to be an officer for the purposes of this Act; or
- (b) a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; or
- (c) a member of the Defence Force; or
- (d) an officer of Customs (as defined in the *Customs Act 1901*).

Pacific Island party, in relation to the Treaty, has the same meaning as in the Treaty.

Pacific Island party officer means a person (other than a person mentioned in paragraph (a), (b) or (c) of the definition of **officer**) who is authorised by or under the law of a Pacific Island party to perform the functions and duties of an observer on Treaty boats.

Panel means the Statutory Fishing Rights Allocation Review Panel.

party, in relation to the Treaty, has the same meaning as in the Treaty.

plan of management means a plan of management determined under section 17.

port permit means a port permit granted under section 94.

PPSA security interest (short for Personal Property Securities Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

- (a) section 8 (interests to which the Act does not apply);
- (b) section 12 (meaning of **security interest**);
- (c) Chapter 9 (transitional provisions).

Note 2: For the meaning of **transitional security interest**, see section 308 of the *Personal Property Securities Act 2009*.

precautionary principle has the same meaning as in clause 3.5.1 of the Intergovernmental Agreement on the Environment, a copy of which is set out in the Schedule to the *National Environment Protection Council Act 1994*.

premises includes a place and a conveyance.

Presiding Member means the Presiding Member of Australian Fisheries Management Authority Selection Committees appointed under section 139.

primary stakeholder has the meaning given in the *Fisheries Administration Act 1991*.

principles of ecologically sustainable development has the meaning given by section 3A.

processing, in relation to fish, includes the work of cutting up, dismembering, cleaning, sorting, packing or freezing.

receive, in relation to fish, means receive fish for any purpose other than:

- (a) personal or domestic consumption; or
- (b) solely for transportation.

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Register means the Register of Statutory Fishing Rights kept by AFMA under section 44.

relevant Treaty purpose has the meaning given by subsection (6).

scientific permit means a scientific permit granted under section 33.

sedentary organism means an organism of a kind declared by Proclamation under section 12 to be a sedentary organism to which this Act applies.

Selection Committee means an Australian Fisheries Management Authority Selection Committee established under section 141A.

statutory fishing right has the meaning given by section 21.

statutory fishing rights option has the meaning given by section 31A.

straddling fish stock has the same meaning as in the Fish Stocks Agreement.

take, in relation to fish, means catch, capture, take or harvest.

temporary order means an order made under section 43.

Treaty means the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America that was signed at Port Moresby on 2 April 1987, a copy of which is set out in Schedule 1, and, subject to subsection (7), includes that Treaty as amended from time to time.

Treaty area has the same meaning as in the Treaty.

Treaty boat means a foreign boat that is a fishing vessel of the United States.

Treaty licence means a licence issued, for the purposes of the Treaty, by the Administrator in respect of a Treaty boat.

warrant means a warrant under section 85 or 86.

warrant premises means premises in relation to which a warrant is in force.

whale means any member of the sub-order *Mysticeti* or *Odontoceti* of the order *Cetacea*.

(2) Where:

- (a) a boat has been lawfully imported into Australia for a limited period; and
- (b) AFMA is satisfied that the extent of participation of citizens or residents of Australia, either directly or indirectly (whether through the holding of shares in a company or otherwise), in the control of the operations of the boat in the AFZ during that period, and the nature of those operations, will be such as to justify it in so doing;

AFMA may, by instrument published in the *Gazette*, declare that, during that period, the boat is taken to be an Australian boat for the purposes of this Act.

(3) AFMA may:

- (a) because of a change in circumstances, by instrument published in the *Gazette*, at any time revoke an instrument under subsection (2); or
- (b) by instrument published in the *Gazette*, extend the period for which an instrument under subsection (2) is to remain in force.

(4) For the purposes of this Act:

- (a) in relation to a fishery or a managed fishery that is identified by reference to an area, a reference to activities in the fishery or in the managed fishery includes activities in that area; and
- (b) in relation to a fishery or a managed fishery that is identified by reference to any matter other than an area, a reference to activities in the fishery or in the managed fishery includes activities in relation to the fishery.

Section 5

- (5) For the purposes of this Act, a charter boat, the person in charge of the boat and any other person fishing from the boat are taken to be engaged in recreational fishing.
- (6) A reference in this Act to a relevant Treaty purpose is a reference to the purpose of:
 - (a) performing the functions and duties of an observer in accordance with Part 6 of Annex 1 to the Treaty or an observer program conducted in accordance with the Treaty; or
 - (b) ascertaining whether the provisions of this Act have been or are being complied with on, or in relation to the use of, a Treaty boat while it is in the AFZ.
- (7) An amendment of the Treaty that alters the Treaty area that is within the AFZ or that alters a condition of a Treaty licence in a way that affects fishing by Treaty boats within the AFZ under a Treaty licence:
 - (a) does not have effect for the purposes of this Act unless the amendment is declared by the regulations to have effect for the purposes of this Act; and
 - (b) takes effect for the purposes of this Act on the day on which regulations mentioned in paragraph (a) take effect or on such later day as is specified in those regulations.
- (8) If an arrangement under Division 3 of Part 5 is varied, a reference in this Act to the arrangement is a reference to the arrangement as varied.

5 Coastal waters

- (1) For the purposes of this Act, the coastal waters of a State or internal Territory are:
 - (a) the part or parts of the territorial sea of Australia that are:
 - (i) within 3 nautical miles of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law; and
 - (ii) adjacent to that State or Territory; and

- (b) any marine or tidal waters that are on the landward side of that baseline and are adjacent to that State or Territory but are not within the limits of a State or Territory.
- (2) Any part of the territorial sea of Australia that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (1), taken to be adjacent to New South Wales.

6 Act binds the Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) Nothing in this Act makes the Crown liable to be prosecuted for an offence.

6A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

7 Application

- (1) This Act extends to all of the Territories and has extra-territorial operation.
- (2) In relation to the AFZ and to fishing for sedentary organisms outside the AFZ, this Act applies to all persons, including foreigners, and to all boats, including foreign boats.
- (3) In relation to fishing activities on waters outside the AFZ, this Act applies:
 - (a) to Australian boats and to Australian-flagged boats that are not Australian boats; and
 - (b) to all persons (including foreigners) on boats to which paragraph (a) applies.

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This subsection does not limit subsection (2) or express provisions that extend the application of this Act.

- (4) Subsections (2) and (3) do not limit the extra-territorial operation of this Act.

8 Application of Act to areas outside the AFZ

- (1) The regulations may provide that, in respect of specified areas outside the AFZ, or in respect of the high seas generally, this Act applies to:
- (a) Australian citizens; and
 - (b) bodies corporate that are incorporated in Australia or carry on activities mainly in Australia; and
 - (c) Australian boats and Australian-flagged boats that are not Australian boats; and
 - (d) persons on board boats to which paragraph (c) applies.
- (2) The Act so applies subject to any exceptions or modifications specified in the regulations.
- (3) When a provision of this Act applies in relation to such an area, then, subject to the regulations, references in that provision to the AFZ are to be read as references to that area.
- (4) This section does not limit the extra-territorial operation of this Act.

8A Regulations may provide for placement of observers on foreign fishing boats operating outside the AFZ

- (1) The regulations may:
- (a) provide for the placement of persons as observers on board foreign fishing boats that will be, or are, operating outside the AFZ; and
 - (b) set out the functions, powers and duties of persons so placed.
- (2) Without otherwise limiting the generality of subsection (1):

- (a) a person may be so placed only if the placement is authorised under a regional arrangement, or a bilateral or multilateral treaty, to which Australia, or a body acting on behalf of Australia, is a party; and
 - (b) the functions, powers and duties conferred or imposed on persons so placed must be consistent with the terms of that arrangement or treaty.
- (3) In this section:

foreign fishing boat means a foreign boat that is equipped for fishing.

9 Application of Act to Protected Zone

- (1) This Act, other than this section and sections 84 and 108, does not apply to or in relation to the Protected Zone.
- (2) Where there is in force a Proclamation under subsection 15(1) or (2) of the *Torres Strait Fisheries Act 1984* in relation to an area adjacent to the Protected Zone, this Act, other than this section and sections 84 and 108, does not, except as provided by subsection (3), apply in relation to any activities within that area to which the *Torres Strait Fisheries Act 1984* applies by virtue of the Proclamation.
- (3) If the Proclamation came into force after the commencement of this section, this Act applies, in relation to matters that occurred after that commencement but before the Proclamation came into force, in relation to any activities within the area to which the Proclamation relates.
- (4) In this section:

Protected Zone has the same meaning as in the *Torres Strait Fisheries Act 1984*.

Section 9A

9A Act not to apply so as to exceed Commonwealth power

- (1) Unless the contrary intention appears, if a provision of this Act:
 - (a) would, apart from this section, have an invalid application; but
 - (b) also has at least one valid application;it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:
 - (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or
 - (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.
- (3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.
- (5) In this section:

application means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases; or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the Commonwealth's legislative power.

valid application, in relation to a provision, means an application that, if it were the provision's only application, would be within the Commonwealth's legislative power.

10 Operation of certain State and Territory laws

- (1) Except as provided by subsections (2) and (3), this Act is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) Subject to subsection (3), the Parliament intends that this Act is to apply to the exclusion of any law of a State or Territory relating to fish or fishing so far as that law would, but for this Act, apply to:
 - (a) activities in the AFZ; or
 - (b) activities in the coastal waters of a State or Territory in respect of which a fishery to which an arrangement mentioned in section 12K of the *Fisheries Act 1952*, or section 76 of this Act, relates; or
 - (c) the landing in the State or Territory of fish taken under a statutory fishing right or fishing permit by prohibiting such landing or by requiring such landing to be done under a licence, permit or similar instrument or upon payment of a fee or charge.
- (3) This Act does not apply to:
 - (a) recreational fishing (whether from a charter boat or otherwise) that is carried on in the AFZ or outside the AFZ by the use of an Australian boat, other than recreational fishing that is prohibited or regulated by a plan of management or temporary order; or
 - (b) recreational fishing (whether from a charter boat or otherwise) that is carried on by the use of an Australian boat in the coastal waters of a State or Territory, being coastal waters in respect of which an arrangement mentioned in

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- section 12K of the *Fisheries Act 1952*, or section 76 of this Act, relates, other than recreational fishing that is prohibited or regulated by a plan of management or temporary order; or
- (c) activities in the AFZ to which, because of section 77, this Act does not apply.
- (4) The reference in paragraph 10(2)(c) to prohibiting the landing in a State or Territory of fish taken under a statutory fishing right or fishing permit includes a reference to:
- (a) directly prohibiting the landing of such fish in the State or Territory; or
- (b) directly prohibiting or regulating the possession or processing of, or other dealing with, such fish in the State or Territory in any respect that would be likely to substantially discourage the landing of such fish in the State or Territory.
- (5) For the avoidance of doubt, the reference in subsection (2) to a law of a State or Territory relating to fish or fishing does not include such a law that is for the protection of public health, for ensuring safety or for any similar objective.

11 Excepted waters

The Governor-General may, by Proclamation, declare any waters to be excepted waters for the purposes of this Act.

12 Sedentary organisms—Australian continental shelf

- (1) If the Governor-General is satisfied that a marine organism of any kind is, for the purposes of international law, part of the living natural resources of the Australian continental shelf because it is, for the purposes of international law, an organism belonging to a sedentary species, the Governor-General may, by Proclamation, declare the organism to be a sedentary organism to which this Act applies.
- (2) Where by this Act (other than Part 5), or the regulations, provision is made in relation to fishing in the AFZ or a fishery, such provision, to the extent that it is capable of doing so, extends by

force of this section to fishing for sedentary organisms, in or on any part of the Australian continental shelf not within the AFZ or the fishery as if they were within the AFZ or the fishery.

- (3) Without limiting the operation of subsection (2), a reference in that subsection to making provision in relation to fishing includes a reference to making provision in respect of:
- (a) the granting of fishing concessions, scientific permits and foreign master fishing licences; and
 - (b) the prohibition or regulation of fishing; and
 - (c) the powers of officers.
- (4) A reference in this section to the Australian continental shelf includes a reference to the waters above the Australian continental shelf.

Part 2—Fishing and the marine environment

13 Driftnet fishing

- (1) A person must not engage in driftnet fishing activities in the AFZ.

Penalty: 500 penalty units.

- (1A) In subsection (1), strict liability applies to the physical element of circumstance, that the relevant conduct is engaged in within the AFZ.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) An Australian citizen must not engage in driftnet fishing activities outside the AFZ.

Penalty: 500 penalty units.

- (3) A body corporate that is incorporated in Australia or carries on activities mainly in Australia must not engage in driftnet fishing activities outside the AFZ.

Penalty: 2,500 penalty units.

- (4) A person must not, outside the AFZ, engage in driftnet fishing activities from an Australian boat.

Penalty: 500 penalty units.

- (4A) In subsections (2), (3) and (4), strict liability applies to the physical element of circumstance, that the relevant conduct is engaged in outside the AFZ.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) In subsection (1):

driftnet means a gillnet or other net or a combination of nets that is more than 2.5 kilometres in length, or such shorter length as is

prescribed, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water.

driftnet fishing activities means:

- (a) taking fish with the use of a driftnet; or
- (b) engaging in any other activity that can reasonably be expected to result in the taking of fish with the use of a driftnet, including searching for and locating fish to be taken by that method; or
- (c) any operations at sea in support of, or in preparation for any activity described in this definition, including operations of placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons; or
- (d) aircraft use relating to the activities described in this definition except for flights in emergencies involving the health or safety of crew members or the safety of a boat; or
- (e) transporting, transshipping and processing any driftnet catch, and co-operation in the provision of food, fuel and other supplies for boats equipped for or engaged in driftnet fishing.

14 Regulation etc. of certain practices

- (1) For the purpose of conserving the marine environment, the regulations may prohibit, or make provision for the regulation of, the engaging in specified activities, or the use of specified practices, by:
 - (a) persons engaged in fishing in the AFZ; and
 - (b) Australian boats, and persons on Australian boats, engaged in fishing outside the AFZ.
- (2) Without limiting the generality of subsection (1), regulations may be made in relation to:
 - (a) the employment of specified fishing practices or methods; and
 - (b) the use of specified fishing equipment; and
 - (c) the taking, and treatment of, by-catches, and the making of returns in relation to by-catches taken; and

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- (d) littering at sea.

15 Prohibition against certain fishing

- (1) A person must not (otherwise than in accordance with the terms of a scientific permit):
- (a) in the AFZ, take black cod (*Epinephelus daemeli*); or
 - (b) in the AFZ, or in a part of the AFZ specified in the regulations, take prescribed fish.

Penalty: 125 penalty units.

- (2) A person on an Australian boat must not, outside the AFZ, take a prescribed fish.

Penalty: 125 penalty units.

- (3) It is a defence to a prosecution for an offence against this section if the person charged satisfies the court that, upon becoming aware of the taking of the fish, he or she took steps immediately to return the fish to its natural environment.

- (4) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

15A Prohibition against taking marlin

- (1) A person must not, in the AFZ, take blue marlin (*Makaira mazara*) or black marlin (*Makaira indica*) unless the person:
- (a) is the holder of a scientific permit that authorises the taking of the fish; or
 - (b) takes the fish in the course of recreational fishing (whether from a charter boat or otherwise).

Penalty: 125 penalty units.

- (2) It is a defence to a prosecution for an offence against this section if the person charged satisfies the court that, upon becoming aware of

the taking of the fish, he or she took steps immediately to return the fish to its natural environment.

- (3) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

15B Report on analysis of marlin stocks

- (1) Not later than 12 months after the commencement of the *Fisheries Legislation Amendment Act (No. 1) 1998*, the Minister must cause an analysis to be undertaken in the AFZ of the estimated numbers of blue marlin (*Makaira mazara*) and black marlin (*Makaira indica*) and the impact on the species of such fishing as is permitted under section 15A.
- (2) The Minister must cause a report of an analysis under subsection (1) to be laid before each House of the Parliament as soon as practicable after the analysis is completed and, in any case, not later than 2 years after the commencement of the *Fisheries Legislation Amendment Act (No. 1) 1998*.

Part 3—Regulation of fishing

Division 1—Preliminary

16 AFMA to pursue objectives

- (1) In performing its functions under this Part, AFMA must pursue its objectives and, in addition, act in accordance with its corporate plan and its current annual operational plan.
- (2) Nothing in subsection (1) is taken to limit the operation of subsection 17(10).

16A AFMA to meet international fisheries management organisation and Fish Stocks Agreement obligations

Boat involved in contravening international fisheries management measure

- (1) AFMA must not authorise under this Part the use of an Australian-flagged boat for fishing on the high seas for a conserved fish stock during the period specified in subsection (2), if:
 - (a) a court has convicted a person of an offence described in subsection (3) involving the use of the boat; and
 - (b) the court has ordered the person to pay a fine for the offence (whether or not the person has also been sentenced to imprisonment for the offence); and
 - (c) the court has not ordered the forfeiture of the boat.

Period for which AFMA must not authorise use of boat

- (2) The period starts when the person is ordered to pay the fine and ends when one of the following events occurs:
 - (a) the person pays the fine;
 - (b) a penalty is imposed on the person for failure to pay the fine;

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- (c) the court orders the forfeiture of the boat (for the offence or another offence);
- (d) the conviction of the person for the offence for which the person was ordered to pay the fine is quashed.

Offences that prevent AFMA authorising use of boat

- (3) Subsection (1) limits authorisation of the use of a boat involved in any of the following offences:
 - (a) an offence against subsection 95(5) constituted by one of the following acts or omissions that contravenes a condition of a fishing concession or scientific permit that authorises fishing for a conserved fish stock on the high seas or contravenes a provision of a temporary order relating to fishing for a conserved fish stock on the high seas:
 - (i) fishing for the conserved fish stock at a particular time, in a particular place or with particular equipment;
 - (ii) failing to maintain accurate records of catch;
 - (iii) failing to provide an accurate return of fish taken, carried, transhipped or processed;
 - (iv) taking, carrying, transhipping or processing more fish than authorised by the concession, permit or order;
 - (v) changing or hiding the markings of the boat;
 - (b) an offence against section 105A involving a fish from a conserved fish stock and a boat;
 - (ba) an offence against section 105AA or 105AB;
 - (c) an offence against section 105B involving a boat equipped for fishing for a conserved fish stock;
 - (d) an offence against section 107 relating to a document, statement, return or information about catch of a conserved fish stock;
 - (e) an offence against a prescribed provision of this Act or the regulations that is constituted by a prescribed act or omission relating to a conserved fish stock.

16B Australian-flagged boats that have previously undermined conservation and management measures

- (1) Subject to subsection (5), AFMA must not, under this Part, grant a fishing concession authorising the use for fishing activities on the high seas of an Australian-flagged boat that was previously registered in a foreign country and authorised by that country for such fishing activities if:
 - (a) AFMA believes, on reasonable grounds, that the boat is a boat to which subsection (2) or (3) applies; and
 - (b) subsection (4) does not apply.
 - (2) This subsection applies to an Australian-flagged boat that was previously registered in a foreign country that is a party to the Compliance Agreement if:
 - (a) that foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period and that period has not expired; or
 - (b) that foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, cancelled the authority to use that boat on the high seas and a period of 3 years has not elapsed since that cancellation.
 - (3) This subsection applies to an Australian-flagged boat that was previously registered in a foreign country that is not a party to the Compliance Agreement if, on the basis of information available to it, AFMA is satisfied that:
 - (a) the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period and that period has not expired; or
 - (b) the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, cancelled the authority for use of that
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boat on the high seas and a period of 3 years has not elapsed since that cancellation.

- (4) If the person seeking the grant of a fishing concession authorising the use of a boat to which subsection (2) or (3) applies for fishing activities on the high seas satisfies AFMA that the owner or operator of the boat at the time the authority to use it was suspended or cancelled has no present legal, beneficial or financial interest in, or control of, the boat, AFMA may grant such a fishing concession authorising the use of the boat despite the application of subsection (2) or (3).
- (5) Despite subsection (1), AFMA may grant a fishing concession authorising the use of an Australian-flagged boat to which subsection (2) or (3) applies for fishing activities on the high seas if, having regard to the circumstances in which a foreign country's authorisation for the use of that boat for fishing activities on the high seas was suspended or cancelled, AFMA is satisfied that the grant of that fishing concession will not be likely to undermine international conservation and management measures.
- (6) Nothing in this section implies that AFMA may not take other matters into consideration when deciding whether or not to grant a fishing concession authorising the use of an Australian-flagged boat for fishing activities on the high seas.

Division 2—Plans of management

17 Plans of management

- (1) Subject to subsection (1A), AFMA must, in writing, after consultation with such persons engaged in fishing as appear to AFMA to be appropriate and after giving due consideration to any representations mentioned in subsection (3), determine plans of management for all fisheries.
- (1A) If, in all the circumstances, AFMA is of the view that a plan of management is not warranted for a particular fishery, AFMA may make a determination accordingly, including in the determination its reasons for making the determination. While a determination under this subsection is in force, AFMA is not required to determine a plan of management for a fishery.
- (1AB) If, at any time after making a determination under subsection (1A) that a plan of management is not warranted for a particular fishery, AFMA ceases to be of the view, AFMA may make a further determination revoking the determination under subsection (1A).
- (1B) A determination under subsection (1A) must be notified:
 - (a) in the *Gazette*; and
 - (b) to all persons and organisations listed in the register established under section 17A, at their addresses as shown on the register.
- (2) Before determining a plan of management for a fishery, AFMA must prepare a draft of the plan and, by public notice:
 - (a) state that it intends to determine a plan of management in respect of the fishery; and
 - (b) invite interested persons to make representations in connection with the draft plan by a date specified in the notice, not being less than one month after the date of publication of the notice in the *Gazette*; and

- (c) specify:
 - (i) an address from which copies of the draft plan may be obtained; and
 - (ii) an address to which representations may be forwarded.
- (2A) In addition to issuing a public notice under subsection (2) and before determining a plan of management for a fishery, AFMA must notify the persons and organisations listed in the register established under section 17A, at their addresses as shown on the register, of the terms of the public notice.
- (3) A person may, not later than the date specified in the notice, make representations to AFMA in connection with the draft plan.
- (4) In this section, a reference to public notice is a reference to notice published:
 - (a) in the *Gazette*; and
 - (b) in each State and Territory, in a newspaper circulating throughout that State or Territory; and
 - (c) in such other newspaper or publication (if any) that appears to AFMA to be appropriate in the circumstances.
- (5) A plan of management for a fishery may set out:
 - (a) the objectives of the plan of management; and
 - (b) measures by which the objectives are to be attained; and
 - (c) performance criteria against which, and time frames within which, the measures taken under the plan of management may be assessed.
- (5AA) The objectives to be set out under paragraph (5)(a) must be consistent with, but are not limited to, the objectives set out in section 3.
- (5C) A plan of management for a fishery affecting straddling fish stocks, highly migratory fish stocks or ecologically related fish stocks (within the meaning of the Fish Stocks Agreement) must set out stock-specific reference points (within the meaning of that Agreement) for the stocks.

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- (6) Without limiting the operation of subsection (5), a plan of management for a fishery may:
- (a) determine the method or methods by which the fishing capacity of the fishery or a part of the fishery is to be measured, which may be or include, but are not limited to, a method based on a particular area, a particular species or type or a particular quantity of fish, a particular kind, size or quantity of fishing equipment, a particular number of boats, a particular period of fishing, or any combination of the above; and
 - (aa) determine, or provide for AFMA to determine, the fishing capacity, measured by that method or those methods, permitted for the fishery or a part of the fishery in respect of a particular period or periods; and
 - (b) provide for the management of the fishery by means of a system of statutory fishing rights, and other fishing concessions; and
 - (c) contain a description of the fishery by reference to area, fish species, fishing methods to be employed or any other matter; and
 - (d) subject to section 28, formulate procedures to be followed for selecting persons to whom fishing concessions are to be granted including, in the case of fishing rights:
 - (i) the holding of an auction; or
 - (ii) the calling of tenders; and
 - (e) specify the kind and quantity of equipment that may be used in the fishery; and
 - (f) specify the circumstances in which a statutory fishing right may authorise fishing by or from a foreign boat; and
 - (g) impose obligations on the holders of fishing concessions; and
 - (h) prohibit or regulate recreational fishing in the fishery; and
 - (i) prohibit or regulate fishing for scientific research purposes in the fishery.
- (6A) Paragraph (6)(aa) authorises the making of a determination in respect of the fishing capacity of a fishery or a part of a fishery that

has the effect that no fishing capacity is permitted for the fishery or that part of the fishery in respect of a particular period or periods.

- (6B) A determination made by AFMA under paragraph (6)(aa) is a legislative instrument.
- (6C) If a plan of management for a fishery provides for the management of the fishery by means of a system that consists of or includes statutory fishing rights, the plan:
- (a) may oblige a person who holds, in respect of the fishery, a fishing concession of a particular kind or fishing concessions of particular kinds also to hold, in respect of the fishery, a fishing concession of another kind or fishing concessions of other kinds, as stated in the plan; and
 - (b) without limiting the generality of paragraph (a), may oblige a person who holds, in respect of the fishery, a fishing right of a particular kind or fishing rights of particular kinds also to hold, in respect of the fishery, a fishing right of another kind or fishing rights of other kinds, as stated in the plan; and
 - (c) in respect of each kind of fishing right that a person holds in respect of the fishery—may do either or both of the following:
 - (i) oblige the person to hold not fewer than such number of fishing rights of that kind as is stated in the plan or worked out using a formula so stated;
 - (ii) oblige the person not to hold more than such number of fishing rights of that kind as is stated in the plan or worked out using a formula so stated.
- (6D) A plan of management for a fishery must contain measures directed at reducing to a minimum:
- (a) the incidental catch of fish not taken under and in accordance with that plan; and
 - (b) the incidental catch of other species.
- (7) A plan of management for a fishery must:
- (a) if the plan makes provision in relation to the management of the fishery by means of a system of statutory fishing rights—

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provide for registration of persons who are to be eligible for the grant of fishing rights and specify the conditions relevant to such registration; and

- (b) contain a statement of any right of review that a person has in relation to such registration or the grant, or refusal to make a grant, of a fishing concession.
- (8) A plan of management may make provision in relation to a matter by applying, adopting or incorporating, with or without modification:
- (a) a provision of any Act or any regulation made under an Act, or of any other determination, as in force at a particular time or as in force from time to time; or
 - (b) any matter contained in any other instrument or writing as in force or existing at the time when the determination takes effect.
- (9) A plan of management has no effect to the extent that it is inconsistent with a provision of this Act.
- (10) While a plan of management is in force for a fishery, AFMA must perform its functions, and exercise its powers, under this Act in relation to the fishery in accordance with the plan of management.
- (11) AFMA may, by writing under its common seal, delegate any powers conferred on it under a plan of management for a fishery in accordance with paragraph (6)(aa) to:
- (a) the CEO; or
 - (b) a primary stakeholder who is to assist AFMA to manage the fishery under a co-management arrangement (within the meaning of the *Fisheries Administration Act 1991*).

17A Register of persons concerned about plans of management

- (1) AFMA must maintain a register containing a list of the names and postal addresses of persons and organisations who are to be notified of, or of determinations affecting the preparation of, draft plans of management.

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- (2) As soon as is practicable after the commencement of this section and on each anniversary of that commencement, AFMA must give public notice:
- (a) inviting persons and organisations to have their names and postal addresses entered on the register; and
 - (b) in the case of the second or a later notice—inviting persons and organisations on the register (if any) to have their names and postal addresses left on the register.
- (3) A notice must state that the acceptance of an invitation:
- (a) is to be in writing, sent to AFMA at a place specified in the notice and accompanied by particulars of the name and postal address of the acceptor; and
 - (b) is to be given:
 - (i) in the case of a person, or organisation, in existence on the publication of the notice—within one month after that publication; and
 - (ii) in any other case—within 12 months after that publication.
- (4) Where a person or organisation accepts an invitation in the way required by the notice, AFMA is to enter, or retain, the name and postal address of the person or organisation on the register.
- (5) AFMA may vary the address on the register of a person or organisation at the written request of the person or organisation.
- (6) AFMA must remove the name and address of a person or organisation from the register if:
- (a) in the case of a name and address that was on the register before the most recent notice under subsection (2)—the invitation to keep that name and address on the register was not accepted within one month after the publication of that notice; or
 - (b) the person or organisation makes a written request for the removal; or
 - (c) AFMA becomes satisfied that:
 - (i) in the case of a natural person—the person has died; or

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- (ii) in any other case—the person or organisation has ceased to exist.
- (7) In subsection (2), a reference to public notice is a reference to a notice published:
- (a) in the *Gazette*; and
 - (b) in each State and internal Territory in a newspaper circulating generally in that State or Territory; and
 - (c) in each external Territory that the Minister considers appropriate (if any) in a newspaper circulating generally in that external Territory.

18 Action after determining a plan of management

- (1) When AFMA has determined a plan of management for a fishery, it must:
- (a) submit the plan to the Minister; and
 - (b) inform the Minister of the nature of any representations it received, and the consultations it conducted, before determining the plan.
- (2) The Minister must accept the plan if it appears to the Minister that:
- (a) AFMA gave due consideration to any representations it received, and conducted adequate consultations, before determining the plan; and
 - (b) the plan is consistent with AFMA’s corporate plan and current annual operational plan.
- (3) If the Minister does not accept the plan, the Minister must refer it to AFMA and inform AFMA why it was not accepted.
- (4) When the plan has been so referred to AFMA, AFMA must, as soon as practicable after receipt of the plan, take such steps as appear to it to be necessary to ensure acceptance of the plan by the Minister and again submit the plan to the Minister.
- (5) If the Minister again does not accept the plan, the procedures mentioned in subsections (3) and (4) continue to apply in relation

to the plan until it is accepted by the Minister or withdrawn by AFMA.

19 Tabling, disallowance etc. of determinations

- (1) AFMA must cause to be published in the *Gazette*, in respect of each determination made under section 17 and accepted by the Minister, notice of:
 - (a) the fact that the determination has been made; and
 - (b) the place or places where copies of the determination can be obtained.
- (5) A determination is taken to be an enactment for the purposes of the *Administrative Appeals Tribunal Act 1975*.

20 Amendment or revocation of plan of management

- (1) AFMA may at any time amend a plan of management.
- (2) If AFMA amends a plan of management, it must:
 - (a) give written notification of that fact to each person who is the holder of a statutory fishing right granted in accordance with the plan; and
 - (b) inform the person where copies of the amended plan may be obtained.
- (3) AFMA may revoke a plan of management.
- (4) Where a plan of management for a fishery is revoked under subsection (3), statutory fishing rights, fishing permits, foreign fishing licences, scientific permits, foreign master fishing licences and fish receiver permits granted by AFMA that relate to the fishery cease to have effect in relation to the fishery.
- (5) Sections 17, 18 and 19 apply in relation to an amendment of a plan of management and the revocation of a plan of management in the same way as they apply to a plan of management prepared under section 17.

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- (6) However, subsection (2) of this section, subsections 17(1B) to (4), and sections 18 and 19 do not apply to an amendment of a plan of management that merely:
- (a) corrects an error in the plan (including a factual, grammatical, mapping or typographical error, for example);
or
 - (b) changes the format or presentation of the plan; or
 - (c) changes a matter in the plan to make the plan consistent with:
 - (i) this or another Act; or
 - (ii) the regulations; or
 - (d) removes conditions from the plan if conditions for the plan's fishery about the same subject matter have been prescribed in the regulations, whether or not the conditions are in the same terms.
- (7) Also, subsections 17(1B) to (4) and section 19 do not apply to an amendment of a plan of management to remove a provision from the plan if, within 1 year before the proposed amendment is to take effect, the following entities have been given at least 28 days written notice of the proposed amendment:
- (a) if there is a management advisory committee for the plan's fishery—the management advisory committee;
 - (b) if a peak body represents the holders of statutory fishing rights under the plan—the peak body;
 - (c) if there is no management advisory committee or peak body—the holders of the licences, permits or rights for the fishery.
- (8) However, section 18 applies to an amendment mentioned in subsection (7) in the same way as section 18 applies to a plan of management.

Division 3—Statutory fishing rights

21 Nature of a statutory fishing right

- (1) For the purposes of this Act, each of the following rights is a separate statutory fishing right:
- (a) a right to take a particular quantity of fish, or to take a particular quantity of fish of a particular species or type, from, or from a particular area in, a managed fishery;
 - (b) a right to a particular proportion of the fishing capacity that is permitted, by or under a plan of management, for, or for a part of, a managed fishery;
 - (c) a right to engage in fishing in a managed fishery at a particular time or times, on a particular number of days, during a particular number of weeks or months, or in accordance with any combination of the above, during a particular period or periods;
 - (d) a right to use a boat in a managed fishery for purposes stated in a plan of management;
 - (e) a right to use particular fishing equipment in a managed fishery;
 - (f) a right to use, in a managed fishery, fishing equipment that is of a particular kind, of a particular size or of a particular quantity or is a combination of any of the above;
 - (g) a right to use a particular type of boat in a managed fishery;
 - (h) a right to use a boat of a particular size or having a particular engine power, or of a particular size and having a particular engine power, in a managed fishery;
 - (i) any other right in respect of fishing in a managed fishery.
- (1A) A plan of management for a fishery may do any one or more of the following:
- (a) provide for a statutory fishing right of a kind mentioned in paragraph (1)(a) even though, in a particular period, the quantity of fish to which the fishing right relates is nil or negligible;

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- (b) provide for a statutory fishing right of a kind mentioned in paragraph (1)(b) even though the proportion of fishing capacity to which the fishing right relates would result in a nil or negligible quantity of fish;
 - (c) provide for a statutory fishing right of a kind mentioned in paragraph (1)(f) even though it may be impracticable to make or use fishing equipment of the size or quantity, or size and quantity, to which the fishing right relates;
 - (d) provide for a statutory fishing right of a kind mentioned in paragraph (1)(h) even though it may be impracticable to build or use a boat of the size or having the engine power, or of the size and having the engine power, to which the fishing right relates.
- (1B) For the purposes of subsection (1C), the fishing rights in respect of a particular fishery that are referred to in any one of the following paragraphs together constitute a class of fishing rights:
- (a) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(a);
 - (b) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(b);
 - (c) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(c);
 - (d) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(f);
 - (e) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(h).
- (1C) If a person holds a class of fishing rights in respect of a managed fishery, the fishing rights in the class together confer fishing rights in respect of:
- (a) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(a)—a quantity of fish, or of fish of the relevant species or type, equal to the sum of the quantities of fish, or of fish of that species or type, in relation to, or in relation to the area in, the fishery, stated in the fishing rights in the class; or

- (b) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(b)—a proportion of fishing capacity equal to the sum of the proportions of the fishing capacity stated in the fishing rights in the class; or
 - (c) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(c) and each fishing right relates to a particular number of days, weeks or months during a particular period or periods—a number of days, weeks or months equal to the sum of the numbers of days, weeks or months, as the case may be, during that period or those periods, stated in the fishing rights in the class; or
 - (d) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(f)—fishing equipment the total size or quantity of which is not greater than the sum of the sizes or quantities, or the total size and total quantity of which are not greater than the sum of the sizes and the sum of the quantities, as the case may be, stated in the fishing rights in the class;
 - (e) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(h)—a boat of a size not greater than the sum of the sizes, having an engine power not greater than the sum of the engine powers, or of a size not greater than the sum of the sizes and having an engine power not greater than the sum of the engine powers, as the case may be, stated in the fishing rights in the class.
- (2) A fishing right may authorise fishing:
- (a) by or from an Australian boat; and
 - (b) if the relevant plan of management so provides—by or from a foreign boat.

22 AFMA to establish system of statutory fishing rights

- (1) Where a plan of management provides for the management by AFMA of a fishery by means of a system of statutory fishing rights, AFMA is to establish and administer such a system in accordance with the plan.

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- (2) AFMA is to give to a person to whom it grants a fishing right a certificate evidencing the grant of the fishing right.
- (3) A fishing right is granted subject to the following conditions:
- (a) the holder of the fishing right must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a fishing right;
 - (b) the fishing right will cease to have effect if the plan of management for the fishery to which the fishing right relates is revoked under subsection 20(3);
 - (c) the fishing right may, under subsection 75(7), cease to have effect;
 - (d) the fishing right may be cancelled under section 39;
 - (e) no compensation is payable because the fishing right is cancelled, ceases to have effect or ceases to apply to a fishery.

Note: For further provisions relating to conditions imposed on fishing rights see subsections (4), (4A), (5) and (5A) and sections 40C, 42, 42A and 42B.

- (4) A fishing right:
- (a) is subject to such other conditions as are specified in the certificate, including conditions relating to the suspension or cancellation of the fishing right and the transferability or otherwise of the fishing right; and
 - (b) comes into force on the day specified for the purpose in the certificate, or, if no day is so specified, on the day on which it is granted; and
 - (c) subject to this Act, remains in force:
 - (i) until the day specified for the purpose in the certificate; or
 - (ii) if no such day is specified, until cancelled or surrendered or it otherwise ceases to have effect, under this Act.

- (4A) It is also a condition of a fishing right relating to a fishery that the holder of the right comply with a direction under section 41A that relates to the fishery.
- (5) AFMA may, by written notice given to the holder of a fishing right, whether or not at the request of the holder, vary or revoke a condition of the fishing right (not being a condition mentioned in subsection (3) or (4A)) or specify a condition or a further condition to which the fishing right is to be subject.
- (5A) After the commencement of this subsection and without limiting the generality of subsection (5), if a statutory fishing right authorises an Australian-flagged boat to fish on the high seas, AFMA may attach a further condition to that right to the effect that another boat may not be substituted for the first-mentioned boat without AFMA's prior written agreement to the substitution.
- (6) A fishing right ceases to be in force if the holder of the fishing right surrenders it by written notice given to AFMA.

23 Certain decisions to be provisional

- (1) Where AFMA or a Joint Authority makes a decision as to the person or persons to whom the grant of a fishing right in a managed fishery is to be made, not being a grant or grants to be made after:
- (a) the holding of an auction in respect of the grant; or
 - (b) the calling of tenders in respect of the grant;
- the following provisions of this section apply.
- (2) AFMA or the Joint Authority, as the case may be, by notice published in the *Gazette*, must set out the name of the person or persons to whom the fishing rights are to be granted and a summary of the fishing rights to be granted to each such person.
- (3) A grant of a fishing right must not be made to such a person:
- (a) before the end of the period within which, under section 143, applications to the Panel may be made for review of the decision in relation to the grant; or

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- (b) if an application in relation to the decision is made to the Panel under section 143—before the application is dealt with by the Panel or otherwise disposed of.

Division 4—Ways of granting statutory fishing rights

24 Notice of intention to grant fishing rights

- (1) AFMA may, by public notice, declare that it intends to grant a fishing right or fishing rights specified in the notice in relation to fishing in a specified managed fishery.
- (2) A reference in subsection (1) to public notice is a reference to notice published:
 - (a) in the *Gazette*; and
 - (b) in each State and Territory, in a newspaper circulating throughout that State or Territory; and
 - (c) in such other newspaper or publication (if any) that appears to AFMA to be appropriate in the circumstances.

25 Contents of notice

AFMA must, in a notice under section 24:

- (a) describe the fishing activities that will be authorised by the fishing right or fishing rights; and
- (b) specify the way in which the grant is to be made and, if the grant is to be made otherwise than by auction or tender, give full particulars of the procedures to be followed for selecting a person to whom the grant will be made available under section 29; and
- (c) set out the conditions (if any) that are to be satisfied by persons applying under section 26 for registration as eligible persons for the grant before they may be so registered; and
- (d) if an auction is to be held, specify the lowest bid that will be a qualifying bid for the purposes of subsection 29(1); and
- (e) specify:
 - (i) the fees (if any) payable by persons applying for registration; and

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- (ii) the period (if any) for which the fishing right will be in force unless it is sooner cancelled or otherwise ceases to apply or have effect; and
 - (iii) if the grant is to be made otherwise than by auction or by calling tenders—the amount (if any) that is the amount of charge on the grant for the purposes of the *Statutory Fishing Rights Charge Act 1991*; and
 - (iv) whether any charge imposed on the grant under the *Statutory Fishing Rights Charge Act 1991* is to be paid in one lump sum or by instalments and, if the charge is to be paid by instalments, the number and frequency of those instalments; and
 - (v) the right of review available to persons in relation to the grant of, or the refusal to grant, a fishing right; and
 - (vi) an address from which copies of the plan of management may be obtained; and
 - (vii) any other matter in respect of the grant that, in the opinion of AFMA, should be notified to prospective applicants; and
- (f) invite interested persons to apply to AFMA, in the approved form, within the period specified in the notice, to be registered as eligible persons for the grant.

26 Registration of applicants

- (1) A person may apply to AFMA, in the approved form, for registration as an eligible person for a grant of a fishing right.
- (2) Subject to section 31K, AFMA must register as an eligible person for a grant of a fishing right each applicant who:
 - (a) satisfies the conditions (if any) for registration specified in the plan of management in relation to the grant; and
 - (b) has paid the prescribed fee; and
 - (c) in the case of an applicant tendering for the grant—has complied with subsections 27(2) and (3).

- (3) AFMA must, as soon as practicable, notify the applicant in writing of its decision to register or not to register the applicant as an eligible person for a grant of a fishing right and of the right of review that the person has in relation to that decision.

27 Tenders for fishing rights

- (1) This section applies where, under a plan of management, tenders are to be called in respect of the grant of a fishing right or fishing rights.
- (2) An application for registration must be accompanied by a tender made in accordance with subsection (3).
- (3) The tender must:
 - (a) specify the amount that the applicant is willing to pay to the Commonwealth for the grant; and
 - (b) be enclosed in a sealed, opaque envelope on which is written only:
 - (i) the name and address of the applicant; and
 - (ii) words identifying the grant to which the tender relates.
- (4) AFMA must take reasonable steps to ensure that the envelope containing the tender is kept in such a way as to prevent premature disclosure of the amount specified in the tender and, in particular, must take reasonable steps to ensure that the envelope is not interfered with until it is opened in accordance with the regulations.

28 Prescribed procedures for grant of fishing rights

- (1) Where a grant of a fishing right is required to be made by auction or tender, the regulations must prescribe the procedures to be followed for selecting the person to whom the grant will be made available under section 29.
- (2) Without limiting the generality of subsection (1), those procedures must include:
 - (a) in the case of an auction—the procedures to be followed for:

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- (i) holding the auction; and
- (ii) where a grant of a fishing right, being a grant that was available to a person under section 29 as a result of an auction, has ceased to be so available, holding another auction in respect of the grant; and
- (b) in the case of tenders—the procedures to be followed for:
 - (i) opening the envelopes containing the tenders lodged by the persons registered under subsection 26(2) as eligible persons for the grant; and
 - (ii) recording the amount specified in each of those tenders; and
 - (iii) ranking those persons by reference to the amounts so recorded; and
- (d) the preparation, where tenders have been called, of a list (in this Division called the *precedence list*) of all the persons who have been registered under section 26 as eligible persons for the grant in the order in which they have, in accordance with the procedures prescribed by the regulations, been ranked for the purposes of the grant.

29 Grant made available to highest bidder etc.

- (1) Where an auction has been held in respect of the grant of a fishing right, the grant is available to the person who made the highest qualifying bid for the grant at the auction.
- (2) Where tenders have been called in respect of the grant of a fishing right, the grant is available to the person ranked highest on the precedence list prepared for the purposes of the grant.
- (3) Where subsections (1) and (2) do not apply in relation to a grant of a fishing right, the grant is available to the person selected in accordance with the procedures specified for that purpose in the plan of management relating to the grant.

- (4) Where a grant of a fishing right is available to a person under this section, AFMA must, as soon as practicable:
- (a) notify that fact in writing to that person and to each other person who was registered under section 26 as an eligible person for the grant of that fishing right; and
 - (b) give to each such person a statement in writing of the reasons for making the grant so available and of any right of review that the person has in relation to the decision to make the grant so available.

30 Amount of charge to be tendered

- (1) If a person to whom a grant becomes available under subsection 29(1) does not, immediately after having been notified of that fact, tender the amount of charge due and payable at that time under the *Statutory Fishing Rights Charge Act 1991* in respect of the grant, the grant ceases to be available to the person.
- (2) If, within 30 days after a grant of fishing rights has become available to a person, either because of subsection 29(2) or (3) or because of a previous application of this subsection, the person does not tender the amount of any charge due and payable under the *Statutory Fishing Rights Charge Act 1991* in respect of the grant:
- (a) the grant ceases to be available to the person; and
 - (b) if a precedence list has been prepared for the purposes of the grant:
 - (i) the name of the person is, by force of this subsection, deleted from the list; and
 - (ii) the grant is available to the person who then becomes the highest ranking person on that list.

31 AFMA to grant fishing right

Upon the request of a person to whom the grant of a fishing right is available, AFMA must grant the fishing right to that person.

Division 4A—Statutory fishing rights options

31A Options arising when plan of management for fishery is revoked

- (1) Subject to subsection (2), if a plan of management for a fishery (the *former plan*) is revoked, each person (a *former holder of fishing rights*) who held statutory fishing rights of a particular class of fishing rights (the *relevant class*) in respect of the fishery under the former plan immediately before it was revoked holds a *statutory fishing rights option* in respect of fishing rights of the relevant class.
- (2) Subsection (1) does not apply if:
 - (a) a new plan of management is determined for the fishery immediately after the revocation of the former plan; and
 - (b) the new plan is in all substantial respects identical to the former plan; and
 - (c) the persons who held statutory fishing rights under the former plan are granted equivalent statutory fishing rights under the new plan.
- (3) Subsection 21(1B) applies in determining the kinds of statutory fishing rights that together constitute a class of fishing rights in respect of a fishery for the purposes of this Division, except that fishing rights that, in AFMA's opinion, are substantially the same are taken to be identical for the purposes of that subsection.
- (4) A statutory fishing rights option entitles the holder of the option to be granted statutory fishing rights of the relevant class under any plan of management (the *new plan*) determined for a fishery after the revocation of the former plan if section 31B or 31C applies to the new plan. The nature and extent of the entitlements are set out in subsection 31B(2) or 31C(2), as the case may be.

31B Rights of option holder where the new plan of management is the same or substantially the same as the former plan of management

- (1) This section applies to the new plan if:
- (a) the new plan applies to a geographical area that consists of or includes the whole or a part of the geographical area to which the former plan applied; and
 - (b) the description (other than the description of the geographical area) of the fishery to which the new plan applies is, in AFMA's opinion, the same, or substantially the same, as the description of the fishery to which the former plan applied; and
 - (c) the new plan provides for the granting of classes of statutory fishing rights that are the same, or substantially the same, as the classes of statutory fishing rights provided for in the former plan; and
 - (d) under the new plan the only persons who are entitled to be granted statutory fishing rights are persons who hold statutory fishing rights options in respect of statutory fishing rights under the new plan.
- (2) If a person holds a statutory fishing rights option in respect of statutory fishing rights under the new plan, the option entitles the person, subject to subsections (3) and (4), to be granted under the new plan, to the extent to which the person exercises the option in accordance with subsection 31D(1), the number of statutory fishing rights of the relevant class worked out in accordance with the formula:

$$\frac{\text{Person's previous rights}}{\text{Total previous rights}} \times \text{Total new rights}$$

where:

person's previous rights means the number of statutory fishing rights of the relevant class held by:

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- (a) if the person was a former holder of fishing rights—the person; or
- (b) otherwise—the former holder of fishing rights from whose statutory fishing rights under the former plan the person directly or indirectly became entitled to the option; under the former plan immediately before it was revoked.

total previous rights means the total number of statutory fishing rights of the relevant class held by all persons under the former plan immediately before it was revoked.

total new rights means the total number of statutory fishing rights of the relevant class that are available to be granted under the new plan.

- (3) If the number of statutory fishing rights worked out under subsection (2) includes a fraction, the number is to be rounded off to the next highest or lowest whole number, as AFMA determines to be reasonable in the circumstances.
- (4) In making a determination under subsection (3), AFMA may have regard to any matters that it considers appropriate, including the total number of statutory fishing rights of the relevant class that are available to be granted under the new plan.

31C Rights of option holder where new plan of management has some features in common with the former plan of management

- (1) This section applies to the new plan if:
 - (a) in AFMA’s opinion section 31B does not apply to the new plan; and
 - (b) the new plan applies to a geographical area that consists of or includes the whole or a part of the geographical area to which the former plan applied; and
 - (c) at least one of the species of fish in respect of which statutory fishing rights are available to be granted under the new plan (except any species that is a by-catch) was also a species of

fish in respect of which statutory fishing rights were granted under the former plan immediately before it was revoked.

- (2) If a person holds a statutory fishing rights option in respect of statutory fishing rights under the new plan, the option entitles the person to be granted such number of such classes of statutory fishing rights under the new plan as AFMA determines to be fair and equitable having particular regard to the number and classes of statutory fishing rights:
- (a) if the person was a former holder of fishing rights—held by the person; or
 - (b) otherwise—held by the former holder of fishing rights from whose fishing rights under the former plan the person directly or indirectly became entitled to the option;
under the former plan immediately before it was revoked.
- (3) In determining the number of a class of statutory fishing rights to be granted to a person under the new plan in accordance with subsection (2), AFMA must take into account:
- (a) the extent to which the new plan applies to the fishery to which the former plan applied; and
 - (b) the number and classes of statutory fishing rights:
 - (i) if the person was a former holder of fishing rights—held by the person; or
 - (ii) otherwise—held by the former holder of fishing rights from whose fishing rights under the former plan the person directly or indirectly became entitled to the option;
under the former plan immediately before it was revoked;
and
 - (c) the procedures to be followed under the new plan for the granting of fishing rights; and
 - (d) the conditions relevant to the registration under the new plan of persons who are to be eligible for the grant of statutory fishing rights.

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31D Exercise and lapsing of option

- (1) A person who holds a statutory fishing rights option is taken to exercise the option if the person has received a notice under paragraph 31K(1)(a) and, within the period stated in the notice, notifies AFMA, by writing signed by the person, that the person exercises the option in respect of all, or a stated number, of the statutory fishing rights to which the option relates.
- (2) If a person does not exercise a statutory fishing rights option in respect of all or some of the statutory fishing rights to which the option relates, the option lapses in respect of the statutory fishing rights in respect of which the option is not exercised.

31E The Register of Statutory Fishing Rights Options

- (1) AFMA is to keep a Register of Statutory Fishing Rights Options (the *Register*).
- (2) The Register may be kept wholly or partly by use of a computer.
- (3) If the Register is kept wholly or partly by use of a computer:
 - (a) references in this Act to an entry in the Register include references to a record of particulars kept by use of a computer and comprising the Register or part of the Register; and
 - (b) references in this Act to particulars being registered, or entered in the Register, include references to the keeping of a record of those particulars as part of the Register by use of the computer.
- (4) The Register must, in relation to each statutory fishing rights option:
 - (a) set out the name and address of the person who for the time being holds the option; and
 - (b) contain such particulars as are necessary to identify the former plan whose revocation gave rise to the option; and
 - (c) set out the number and class of statutory fishing rights to which the option relates; and

- (d) if the option has been exercised in respect of any statutory fishing rights—state the date of the exercise and the number and class of rights in respect of which the option has been exercised; and
- (e) if the option has lapsed in respect of any statutory fishing rights—state the date of the lapse and the number and class of rights in respect of which the option has lapsed.

31F Registration of dealings in statutory fishing rights options

Scope

- (1) This section applies to a dealing that would, apart from subsection (2), have the effect of creating, assigning, transmitting or extinguishing an interest in a statutory fishing rights option, other than an interest that is a PPSA security interest.

Registration of dealings

- (2) The dealing has no effect of a kind mentioned in subsection (1) until it is registered under this section.
- (3) A party to the dealing may lodge with AFMA:
 - (a) an application, in the form approved by AFMA, for registration of the dealing; and
 - (b) the instrument evidencing the dealing; and
 - (c) an instrument setting out such particulars (if any) as are prescribed for the purposes of an application for registration of the dealing; and
 - (d) one copy each of the application and of the instruments mentioned in paragraphs (b) and (c).
- (4) A party to the dealing may, instead of lodging the instrument evidencing the dealing, lodge with AFMA a summary of that instrument containing the particulars required by AFMA for the purposes of this subsection.
- (5) Subject to subsections (6) and (7), if an application for registration of the dealing, either the instrument evidencing the dealing or a

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summary of that instrument that complies with subsection (4), and the other documents referred to in paragraphs (3)(c) and (d), are lodged with AFMA, AFMA must:

- (a) register the dealing by entering in the Register the following particulars:
 - (i) the name and address of the person acquiring the interest in the option;
 - (ii) the number and class of statutory fishing rights to which the dealing relates; and
- (b) endorse on the instrument evidencing the dealing and the copy of that instrument the fact of the entry having been made together with the date and time of the making of the entry.

Partial assignment of statutory fishing rights options

- (6) For the purposes of this Division, if a statutory fishing rights option is assigned to a person in respect of some only of the statutory fishing rights to which the option relates:
 - (a) the assignee is taken to hold a new statutory fishing rights option in respect of the statutory fishing rights assigned to the assignee; and
 - (b) the assignor continues to hold the first-mentioned option in respect of such of the statutory fishing rights as have not been assigned.

Refusal to register dealings

- (7) AFMA may only refuse to register a dealing if the registration of the dealing would be contrary to the requirements of the new plan or a condition of statutory fishing rights in respect of which the option is held.

Documentation of registration of dealings

- (8) If a dealing is registered:

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- (a) the copies referred to in paragraph (3)(d) and the summary (if any) lodged under subsection (4) are to be kept by AFMA; and
 - (b) if a summary is not lodged under subsection (4), the copy of the instrument evidencing the dealing is to be made available for inspection in accordance with this Division; and
 - (c) if a summary is lodged under subsection (4), the summary is to be made available for inspection in accordance with this Division; and
 - (d) the original instrument is to be returned to the person who made the application for registration.
- (10) AFMA is not concerned with the effect in law of any instrument lodged under this section.

31FA Interests in statutory fishing rights options—priority between section 31F interests and PPSA security interests

Scope

- (1) This section sets out the priority between the following interests in a statutory fishing rights option:
- (a) an interest (the **section 31F interest**) that is the subject of a dealing (the **section 31F dealing**), if the dealing has effect under section 31F (by registration);
 - (b) a PPSA security interest.

Priority rules

- (2) The priority is as set out in the following table:

Priority between PPSA security interests and section 31F interests		
Item	If ...	then ...
1	the PPSA security interest is not perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act</i>	the section 31F interest has priority.

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Priority between PPSA security interests and section 31F interests

Item	If ...	then ...
	<i>2009</i>	
2	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 31F dealing is registered under section 31F of this Act before the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the section 31F interest has priority.
3	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 31F dealing is registered under section 31F of this Act at or after the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the PPSA security interest has priority.

(3) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the section 31F interest.

Note 1: The effect of subsection (3) is that the priority between a section 31F interest and a PPSA security interest in a statutory fishing rights option is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to section 31F interests that arise after the commencement of subsection (3) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

31G Claims of interests in statutory fishing rights options

- (1) If a person lodges with AFMA a notice, in the form approved by AFMA:
- (a) stating that a dealing of a kind referred to in subsection 31F(1) that is described in the statement has taken place; and
 - (b) claiming that, if the dealing were registered, the person would have an interest in a statutory fishing rights option; and
 - (c) setting out particulars of the interest; and
 - (d) requesting AFMA to register the claim;
- AFMA must register the claim by entering in the register the person's name and particulars of the interest claimed.
- (2) If, after the registration of a claim to an interest in a statutory fishing rights option, the claimant, by notice lodged with AFMA in the form approved by AFMA, withdraws the claim, AFMA must cancel the registration by omitting from the register the entry relating to the claim.
- (3) If:
- (a) a claim to an interest in a statutory fishing rights option is registered; and
 - (b) an application is made to AFMA for registration of a dealing in respect of the option;
- AFMA must not register the dealing unless:
- (c) AFMA has given written notice of the application to the person whose name appears in the register in relation to the claim; and
 - (d) either:
 - (i) the person has withdrawn the claim under subsection (2); or
 - (ii) 21 days have elapsed since the notice was given to the person.

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31H Trusts not registrable

Notice of any kind of trust relating to a statutory fishing rights option is not receivable by AFMA and must not be entered in the Register.

31J Power of holder of statutory fishing rights option to deal with option

- (1) The holder of a statutory fishing rights option may, subject to this section, deal with the option, in respect of all or any of the statutory fishing rights to which the option relates, as absolute owner and give good discharges for any consideration for any such dealing.
- (1A) A dealing mentioned in subsection (1) is subject to:
 - (a) any rights appearing in the Register to be vested in another person, other than any such rights that are PPSA security interests; and
 - (b) any rights or interests in the statutory fishing rights option that are PPSA security interests, to the extent provided by the *Personal Property Securities Act 2009*.
- (2) Subsection (1) only protects a person who deals with a holder of a statutory fishing rights option as a purchaser in good faith for value and without notice of any fraud on the part of the holder.
- (3) Equities in relation to a statutory fishing rights option may be enforced against the holder of the option except to the prejudice of a person protected by subsection (2).

31K Obligations of AFMA in respect of granting statutory fishing rights under the new plan

- (1) AFMA must not grant any statutory fishing rights under the new plan unless:
 - (a) it has given written notice to each person who holds a statutory fishing rights option in relation to the plan asking the person to tell AFMA in writing within the period of 30

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days after a date stated in the notice (being a date not earlier than 2 days after the day on which the notice is sent):

- (i) whether the person wishes to exercise the option; and
 - (ii) if so, the number of fishing rights in respect of which the person exercises the option; and
- (b) that period has elapsed.
- (2) AFMA must develop procedures that will ensure that the holders of options that are exercised are granted the statutory fishing rights under the new plan to which they are entitled.
- (3) AFMA may remove particulars of an option from the Register when all the statutory fishing rights to which the option relates have been granted or the option has lapsed.

31L Administrative provisions

Sections 52 to 57 apply to the Register of Statutory Fishing Rights Options and documents subject to inspection under this Division in the same way as those sections apply to the Register of Statutory Fishing Rights and documents subject to inspection under Part 4.

Division 5—Fishing permits

32 Grant of fishing permits

- (1) AFMA may, upon application made in the approved form, grant to a person a fishing permit authorising, subject to subsections (1A), (1B), (1C) and (1D), the use by that person, or by a person acting on that person's behalf, of an Australian boat for fishing in a specified area of the AFZ or a specified fishery.
- (1A) Subject to subsections (1C) and (1D), if an Australian boat is specified in the permit, the permit authorises the use as mentioned in subsection (1) of:
- (a) subject to paragraph (b)—that boat; or
 - (b) if the person to whom the permit is granted, from time to time, by written notice given to AFMA, nominates for the purposes of the permit another Australian boat in lieu of that boat—the boat so nominated.
- (1B) Subject to subsections (1C) and (1D), if no Australian boat is specified in the permit, the permit authorises the use as mentioned in subsection (1) of such Australian boat (if any) as the person to whom the permit is granted, from time to time, by written notice given to AFMA, nominates for the purposes of the permit.
- (1BA) After the commencement of this subsection, a boat may be nominated under subsection (1A) or (1B) only if:
- (a) either:
 - (i) the boat's particulars are already registered on the Fishing Permits Register; or
 - (ii) the boat is an Australian boat; and
 - (b) the acceptance of the nomination would not be contrary to:
 - (i) a condition of the permit; or
 - (ii) the regulations; and
 - (c) for the purposes of a permit to fish in a specified fishery on the high seas—the boat is an Australian-flagged boat.

(1C) The permit does not authorise the use of an Australian boat unless the boat complies with any conditions to which the permit is subject.

(1D) If subsection 16A(1) prohibits AFMA from authorising a use of a boat for a period described in subsection 16A(2), the permit does not authorise the use of the boat during the period.

Note: Subsection 16A(1) prohibits AFMA from authorising the use of a boat to fish on the high seas for a conserved fish stock if the boat has been used in the commission of certain offences and the penalties for those offences have not been complied with.

(2) An application made for the grant of a fishing permit must provide AFMA with such information as it reasonably requires for a proper consideration of the application.

(3) Without limiting the operation of subsection (1), AFMA may refuse to grant a fishing permit if it has reason to believe that a requirement of a law of the Commonwealth, or of a State or Territory, has not been complied with in relation to the boat.

(4) A fishing permit may authorise the use of a boat:

- (a) for commercial fishing generally; or
- (b) for recreational fishing generally (whether from a charter boat or otherwise); or
- (d) for specified fishing activities, including:
 - (i) the carrying of fish; or
 - (ii) the processing of fish; or
 - (iii) the testing of fishing equipment.

(5) A fishing permit is granted subject to the following conditions:

- (a) if the fishing permit authorises fishing in a specified managed fishery—the holder of the permit must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a fishing permit;
- (b) if the fishing permit authorises fishing in a specified managed fishery—the permit will cease to have effect if the

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plan of management for the fishery is revoked under subsection 20(3);

- (c) the fishing permit may, under subsection 75(7), cease to have effect;
- (d) the fishing permit may be cancelled under section 39;
- (e) no compensation is payable because the fishing permit is cancelled, ceases to have effect or ceases to apply to a fishery.

Note: For further provisions relating to conditions imposed on fishing permits see subsections (6), (7A) and sections 40C, 42, 42A and 42B.

- (6) A fishing permit:
 - (a) is subject to such other conditions as are:
 - (i) specified in the permit; or
 - (ii) prescribed in relation to permits granted under this section; and
 - (b) comes into force on the day specified for the purpose in the permit or, if no day is so specified, on the day on which it is granted; and
 - (c) subject to this Act, remains in force until the day specified for the purpose in the permit, being a day not later than 5 years after the day on which it came into force.
- (7) Without limiting the operation of paragraph (6)(a), the conditions that may be specified in a permit include conditions relating to:
 - (a) the fish that may be taken; or
 - (b) the quantity of fish that may be taken; or
 - (c) the rate at which fish may be taken; or
 - (d) the methods or equipment that may be used to take fish; or
 - (e) the methods or equipment that may be used to process or carry fish.
- (7A) It is also a condition of a fishing permit relating to a fishery that the holder of the permit comply with a direction under section 41A that relates to the fishery.

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- (8) AFMA may, by written notice given to the holder of a permit, whether or not at the request of the holder, vary or revoke a condition of the permit (not being a condition mentioned in subsection (5) or (7A)) or specify a condition or a further condition to which the permit is to be subject.
- (9) A permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to AFMA.
- (11) A fishing permit is to be in the approved form.

32A Transfer of fishing permits

- (1) This section is about the holder of a fishing permit transferring the permit to another person.
- (2) The holder of the fishing permit must apply to AFMA, in the approved form, to register the transfer.
- (3) The transfer takes effect when AFMA registers the transfer.
- (4) AFMA must register the transfer unless:
 - (a) the fishing permit is suspended under section 38; or
 - (b) the holder of the fishing permit:
 - (i) is being investigated for a fisheries offence; or
 - (ii) has been convicted of a fisheries offence; or
 - (c) a levy on the fishing permit that is due has not been paid; or
 - (d) other circumstances that are prescribed under the regulations exist.
- (5) Subsection (4) applies despite the fact that a requirement in a plan of management relating to the transfer has not been satisfied.
- (6) This section does not apply to a fishing permit that is stated to be non-transferable.

Division 6—Scientific permits

33 Grant of scientific permits

- (1) AFMA may, upon application made in the approved form, grant to a person a scientific permit in respect of a specified boat (including a foreign boat) authorising the use of the boat by that person, or a person acting on that person's behalf, for scientific research purposes in a specified area of the AFZ or a specified fishery.
- (2) An application made for the grant of a scientific permit must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (3) A scientific permit is granted subject to the following conditions:
 - (a) if the permit authorises the use of a boat for scientific research purposes in a specified managed fishery—the permit will cease to have effect in relation to that fishery if the plan of management for the fishery is revoked under subsection 20(3);
 - (b) the permit may, under subsection 75(7), cease to have effect;
 - (c) the permit may be revoked under subsection (6);
 - (d) no compensation is payable because the permit is revoked, ceases to have effect or ceases to apply to a fishery.

Note: For further provisions relating to conditions imposed on scientific permits see subsections (4), (5A) and sections 40C and 42A.

- (4) A scientific permit:
 - (a) is subject to such other conditions as are specified in the permit; and
 - (b) comes into force on the day specified for the purpose in the permit or, if no day is so specified, on the day on which it is granted; and
 - (c) subject to this Act, remains in force until the day specified for the purpose in the permit, being a day not later than 6 months after the day on which it came into force.

- (5) Without limiting the operation of subsection (4), the conditions that may be specified in a scientific permit include conditions relating to:
- (a) the carriage on board the boat concerned of persons nominated by AFMA to make scientific observations; or
 - (b) the sale or disposal of fish taken during the course of activities carried out under the permit.
- (5A) It is also a condition of a scientific permit relating to a fishery that the holder of the permit comply with a direction under section 41A that relates to the fishery.
- (6) AFMA may, by written notice given to the holder of a scientific permit, whether or not at the request of the holder:
- (a) revoke the permit; or
 - (b) vary or revoke a condition to which the permit is subject (not being a condition mentioned in subsection (5A)) or specify a condition or further condition to which the permit is to be subject.
- (7) A scientific permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to AFMA.
- (8) A scientific permit is to be in the approved form.

Division 7—Foreign fishing licences and Treaty licences

34 Grant of foreign fishing licences

- (1) AFMA may, upon application made in the approved form, grant to a person a foreign fishing licence authorising the use of a specified foreign boat by that person, or a person acting on that person's behalf, for commercial fishing in a specified area of the AFZ or a specified fishery.
- (2) An application made for the grant of a foreign fishing licence must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (3) In considering whether to grant a foreign fishing licence, AFMA must give effect to any obligation undertaken by the Commonwealth contained in an agreement entered into by the Commonwealth that is relevant in the particular case.
- (4) A foreign fishing licence is granted subject to the following conditions:
 - (a) if the licence authorises commercial fishing in a specified managed fishery—the holder of the licence must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a licence;
 - (b) if the licence authorises commercial fishing in a specified managed fishery—the licence will cease to have effect in relation to the fishery if the plan of management for the fishery is revoked under subsection 20(3);
 - (c) the licence may be cancelled under section 39;
 - (d) no compensation is payable because the licence is cancelled.

Note: For further provisions relating to conditions imposed on foreign fishing licences see subsections (5), (6A) and sections 40C, 42, 42A and 42B.

- (5) A licence granted under this section:

- (a) is subject to the condition that, while the boat to which the licence relates is in the AFZ, the person in charge of the boat is the holder of a foreign master fishing licence; and
 - (b) is subject to such other conditions as are specified in the licence; and
 - (c) comes into force on the day specified for the purpose in the licence or, if no day is so specified, on the day on which it is granted; and
 - (d) subject to this Act, remains in force until the day specified for the purpose in the licence, being a day not later than 12 months after the day on which it came into force.
- (6) Without limiting the operation of subsection (5), the conditions that may be specified in a licence include conditions relating to any matter that may be included in a fishing permit granted under section 32.
- (6A) It is also a condition of a foreign fishing licence relating to a fishery that the holder of the licence comply with a direction under section 41A that relates to the fishery.
- (7) AFMA may, at any time, subject to such conditions (if any) as are specified in the endorsement, endorse a licence so as to extend it to authorise the boat to be brought into a specified port in Australia or in an external Territory at such time as is, or at such times as are, specified in the endorsement.
- (8) AFMA may, by written notice given to the holder of a licence in respect of which an endorsement under subsection (7) is in force, revoke the endorsement.
- (9) AFMA may, by written notice given to the holder of a licence, whether or not at the request of the holder, vary or revoke a condition of the licence (not being a condition mentioned in subsection (4) or (6A)) or specify a condition or further condition to which the licence is to be subject.
- (10) A licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to AFMA.

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- (11) A licence is to be in the approved form.

35 Agreements to grant foreign fishing licences

- (1) AFMA, with the approval of the Minister, may enter into an agreement with a person that contains a provision under which AFMA agrees to grant a foreign fishing licence or 2 or more such licences (whether to that person or to any other person or persons) in respect of a foreign boat or 2 or more foreign boats.
- (2) Where AFMA has entered into an agreement with a person that contains a provision of a kind mentioned in subsection (1), AFMA may, with the approval of the Minister, enter into a further agreement with the person varying the terms of the provision or varying the terms of the provision as varied under this subsection.
- (3) The Minister is to cause a copy of such an agreement or further agreement, as the case may be, to be laid before each House of the Parliament within 15 sitting days of that House after the agreement, or the further agreement, as the case may be, is entered into.
- (4) Where:
- (a) AFMA has entered into an agreement under subsection (1);
or
 - (b) there is in force an agreement between the Commonwealth and the government of another country that contains a provision under which foreign fishing licences are agreed to be granted in respect of foreign boats (whether or not the provision also provides for the payment of an amount or amounts to the Commonwealth);
- AFMA must, in deciding whether or not to grant the licence or any of the licences to which the agreement relates, have regard only to the terms of the agreement.
- (5) Subsection (4) has effect only so far as that subsection is not a law imposing taxation within the meaning of section 55 of the Constitution.

36 Fisheries agreements

- (1) If the Commonwealth enters into an agreement with the government of another country that contains a provision under which foreign fishing licences are agreed to be granted in respect of foreign boats (whether or not the provision also provides for the payment of an amount or amounts to the Commonwealth), the Minister is to cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the agreement is entered into.
- (2) Where:
 - (a) an agreement that contains a provision of a kind mentioned in subsection (1) is in force; and
 - (b) the provision provides for the payment of an amount or amounts to the Commonwealth; and
 - (c) a foreign fishing licence or licences to which the provision relates has or have been granted in respect of a foreign fishing boat or foreign fishing boats; and
 - (d) the whole or any part of an amount specified in the provision is not paid to the Commonwealth in accordance with the terms of the provision;AFMA may suspend each licence by written notice given to the holder of the licence.
- (3) Where AFMA has suspended a licence under subsection (2) and the amount concerned is fully paid, AFMA must revoke the suspension by written notice given to the holder of the licence.
- (4) Subsections (2) and (3) have effect only so far as those subsections are not laws imposing taxation within the meaning of section 55 of the Constitution.

37 Treaty licences

- (1) For the purposes of this Act, a Treaty licence is taken to be in force in respect of a boat at all times during the period of validity of the

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Treaty licence as stated in the licence, except when the Treaty licence is suspended within the meaning of this section.

- (2) A Treaty licence issued in respect of a Treaty boat is suspended when:
- (a) each party to the Treaty has been notified in writing by the Minister that an investigation is being conducted in relation to an alleged contravention of a provision of the Treaty with the use of, or in relation to, the boat; or
 - (b) the Minister is notified in writing by the Administrator that the Treaty licence has been suspended in accordance with paragraph 8 of Article 5 of the Treaty.
- (3) A notice under paragraph (2)(a) must give particulars of the alleged contravention.
- (4) A Treaty licence ceases to be suspended:
- (a) where paragraph (2)(a) applies—when the Minister has, in writing, notified the Administrator that the investigation has been completed; or
 - (b) where paragraph (2)(b) applies—when the Minister is notified in writing by the Administrator that the Treaty licence is no longer suspended.

Division 8—Suspension and cancellation of fishing concessions

38 Suspension of fishing concessions

- (1) AFMA may, by written notice given to the holder of a fishing concession, suspend the operation of the concession if:
 - (a) any fee, levy, charge or other money relating to the concession is not paid as it becomes due; or
 - (b) it has reasonable grounds to believe that:
 - (i) there has been a contravention of a condition of the concession; or
 - (ii) in an application under this Act, the holder of the concession made a statement or furnished information that was, to the holder's knowledge, false or misleading in a material particular, not being an act or omission in relation to which AFMA has previously exercised powers under this subsection; or
 - (c) to do so would be in accordance with a condition of the fishing concession relating to suspension of the concession.
- (2) Subject to subsections (3) and (3A), where a fishing concession is so suspended (otherwise than for the reason mentioned in paragraph (1)(a)), the suspension, unless it is sooner revoked, ceases:
 - (a) if proceedings for an offence against this Act in relation to the alleged act or omission because of which the concession was suspended are instituted against the holder of the concession, or a person who acted on behalf of the holder of the concession, within one month after the suspension—on completion of the proceedings; or
 - (b) in any other case—at the end of one month after the suspension.

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(3) AFMA may, by written notice given to the holder of a fishing concession, suspend the fishing concession for such period as is specified in the notice, if the holder of the fishing concession is convicted of an offence against this Act, the regulations or any other law of the Commonwealth relating to fishing or against a law of New Zealand, Papua New Guinea or a State or Territory relating to fishing.

(3A) If:

(a) a contravention of an international fisheries management measure has led to the imposition on the holder of a fishing concession of sanctions by Australia or a foreign country; and

(b) those sanctions have not been complied with;

AFMA may, by written notice given to the holder of the concession, suspend the fishing concession until the sanctions are fully complied with.

(4) AFMA, by written notice given to the holder of a fishing concession suspended under this section:

(a) may revoke the suspension; and

(b) if the concession was suspended for the reason mentioned in paragraph (1)(a), must revoke the suspension:

(i) if the money is paid; or

(ii) if the holder enters into an arrangement mentioned in paragraph 39(c) in relation to the money; or

(iii) there is a remission or refund made under the regulations of the whole of the money.

Note: Section 98 authorises a court in certain circumstances to suspend a fishing concession.

39 Cancellation of fishing concessions

(1) AFMA may, by notice in writing given to the holder of a fishing concession, whether or not it has previously suspended the fishing concession, cancel the concession if:

- (a) the holder of the concession is convicted of an offence against this Act, the regulations or any other law of the Commonwealth relating to fishing or against a law of New Zealand, Papua New Guinea or a State or Territory relating to fishing; or
- (b) to do so would be in accordance with a condition of the concession relating to cancellation of the concession; or
- (c) any fee, levy, charge or other money relating to the concession is not paid or the holder does not enter into an arrangement satisfactory to AFMA in relation to the money within such period as is prescribed after the time at which such fee, levy, charge or other money became due; or
- (d) both of the following conditions are met:
 - (i) the concession authorises the use of a boat for fishing for a fish stock covered by a global, regional or subregional fisheries organisation or arrangement;
 - (ii) Australia is not involved in the organisation or arrangement and has not agreed to apply measures established by the organisation or arrangement.

Note: Section 98 authorises a court in certain circumstances to cancel a fishing concession.

- (2) If a fishing concession authorises the use of an Australian-flagged boat for fishing activities in waters wholly or partly beyond the AFZ—the concession is taken, by force of this subsection, to have been cancelled if the boat ceases to be an Australian-flagged boat.

Division 9—Foreign master fishing licences

40 Grant of foreign master fishing licences

- (1) AFMA may, upon application made in the approved form, grant to a person a foreign master fishing licence authorising the person to be in charge of a foreign boat that is being used for commercial fishing in a specified area of the AFZ or a specified fishery.
- (2) An application made for the grant of a foreign master fishing licence must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (3) A foreign master fishing licence is granted subject to the following conditions:
 - (a) if the licence authorises a person to be in charge of a foreign boat that is being used for commercial fishing in a specified managed fishery—the holder of the licence must comply with any obligations imposed on the holder by the relevant plan of management;
 - (b) if the licence authorises a person to be in charge of a foreign boat that is being used for commercial fishing in a specified managed fishery—the licence will cease to have effect in relation to that fishery if the plan of management for the fishery is revoked under subsection 20(3);
 - (c) the licence may be cancelled under subsection (8);
 - (d) no compensation is payable because the fishing permit is cancelled or ceases to have effect.

Note: For further provisions relating to conditions imposed on foreign master fishing licences see subsections (4), (4A) and section 42B.

- (4) A licence granted under this section:
 - (a) is subject to such other conditions as are:
 - (i) specified in the licence; or
 - (ii) prescribed in relation to licences granted under this section; and

- (b) comes into force on the day specified for the purpose in the licence or, if no day is so specified, on the day on which it is granted; and
 - (c) subject to this section, remains in force until the day specified for the purpose in the licence, being a day not later than the end of the period of 12 months after the day on which the licence came into force.
- (4A) It is also a condition of a foreign master fishing licence relating to a fishery that the holder of the licence comply with a direction under section 41A that relates to the fishery.
- (5) AFMA may, by written notice given to the holder of a licence, whether or not at the request of the holder, vary or revoke a condition of the licence (not being a condition mentioned in subsection (3) or (4A)) or specify a condition or further condition to which the licence is to be subject.
- (6) A licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to AFMA.
- (7) A licence under this section is to be in the approved form.
- (8) AFMA may, by written notice given to the holder of a licence, cancel the licence if the holder of the licence is convicted of an offence against this Act, the regulations or any other law of the Commonwealth relating to fishing or against a law of New Zealand, Papua New Guinea or a State or Territory relating to fishing.

Division 9A—E-monitoring of fishing-related activity

40A Directions to classes of concession and permit holders

Directions power

- (1) AFMA may make a written direction requiring any person who holds a fishing concession, or a scientific permit, of a class prescribed in the direction, to comply with:
 - (a) obligations that are prescribed in the direction relating to the e-monitoring of fishing-related activity; or
 - (b) prescribed restrictions on engaging in fishing if any obligation prescribed under paragraph (a) in the direction has not been, or is not being, complied with.

Note: See section 97A for offences relating to e-monitoring equipment and e-monitoring data.

- (2) Without limiting the operation of paragraph (1)(a), examples of obligations that may be prescribed in a direction made under subsection (1) include obligations relating to:
 - (a) installing, carrying, using, handling, maintaining or monitoring the use of, prescribed e-monitoring equipment; and
 - (b) the circumstances, times, places or methods for giving AFMA e-monitoring data; and
 - (c) the circumstances, times, places or methods for giving AFMA e-monitoring equipment on which e-monitoring data is stored; and
 - (d) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring data (including statements about its circumstance, time, place or manner of generation, transmission or storage); and
 - (e) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring equipment (including statements about its circumstance, time, place or

manner of installation, carriage, use, handling, maintenance or monitoring of use).

- (3) A direction made under subsection (1) must prescribe, in respect of each prescribed obligation or restriction, a day, which is a reasonable period after the direction is made, by which compliance with the obligation or restriction must occur or commence.

Consultation and notification requirements for making directions

- (4) Before making a direction under subsection (1) in relation to fishing concessions or scientific permits that relate to a particular fishery, AFMA must consult with:
- (a) the management advisory committee for the fishery; or
 - (b) if there is no management advisory committee for the fishery—the holders of fishing concessions or scientific permits for the fishery.
- (5) At least 7 days before a direction made under subsection (1) takes effect, AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession or scientific permit to which the direction relates.
- (6) However, in an emergency:
- (a) a direction may be made under subsection (1) without any consultation; and
 - (b) subsection (5) does not apply in respect of the direction; and
 - (c) AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession or scientific permit to which the direction relates as soon as possible.

Variation and revocation

- (7) AFMA may, at any time, by a further direction in writing, vary or revoke a direction made under subsection (1).

Note: Requirements like those in subsections (4) and (5) do not apply in relation to directions made under this subsection.

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- (8) If AFMA varies or revokes a direction made under subsection (1) it must ensure that a copy of the direction made under subsection (7) is sent to each holder of a fishing concession or scientific permit to which the direction as varied or revoked, relates or related, as soon as possible.

Directions are legislative instruments

- (9) A direction made under subsection (1), or a variation or revocation of such a direction, is a legislative instrument.

40B Directions to specific concession and permit holders

Directions power

- (1) AFMA may, by written notice given to the holder of a fishing concession or a scientific permit, direct the holder of the fishing concession or scientific permit to comply with:
- (a) obligations that relate to the e-monitoring of fishing-related activity and that:
 - (i) are prescribed in the direction; and
 - (ii) are not inconsistent with an obligation prescribed in a direction made under section 40A that the holder is required to comply with; and
 - (b) prescribed restrictions on engaging in fishing if any obligations prescribed under paragraph (a) in the direction have not been, or are not being, complied with.

Note 1: See section 97A for offences relating to e-monitoring equipment and e-monitoring data.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Without limiting the operation of paragraph (1)(a), examples of obligations that may be prescribed in a direction under subsection (1) include obligations relating to:
- (a) installing, carrying, using, handling, maintaining or monitoring the use of, prescribed e-monitoring equipment; and

- (b) the circumstances, times, places or methods for giving AFMA e-monitoring data; and
 - (c) the circumstances, times, places or methods for giving AFMA e-monitoring equipment on which e-monitoring data is stored; and
 - (d) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring data (including statements about its circumstance, time, place or manner of generation, transmission or storage); and
 - (e) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring equipment (including statements about its circumstance, time, place or manner of installation, carriage, use, handling, maintenance or monitoring of use).
- (3) A direction made under subsection (1) must prescribe, in respect of each prescribed obligation or restriction, a day, which is a reasonable period after the direction is made, by which compliance with the obligation or restriction must occur or commence.

Directions are not legislative instruments

- (4) A direction made under subsection (1) is not a legislative instrument.

40C Conditions of fishing concessions and scientific permits

It is a condition of a fishing concession or scientific permit that the holder of the concession or permit will comply with each obligation and restriction that is validly prescribed in a direction in force under this Division in relation to the concession or permit by the day prescribed in the direction for compliance with that obligation or restriction.

Note: For offences relating to contravention of licence conditions, see section 95.

Division 10—Miscellaneous

41 Authority to extend to tender boats

Where the use by a person of a specified boat is authorised by a fishing concession or scientific permit, the authority to use that boat extends to the use of any tender boat carried by the first-mentioned boat.

41A AFMA may give directions in relation to closure or partial closure of fishery

- (1) This section applies to a fishery in respect of which fishing concessions, scientific permits or foreign master fishing licences are in force.
- (2) After consultation with:
 - (a) the management advisory committee for the fishery; or
 - (b) if there is no management advisory committee for the fishery—the holders of fishing concessions, scientific permits or foreign master fishing licences for the fishery;

AFMA may direct that fishing not be engaged in in the fishery, or in a particular part of the fishery, during a period or periods specified in the direction.

- (2AA) To avoid doubt, a direction given under subsection (2) in relation to a part of a fishery may identify the part concerned in any way or ways.
- (2A) At least 7 days before a direction given under subsection (2) takes effect, AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence in respect of the fishery, or part of the fishery, to which the direction relates.
- (2B) However, in an emergency:

- (a) a direction may be given under subsection (2) without any consultation; and
 - (b) subsection (2A) does not apply in respect of the direction; and;
 - (c) AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence in respect of the fishery, or part of the fishery, to which the direction relates as soon as possible.
- (2C) AFMA may, by writing under its common seal, delegate the power to give a direction under subsection (2) to:
- (a) the CEO; or
 - (b) a primary stakeholder who is to assist AFMA to manage the fishery under a co-management arrangement (within the meaning of the *Fisheries Administration Act 1991*).
- (3) AFMA may, at any time, by a further direction in writing, vary or revoke a direction given under subsection (2).
- Note: Requirements like those in subsections (2) and (2A) do not apply in relation to directions given under this subsection.
- (4) If AFMA varies or revokes a direction given under subsection (2) it must ensure that a copy of the direction given under subsection (3) is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence, in respect of the fishery, or part of the fishery, to which the direction as varied or revoked, relates or related, as soon as possible.
- (5) A direction under subsection (2), or a variation or revocation of such a direction, is a legislative instrument.

42 Determinations relating to logbooks and the furnishing of returns

- (1) AFMA may, by a written determination, in relation to a particular fishery, provide for holders of fishing concessions in respect of that fishery to keep and maintain logbooks containing information in respect of their activities in that fishery.

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- (1A) Without limiting the generality of subsection (1), a determination by AFMA in respect of a particular fishery may cover matters including:
- (a) the form and content of logbooks for that fishery to be kept by the concession holder; and
 - (b) the secure storage of such logbooks; and
 - (c) the period for which retention of such logbooks is required; and
 - (d) the furnishing to AFMA of such logbooks or of returns of information contained in them.
- (1B) The content of the logbook kept by the holder of a fishing concession in respect of a particular fishery, and of any return of information from such a logbook, may extend to information in relation to:
- (a) the taking of fish under that fishing concession and the sale or disposal of such fish; or
 - (b) the carrying, landing, transshipping or transporting of fish taken under that fishing concession; or
 - (c) the receipt or processing of fish taken under that fishing concession and the sale or disposal of fish so received or processed; or
 - (d) the course, or position at regular intervals, inside or outside the outer limits of the AFZ, of boats to which the fishing concession relates; or
 - (e) any other matter relevant to the fishing concession in that fishery that is specified in the determination.
- (1C) The obligations arising under this section from a determination made under subsection (1) in relation to a particular fishery override any provision to the contrary, in force immediately before the making of the determination:
- (a) in a plan of management for that fishery; or
 - (b) in a condition to which a fishing concession in respect of that fishery is subject.

- (2) It is a condition of a fishing concession that the holder of the fishing concession will comply with the requirements of any determination made under subsection (1).
- (3) A determination made under subsection (1) is a legislative instrument.

42A Fishing concession condition to facilitate boarding

It is a condition of a fishing concession, or scientific permit, authorising the use of an Australian-flagged boat outside the AFZ that the master of the boat:

- (a) facilitate boarding of the boat; and
- (b) co-operate with inspection of the boat;

by officials of a foreign country acting in accordance with the Fish Stocks Agreement or a measure established by an international fisheries management organisation.

42B Regulation-making power for conditions

- (1) The regulations may prescribe conditions that apply to fishing concessions or foreign master fishing licences.
- (2) A provision of a plan of management has no effect to the extent that it is inconsistent with regulations made for the purposes of this section.

43 Temporary orders

- (1) The purpose of this section is to enable quick action to be taken:
 - (a) to deal with:
 - (i) emergencies; or
 - (ii) other circumstances where urgent action is required for purposes related to the management of a fishery; or
 - (iii) the maintenance of straddling fish stocks, highly migratory fish stocks or ecologically related fish stocks (within the meaning of the Fish Stocks Agreement)

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before a plan of management is determined, amended or revoked; or

(b) to correct errors or anomalies in a plan of management.

(2) If AFMA is satisfied that:

(a) it is necessary to take action for the purpose of this section; and

(b) the action contemplated is consistent with AFMA's objectives; and

(c) no other action is appropriate;

AFMA may make an order, consistent with this Act and the regulations, with respect to:

(d) any matter directly or indirectly connected with fishing:

(i) in a managed fishery; or

(ii) in the AFZ but not in a managed fishery; or

(iii) that is the subject of an international agreement and occurs outside the AFZ; or

(e) any other matter relating to a managed fishery, being a matter that may be provided for by a plan of management; or

(f) any incidental matter.

(3) AFMA may at any time make an order cancelling a previous order.

(4) An order ceases to have effect:

(a) on a day specified in the order; or

(b) on being cancelled by another order; or

(c) at the end of 6 months after the order is made;

whichever is soonest.

(5) Subject to subsections (6) and (7), AFMA must not make an order the same in substance as a previous order within 6 months after the previous order has ceased to have effect.

(6) While an order is in force, AFMA may make one, and only one, further order the same in substance as the first-mentioned order.

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- (7) Nothing in subsections (5) and (6) prevents AFMA from making a further order the same in substance as a previous order to deal with a different emergency.
- (8) AFMA may, by writing under its common seal, delegate its powers under this section to the CEO, but to no other person.
- (9) If an order is inconsistent with a provision of:
 - (a) a plan of management; or
 - (b) a fishing concession, scientific permit, foreign master fishing licence or fish receiver permit;the order overrides the provision and, to that extent, the provision has no effect.
- (10) When an order ceases to have effect, any provision overridden by the order revives, subject to this Act, unless the regulations provide otherwise.
- (11) An order is a legislative instrument.

Part 4—Register of Statutory Fishing Rights

44 The Register

- (1) AFMA is to keep a Register of Statutory Fishing Rights.
- (2) The Register may be kept wholly or partly by use of a computer.
- (3) If the Register is kept wholly or partly by use of a computer:
 - (a) references in this Act to an entry in the Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Register or part of the Register; and
 - (b) references in this Act to particulars being registered, or entered in the Register, are to be read as including references to the keeping of a record of those particulars as part of the Register by use of the computer; and
 - (c) references in this Act to the rectification of the Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Register or part of the Register.

45 Information to be included in Register

- (1) AFMA must register each fishing right that it, or a Joint Authority managing a fishery that is (or part of which is) managed in accordance with the law of the Commonwealth, grants by entering in the Register the following particulars:
 - (a) the name of the person to whom the fishing right is granted;
 - (b) a description of the fishing right;
 - (c) the period (if any) for which the fishing right is granted;
 - (d) the managed fishery in relation to which the fishing right is granted;
 - (e) the conditions of the fishing right;
 - (f) such other particulars (if any) as are prescribed.

- (2) Where a Joint Authority grants a fishing right, it must give to AFMA such information in relation to the grant as will enable AFMA to comply with subsection (1).

46 Registration of dealings in fishing rights

Scope

- (1) This section applies to a dealing that would, but for subsection (2), have the effect of creating, assigning, transferring, transmitting or extinguishing an interest in a fishing right, other than an interest that is a PPSA security interest.

Registration of dealing

- (2) The dealing has no effect of a kind mentioned in subsection (1) until it is registered under this section.
- (3) A party to the dealing may lodge with AFMA:
- (a) an application in the form approved by AFMA for registration of the dealing; and
 - (b) the instrument evidencing the dealing; and
 - (c) an instrument setting out such particulars (if any) as are prescribed for the purposes of an application for registration; and
 - (d) one copy each of the application and of the instruments mentioned in paragraphs (b) and (c).
- (3A) A party to the dealing may, instead of lodging the instrument evidencing the dealing, lodge with AFMA a summary of that instrument containing the particulars required by AFMA for the purposes of this subsection.
- (4) Subject to subsections (4C) and (4D), if an application for registration of the dealing, either the instrument evidencing the dealing or a summary of that instrument that complies with subsection (3A), and the other documents referred to in paragraphs (3)(c) and (d), are lodged with AFMA, AFMA must:

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- (a) register the dealing by entering in the Register the following particulars:
 - (i) the name of the person acquiring the interest in the fishing right;
 - (ii) a description of the dealing; and
 - (b) endorse on the instrument evidencing the dealing and the copy of that instrument the fact of the entry having been made together with the date and time of the making of the entry.
- (4A) If a person lodges with AFMA a notice, in the form approved by AFMA:
- (a) stating that a dealing of a kind referred to in subsection (1) that is described in the statement has taken place; and
 - (b) claiming that, if the dealing were registered, the person would have an interest in a fishing right; and
 - (c) setting out particulars of the interest; and
 - (d) requesting AFMA to register the claim;
- AFMA must register the claim by entering in the register the person's name and particulars of the interest claimed.
- (4B) If, after the registration of a claim to an interest in a fishing right, the claimant, by notice lodged with AFMA in the form approved by AFMA, withdraws the claim, AFMA must cancel the registration by omitting from the register the entry relating to the claim.
- (4C) If:
- (a) a claim to an interest in a fishing right is registered; and
 - (b) an application is made to AFMA for registration of a dealing in respect of the fishing right;
- AFMA must not register the dealing unless:
- (c) AFMA has given written notice of the application to the person whose name appears in the register in relation to the claim; and
 - (d) either:

- (i) the person has withdrawn the claim under subsection (4B); or
 - (ii) 21 days have elapsed since the notice was given to the person.
- (4D) AFMA must register a lease, or transfer of ownership, of a fishing right unless:
- (a) the fishing right is suspended under section 38; or
 - (b) the holder of the fishing right:
 - (i) is being investigated for a fisheries offence; or
 - (ii) has been convicted of a fisheries offence; or
 - (c) a levy on the fishing right that is due has not been paid; or
 - (d) other circumstances that are prescribed under the regulations exist.
- (4E) Subsection (4D) applies despite the fact that any requirement in a plan of management relating to the lease, or transfer, has not been satisfied.

Documentation of registration of dealings

- (5) If a dealing is registered:
- (a) the copies referred to in paragraph (3)(d) and the summary (if any) lodged under subsection (3A) are to be kept by AFMA; and
 - (b) if a summary is not lodged under subsection (3A), the copy of the instrument evidencing the dealing is to be made available for inspection in accordance with this Part; and
 - (c) if a summary is lodged under subsection (3A), the summary is to be made available for inspection in accordance with this Part; and
 - (d) the original instrument is to be returned to the person who made the application for registration.

Section 46A

46A Interests in fishing rights—priority between section 46 interests and PPSA security interests

Scope

- (1) This section sets out the priority between the following interests in a fishing right:
- (a) an interest (the *section 46 interest*) that is the subject of a dealing (the *section 46 dealing*), if the dealing has effect under section 46 (by registration);
 - (b) a PPSA security interest.

Priority rules

- (2) The priority is as set out in the following table:

Priority between PPSA security interests and section 46 interests		
Item	If ...	then ...
1	the PPSA security interest is not perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i>	the section 46 interest has priority.
2	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 46 dealing is registered under section 46 of this Act before the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the section 46 interest has priority.
3	(a) the PPSA security interest is perfected (whether by registration or otherwise) within	the PPSA security interest has priority.

Priority between PPSA security interests and section 46 interests

Item	If ...	then ...
	the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 46 dealing is registered under section 46 of this Act at or after the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	

- (3) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the section 46 interest.

Note 1: The effect of subsection (3) is that the priority between a section 46 interest and a PPSA security interest in a fishing right is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to section 46 interests that arise after the commencement of subsection (3) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

47 Trusts not registrable

Notice of any kind of trust relating to a fishing right is not receivable by AFMA and must not be registered.

48 Power of holder of fishing right to deal with fishing right

- (1) Except where a condition of a fishing right provides otherwise, a holder of a fishing right may, subject to this section, deal with the fishing right as its absolute owner and give good discharges for any consideration for any such dealing.

- (1A) A dealing mentioned in subsection (1) is subject to:

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- (b) any rights appearing in the Register to be vested in another person, other than any such rights that are PPSA security interests; and
 - (c) any rights or interests in the fishing right that are PPSA security interests, to the extent provided by the *Personal Property Securities Act 2009*.
- (2) Subsection (1) only protects a person who deals with such a holder as a purchaser in good faith for value and without notice of any fraud on the part of the holder.
- (3) Equities in relation to a fishing right may be enforced against the holder of the fishing right except to the prejudice of a person protected by subsection (2).

50 Suspension, cancellation etc. of fishing right to be noted in Register

- (1) Where a fishing right registered under this Part is suspended, cancelled or ceases to have effect (other than because of subsection 43(9)), or a suspension of a fishing right is revoked, then:
- (a) if the fishing right is suspended or a suspension is revoked—AFMA must make a notation in the Register to that effect; and
 - (b) if the fishing right is cancelled or ceases to have effect—AFMA must make a notation in the Register to that effect and cancel the registration of the fishing right.
- (2) Where, because of a decision made by AFMA, a Joint Authority, the Administrative Appeals Tribunal or a court, a notation made by AFMA under subsection (1) is no longer correct, AFMA must rectify the Register accordingly.
- (4) Where, because of subsection 43(9), a provision of a fishing right registered under this Part has no effect, AFMA must make a notation in the Register to that effect.

- (5) Where AFMA has made a notation in the Register under subsection (4) and the relevant provision of the fishing right revives, AFMA must make a notation in the Register to that effect.

51 AFMA not concerned with certain matters

AFMA is not concerned with the effect in law of any instrument lodged under section 46 and the registration of the dealing does not give to the instrument any effect that it would not have if this Part had not been enacted.

52 Inspection of Register and documents

- (1) The Register and all instruments and documents subject to inspection under this Part must be available for inspection, in accordance with the regulations and upon payment of the prescribed fee, by any person during the hours that AFMA is open for business.
- (2) If the Register is kept wholly or partly by use of a computer, subsection (1) is taken to be complied with, to the extent that the Register is so kept, by giving members of the public access to a computer terminal that they can use to inspect the Register, either on a screen or in the form of a computer print-out.

53 Evidentiary provisions

- (1) The Register is prima facie evidence of any particulars registered in it.
- (2) If the Register is wholly or partly kept by use of a computer, a document issued by AFMA producing in writing all or any of the particulars comprising the Register, or that part of it, as the case may be, is admissible in any proceedings as prima facie evidence of those particulars.
- (3) A signed copy of, or signed extract from, the Register is admissible in any proceedings as if it were the original.

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- (4) A signed copy of, or signed extract from, an instrument evidencing a dealing registered under this Part is admissible in any proceedings as if it were the original.
- (5) AFMA, upon application made in the form approved by AFMA, must supply a person with a document mentioned in subsection (2) or a signed copy of, or a signed extract from, an entry in the Register or an instrument evidencing a dealing registered under this Part.

- (6) In this section:

signed means signed by a person on behalf of AFMA.

54 Orders for rectification of Register

- (1) A person aggrieved by:
 - (a) the omission of an entry from the Register; or
 - (b) an entry made in the Register without sufficient cause; or
 - (c) an entry wrongly existing in the Register; or
 - (d) an error or defect in an entry in the Register;may apply to a prescribed court for an order to rectify the Register.
- (2) On hearing an application, the court may:
 - (a) decide any question that it is necessary or expedient to decide in connection with the rectification of the Register; and
 - (b) make any order it thinks fit for the rectification of the Register.
- (3) AFMA:
 - (a) must be given notice of an application; and
 - (b) may appear and be heard in the proceedings; and
 - (c) an AFMA staff member must appear if directed to do so by the court.
- (4) A copy of an order must be served on AFMA by the Registrar or other appropriate officer of the court.

- (5) On receiving the copy of an order, AFMA must rectify the Register accordingly.
- (5A) This section, so far as it relates to the Supreme Court of Norfolk Island, has effect subject to section 60AA of the *Norfolk Island Act 1979*.
- (6) In this section:

prescribed court means the Federal Court of Australia, the Supreme Court of a State, the Supreme Court of the Australian Capital Territory, the Supreme Court of the Northern Territory or the Supreme Court of Norfolk Island.

55 Correction of clerical errors etc. in Register

AFMA may correct, or cause to be corrected, any clerical error or obvious mistake in the Register.

56 AFMA etc. not liable in certain circumstances

Neither AFMA nor a person acting for or on behalf of AFMA is liable to an action, suit or proceeding for or in respect of an act or matter in good faith done or omitted to be done in the exercise or purported exercise of any power conferred by this Part.

57 Offences

A person commits an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) that document falsely purports to be:
- (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or
 - (ii) a copy of or extract from an entry in the Register.

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 4 Register of Statutory Fishing Rights

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Note 2: Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

Part 4A—Register of vessels authorised to fish on high seas

57A The High Seas Register

- (1) AFMA must establish and must maintain a separate register, to be called the High Seas Register, containing particulars of all Australian-flagged boats that are authorised from time to time to engage in fishing activities on the high seas.
- (2) The Register may be kept wholly or partly by use of a computer.
- (3) If the Register is kept wholly or partly by use of a computer:
 - (a) references in this Act to an entry in the Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Register or a part of the Register; and
 - (b) references in this Act to particulars being entered in the Register are to be read as including references to the keeping of a record of those particulars as part of the Register by use of the computer; and
 - (c) references in this Act to the rectification of the Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Register or part of the Register.

57B Information to be included in the High Seas Register

- (1) AFMA must include in the Register:
 - (a) the identifying particulars of each Australian-flagged boat that is authorised by a fishing concession to be used for fishing activities on the high seas; and
 - (b) the name and address of the owner or owners of the boat; and

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- (c) the nature of the fishing concession, how it covers fishing activities on the high seas and the period for which it is granted.
- (2) For the purposes of paragraph (1)(a), the identifying particulars of an Australian-flagged boat are:
- (a) its name and any previous name or names (if known to AFMA); and
 - (b) its registration number; and
 - (c) its port of registry; and
 - (d) any previous flag under which it has sailed; and
 - (e) its international radio call sign (if any); and
 - (f) the place where, and the period when, it was built; and
 - (g) its type; and
 - (h) its length; and
 - (i) such other particulars (if any) as are prescribed.
- (3) Subject to subsections (4) and (5), if any of the particulars required to be recorded under subsection (1) or (2) in relation to an Australian-flagged boat changes, AFMA must, as soon as it becomes aware of that change, alter the Register to record that change.
- (4) If, in relation to an Australian-flagged boat that is included in the Register:
- (a) the fishing concession covering that boat is suspended or the suspension is revoked; or
 - (b) the fishing concession covering that boat is cancelled or ceases to have effect;
- AFMA must record in the Register the fact of that suspension, revocation, cancellation or cessation and also the reason for it.
- (5) If, because of a decision made by AFMA, a Joint Authority, the Administrative Appeals Tribunal or a court, a record made by AFMA under subsection (4) is no longer correct, AFMA must rectify the Register accordingly.
- (6) If an Australian-flagged boat that is included in the Register:
-

- (a) ceases to be an Australian-flagged boat; or
 - (b) is decommissioned or lost;
- AFMA must record that fact in the Register.

57C Notification obligations

- (1) AFMA must:
 - (a) on the establishment of the High Seas Register—notify the FAO of its contents; and
 - (b) whenever there is:
 - (i) an addition to, or a change in the particulars on, the Register; or
 - (ii) a record placed on the Register as required under subsection 57B(4) or (6); or
 - (iii) a rectification of the Register as required under subsection 57B(5);notify the FAO of that addition, change, record or rectification and of the reason for it.
- (2) If the reason for suspending or cancelling a fishing concession authorising the use of an Australian-flagged boat for fishing activities on the high seas is that AFMA is satisfied that the boat has been used in any activities that undermine international conservation and management measures—the notification to the FAO must specify particulars of the activities giving rise to AFMA’s action.
- (3) If AFMA grants a fishing concession authorising the use of an Australian-flagged boat to fish on the high seas in the circumstances set out in subsection 16B(5), AFMA must notify the FAO:
 - (a) of the fact that the concession has been granted, despite the prior suspension or cancellation of an authority granted by a foreign country; and
 - (b) of all data known to AFMA that is relevant to the identification of the boat and of its current owners and operators; and

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- (c) of all matters relevant to AFMA's decision to grant the concession.
- (4) If AFMA believes, on reasonable grounds, that a boat flying the flag of a foreign country has been used in any activities that undermine international conservation and management measures:
 - (a) AFMA must notify the foreign country of its belief and provide the foreign country with the evidence that supports its belief; and
 - (b) AFMA may notify the FAO of its belief and give it a summary of the supporting evidence.

57D Inspection of the High Seas Register

- (1) The High Seas Register must be available for inspection in accordance with the regulations and on payment of the prescribed fee by any person during the hours that AFMA is open for business.
- (2) If the High Seas Register is kept wholly or partly by use of a computer, subsection (1) is taken to have been complied with, to the extent that the Register is so kept, by giving members of the public access to a computer terminal so that they can inspect the Register, either on a screen or in the form of a computer print-out.

57E Application of sections 53 to 56

Sections 53, 54, 55 and 56 apply to the High Seas Register in like manner as they apply to the Register established and maintained under Part 4.

57F Offence

A person commits an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) that document falsely purports to be:
 - (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or

- (ii) a copy of or extract from an entry in the High Seas Register.

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

Part 4B—Fishing Permits Register

57G The Fishing Permits Register

- (1) AFMA must establish and maintain a Register relating to fishing permits granted under section 32 to be called the Fishing Permits Register.
- (2) The Fishing Permits Register may be kept wholly or partly by use of a computer.
- (3) If the Fishing Permits Register is kept wholly or partly by use of a computer:
 - (a) references in this Act to an entry in the Fishing Permits Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Fishing Permits Register or a part of the Register; and
 - (b) references in this Act to particulars being entered in the Fishing Permits Register are to be read as including references to the keeping of a record of those particulars as part of the Fishing Permits Register by use of the computer; and
 - (c) references in this Act to the rectification of the Fishing Permits Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Fishing Permits Register or part of the Register.

57H Information to be included in the Fishing Permits Register

- (1) AFMA must register each fishing permit that it grants under section 32 by entering in the Fishing Permits Register:
 - (a) the name of the holder of the permit; and
 - (b) the area of the AFZ, or the fishery, that is specified in the permit; and
 - (c) the period for which the permit remains in force; and

- (d) if the permit is granted in respect of a nominated boat or if, after the grant of the permit, a boat is nominated—the name and distinguishing symbols for the nominated boat; and
 - (e) such other particulars (if any) as are prescribed.
- (2) Subject to subsections (3) and (4), if any of the particulars required to be recorded under subsection (1) changes, AFMA must, as soon as it becomes aware of that change, alter the Fishing Permits Register to record that change.
- (3) If, in relation to a boat particulars of which are included in the Fishing Permits Register:
 - (a) the fishing permit covering that boat is suspended or the suspension is revoked; or
 - (b) the fishing permit covering that boat is cancelled or ceases to have effect;AFMA must record in the Fishing Permits Register the fact of that suspension, revocation, cancellation or cessation and also the reason for it.
- (4) Where, because of a decision made by AFMA, a Joint Authority, the Administrative Appeals Tribunal or a court, a record made by AFMA under subsection (3) is no longer correct, AFMA must rectify the Fishing Permits Register accordingly.

57J Inspection of the Fishing Permits Register

- (1) The Fishing Permits Register must be available for inspection in accordance with the regulations and on payment of the prescribed fee by any person during the hours that AFMA is open for business.
- (2) If the Fishing Permits Register is kept wholly or partly by use of a computer, subsection (1) is taken to have been complied with, to the extent that the Register is so kept, by giving members of the public access to a computer terminal so that they can inspect the Register, either on a screen or in the form of a computer print-out.

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57K Application of sections 53 to 56

Sections 53, 54, 55 and 56 apply to the Fishing Permits Register in like manner as they apply to the Register established and maintained under Part 4.

57L Offence

A person commits an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) the document falsely purports to be:
 - (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or
 - (ii) a copy of or extract from an entry in the Fishing Permits Register.

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

Part 5—Co-operation with States and Northern Territory in management of fisheries

Division 1—Preliminary

58 Interpretation

- (1) In this Part, unless the contrary intention appears:

appropriate Minister, in relation to a State, means the Minister of the State for the time being administering the laws of the State relating to marine fishing.

Commonwealth Minister means the Minister.

Joint Authority fishery means a fishery in respect of which there is in force an arrangement under this Part under which the fishery is to be under the management of a Joint Authority.

- (2) For the purposes of this Part, waters relevant to a State are the coastal waters of the State and the AFZ.

59 Application of Part in relation to Northern Territory

- (1) This Part has effect as if the Northern Territory were a State.
- (2) A reference in this Part to the Governor of a State is to be read, in relation to the Northern Territory, as a reference to the Administrator of the Territory.

60 Acting Ministers

- (1) The functions and powers of the Commonwealth Minister under this Part, including the Minister's functions and powers as a member of a Joint Authority, may be performed and exercised by another Minister of the Commonwealth acting for and on behalf of the Commonwealth Minister, and references in this Part to the

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Commonwealth Minister are to be read as including references to a Minister so acting.

- (2) The functions and powers of the appropriate Minister of a State under this Part, including the Minister's functions and powers as a member of a Joint Authority, may be performed and exercised by a Minister of the State acting for and on behalf of the appropriate Minister, and references in this Part to the appropriate Minister of a State are to be read as including references to a Minister so acting.

Division 2—Joint Authorities

61 Establishment of Joint Authorities

- (1) The Commonwealth may make an arrangement with a State or States for the establishment of a Joint Authority consisting of the Commonwealth Minister together with the appropriate Minister or Ministers of that State or those States.
- (2) Each arrangement is to be made by instrument approved by the Governor-General and the Governor or Governors of the State or States represented on the Joint Authority.
- (3) A Joint Authority may be abolished by a further such instrument, but such an instrument does not take effect while there is in operation an arrangement under Division 3 providing that the Joint Authority is to have the management of a particular fishery.
- (4) The Commonwealth Minister is to cause a copy of every instrument so approved to be published in the *Gazette* and, subject to subsection (3), the instrument takes effect on the day of publication.

62 Functions of Joint Authority

A Joint Authority has such functions in relation to fisheries in respect of which arrangements are made under Division 3 as are conferred on it by this Part or a law of a State that is represented on the Joint Authority.

63 Deputies of members

- (1) A member of a Joint Authority may, in writing, appoint a person or persons to be his or her deputy or deputies.
- (2) A deputy of a member is entitled, in the absence from a meeting of the Joint Authority of the member and of the other deputy or

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deputies (if any) of the member, to attend that meeting and, when so attending, is taken to be a member.

64 Representation on Joint Authority

For the purposes of this Part, a State is taken to be represented on a Joint Authority if the appropriate Minister of the State is a member of the Joint Authority.

65 Delegation

- (1) Subject to this section, a Joint Authority may, by writing, delegate to an officer or employee of a State or of an authority of a State any of its powers under this Act, other than its powers under sections 18 and 20.
- (2) Without limiting the operation of subsection (1), a delegation may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified position or office in the service of a State or an authority of a State or under the law of a State.
- (3) A delegate of a Joint Authority is, in the exercise of his or her delegated powers, subject to the directions of the Joint Authority.
- (4) A delegation of a power under this section:
 - (a) may be revoked, by instrument, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated); and
 - (b) continues in force despite any change in the membership of the Joint Authority.
- (5) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation of a power under this section by the Joint Authority is prima facie evidence of that matter.
- (6) Nothing in this Part is intended to prevent the delegation by a Joint Authority, in accordance with the law of a State, of powers conferred on the Joint Authority by the law of that State.

66 Procedure of Joint Authorities

- (1) At a meeting of a Joint Authority:
 - (a) if the Commonwealth Minister is present—that Minister is to preside; and
 - (b) if deputies of members only are present—the deputy of the Commonwealth Minister is to preside; and
 - (c) if neither paragraph (a) nor paragraph (b) is applicable—the members present are to select one of their number, being a Minister, to preside.
- (2) Meetings of a Joint Authority are to be convened by the Commonwealth Minister, and that Minister must convene such a meeting at the request of any other member.
- (3) The quorum for a meeting of a Joint Authority is:
 - (a) if there are 2 members—2 members; or
 - (b) if there are more than 2 members—the Commonwealth Minister or that Minister’s deputy and other members not fewer in number than 2 and not fewer in number than half the number of States represented on the Joint Authority.
- (4) If, at a meeting of a Joint Authority, the members present are not agreed as to the decision to be made on a matter, the Commonwealth Minister may, subject to subsection (6), decide that matter.
- (5) A decision of the Commonwealth Minister made under subsection (4) has effect as the decision of the Joint Authority.
- (6) Before deciding in accordance with subsection (4), the Commonwealth Minister must:
 - (a) submit the matter for consideration by the members of the Australian Fisheries Council, being the body known by that name constituted by the Commonwealth Minister and Ministers of the States and certain of the Territories; and

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- (b) for that purpose, if so requested by a member of that Council, convene a meeting of that Council;
- but a decision of the Commonwealth Minister may not be called into question in any legal proceedings on a ground arising out of this subsection.
- (7) Subject to this Division, a Joint Authority may adopt its own rules of procedure.

67 Decisions taken without meeting

- (1) A member of a Joint Authority may, by written or other communication, submit a matter within the functions of the Joint Authority for consideration by the other member, or each of the other members, of the Joint Authority.
- (2) If all the members of the Joint Authority are agreed as to the decision to be made on the matter, the Joint Authority is taken to have made a decision accordingly.
- (3) The Commonwealth Minister, upon being satisfied that the members are so agreed, must record the decision as a decision of the Joint Authority.

68 Advisory committees

A Joint Authority may establish advisory committees, consisting of such persons as it thinks fit, to provide information and advice to the Joint Authority on matters related to any fishery.

69 Administration

- (1) The Commonwealth Minister must, in respect of each Joint Authority:
- (a) appoint a person to be the secretary of the Joint Authority; and
- (b) make arrangements for the provision of appropriate services in respect of the Authority.

- (2) A person appointed under subsection (1) to be the secretary of a Joint Authority must be an AFMA staff member if the Joint Authority is to manage, or is managing, a fishery in accordance with the law of the Commonwealth.
- (3) The Commonwealth Minister must cause written records to be kept of the decisions of a Joint Authority.
- (4) Such a record, if signed by the Commonwealth Minister, or deputy of the Commonwealth Minister, who took part in or made the decision, is prima facie evidence that the decision, as recorded, was duly made.
- (5) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of that Joint Authority, is taken to be duly executed by the Joint Authority and, unless the contrary is proved, is taken to be in accordance with a decision of the Joint Authority.

70 Annual reports

- (1) A Joint Authority must, as soon as practicable after 30 June in each year, prepare a report on:
 - (a) the activities of the Joint Authority in the immediately preceding financial year; and
 - (b) the condition during that year of the fisheries to which the functions of the Joint Authority apply.
- (2) The Commonwealth Minister is to cause a copy of every report under this section to be laid before each House of the Parliament as soon as practicable after the preparation of the report.
- (3) A report for a financial year may, subject to agreement between the Joint Authority and AFMA, be included, as a separate part, in the annual report of AFMA for that financial year.

Division 3—Arrangements with respect to management of particular fisheries

71 Arrangements with States—Joint Authority to manage

- (1) The Commonwealth may make an arrangement with the State or States represented on a Joint Authority that the Joint Authority is to have the management of a particular fishery in waters relevant to that State or to any of those States.
- (2) An arrangement with only one State must provide that:
 - (a) the fishery is to be managed in accordance with the law of the Commonwealth; or
 - (b) the fishery is to be managed in accordance with the law of the State; or
 - (c) the fishery is to be managed in accordance with the law of the Commonwealth and the law of the State.
- (3) An arrangement with 2 or more States must provide that:
 - (a) the fishery is to be managed in accordance with the law of the Commonwealth; or
 - (b) the fishery is to be managed in accordance with the law of one or more of the States concerned; or
 - (c) the fishery is to be managed in accordance with the law of the Commonwealth and the law of one or more of the States concerned.
- (4) An arrangement that provides that a fishery is to be managed in accordance with the law of more than one jurisdiction must identify, by reference to areas that do not overlap, the parts of the fishery that are to be managed in accordance with each law.
- (5) If, under an arrangement:
 - (a) a fishery is to be managed in accordance with the law of a State; or
 - (b) a part of a fishery is to be managed in accordance with the law of a State;

the arrangement may, if required by the Commonwealth, provide for giving effect to Australia's obligations under international law (including international agreements) in relation to the fishery or part of the fishery.

72 Other arrangements with States

- (1) The Commonwealth may make an arrangement with a State with respect to a particular fishery in waters relevant to the State, not being a fishery to which an arrangement under section 71 applies:
 - (a) that the fishery (being a fishery wholly or partly in the coastal waters of the State) is to be managed in accordance with the law of the Commonwealth; or
 - (b) that the fishery (being a fishery wholly or partly in waters on the seaward side of the coastal waters of the State) is to be managed in accordance with the law of the State.
- (2) If, under an arrangement, a fishery is to be managed in accordance with the law of a State, the arrangement may, if required by the Commonwealth, provide for giving effect to Australia's obligations under international law (including international agreements) in relation to the fishery.

73 Arrangements with States—general provisions

- (1) An arrangement under this Division does not have any effect in relation to:
 - (a) any area within the Protected Zone; or
 - (b) if there is in force a Proclamation under subsection 15(1) or (2) of the *Torres Strait Fisheries Act 1984* in relation to an area adjacent to the Protected Zone—any activities within that area to which that Act applies by virtue of the Proclamation.
- (2) In this section:

Protected Zone has the same meaning as in the *Torres Strait Fisheries Act 1984*.

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74 Arrangements—how made etc.

- (1) An arrangement under this Division is to be made by instrument approved by:
 - (a) the Commonwealth Minister on behalf of the Commonwealth; and
 - (b) the appropriate Minister or Ministers of the State or States concerned.
- (2) The Commonwealth Minister must cause a copy of every instrument so approved to be published in the *Gazette*, and the instrument takes effect on the date of publication or on a later date specified in the instrument.
- (3) Subject to the requirements of section 23, after an arrangement under this Division has been made but before the arrangement takes effect, the following things may be done for the purposes of the operation of this Act as affected by the arrangement as if the arrangement had taken effect:
 - (a) plans of management, permits or other instruments may be determined, granted or executed;
 - (b) fishing rights may be granted;but such a plan, instrument or right does not have effect before the arrangement takes effect.
- (4) An instrument approved under subsection (1) is not a legislative instrument.

74A Arrangements—how varied etc.

- (1) An arrangement under this Division is to be varied by instrument approved by:
 - (a) the Commonwealth Minister on behalf of the Commonwealth; and
 - (b) the appropriate Minister or Ministers of the State or States concerned.

- (2) The Commonwealth Minister must cause a copy of every instrument so approved to be published in the *Gazette*, and the instrument takes effect on the date of publication or on a later date specified in the instrument.
- (3) Subject to the requirements of section 23, after an arrangement under this Division has been varied but before the variation takes effect, the following things may be done for the purposes of the operation of this Act as affected by the variation as if the variation had taken effect:
 - (a) plans of management, permits or other instruments may be determined, granted or executed;
 - (b) fishing rights may be granted;but such a plan, instrument or right does not have effect before the variation takes effect.
- (4) Upon the variation of an arrangement under this Division:
 - (a) plans of management, fishing permits, scientific permits and other instruments determined, granted, executed or published; and
 - (b) statutory fishing rights granted;for the purposes of the operation of this Act as affected by the variation cease to have effect to the extent (if any) they are inconsistent with the arrangement as varied.
- (5) An instrument approved under subsection (1) is not a legislative instrument.

75 Arrangements—how terminated etc.

- (1) An arrangement under this Division may be terminated by instrument approved by:
 - (a) the Commonwealth Minister on behalf of the Commonwealth; and
 - (b) the appropriate Minister or Ministers of the State or States concerned.

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- (2) The Commonwealth Minister must cause a copy of such an instrument to be published in the *Gazette*, and the instrument takes effect on the date of publication or on a later date specified in the instrument.
- (3) A party to an arrangement may:
- (a) in the case of the Commonwealth—with the approval of the Commonwealth Minister; or
 - (b) in the case of a State—with the approval of the appropriate Minister of the State;
- give written notice to the other party or parties that the party giving the notice desires the arrangement to terminate upon a date specified in the notice or notices, not being earlier than 6 months after the day on which the notice, or the last of the notices, is given.
- (4) Where a party has duly given such a notice, the Commonwealth Minister must, not less than 3 months before the date specified in the notice or notices, cause to be published in the *Gazette* a notice stating that, because of notice of termination given by that party, the arrangement will cease to have effect on the date specified in the notice or notices.
- (5) Where the Commonwealth Minister has caused a notice to be so published, the arrangement ceases to have effect on the specified date.
- (6) An arrangement under this Division may provide:
- (a) that, for the purposes of the application of subsection (3) in respect of the arrangement, a longer or shorter period is to be substituted for the period of 6 months mentioned in that subsection; and
 - (b) that, for the purposes of the application of subsection (4) in respect of the arrangement, a longer or shorter period is to be substituted for the period of 3 months mentioned in that subsection.

- (7) Upon the termination of an arrangement under this Division, plans of management, fishing permits, scientific permits and other instruments determined, granted, executed or published, and statutory fishing rights granted, for the purposes of the operation of this Act as affected by the arrangement cease to have effect.
- (8) Subject to the requirements of section 23, after action for the purpose of the termination of an arrangement under this Division has been taken, but before the termination takes effect, the following things may be done for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated:
- (a) plans of management, permits or other instruments may be determined, granted or executed;
 - (b) fishing rights may be granted;
- but such a plan, instrument or fishing right does not have effect before the termination of the arrangement takes effect.
- (9) An instrument approved under subsection (1) is not a legislative instrument.

76 Extension of operation of this Act

- (1) Where an arrangement under this Division provides that a particular fishery, being a fishery that is so defined that it is or may be carried on partly within the coastal waters of a State, is to be managed in accordance with the law of the Commonwealth, the coastal waters of that State are taken to be in the AFZ, for the purposes of the application of this Act in relation to that fishery.
- (2) If an arrangement under this Division provides that:
- (a) a part of a fishery is to be managed in accordance with the law of the Commonwealth; and
 - (b) that part of the fishery is so identified that it is, or may be, carried on partly within the coastal waters of a State;
- the coastal waters of that State are taken to be in the AFZ for the purposes of the application of this Act in relation to that part of the fishery.

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77 Exclusion of this Act (except this Division)

If an arrangement under this Division provides that:

- (a) a particular fishery is to be managed in accordance with the law of a State; or
- (b) a part of a particular fishery is to be managed in accordance with the law of a State;

this Act, other than this Division, does not apply in relation to that fishery, or that part of the fishery, except in relation to:

- (c) foreign boats; and
- (d) operations on and from foreign boats; and
- (e) persons on foreign boats; and
- (ea) e-monitoring by AFMA of fishing-related activity; and
- (f) matters that occurred before the arrangement took effect.

78 Effect of arrangement

- (1) If, in respect of a fishery, there is in force an arrangement under this Division under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the Commonwealth:

- (a) AFMA has the same powers in relation to the fishery as it would have if the fishery were under the management of AFMA; and
- (b) references in sections 18 and 20 to the Minister are taken, in relation to the fishery, to be references to the Joint Authority.

- (2) If:

- (a) an arrangement is in force under this Division under which a Joint Authority has the management of a fishery; and
- (b) a part of the fishery is to be managed in accordance with the law of the Commonwealth;

then:

- (c) AFMA has the same powers in relation to the part of the fishery as it would have if the part of the fishery were under the management of AFMA; and

- (d) references in sections 18 and 20 to the Minister are taken, in relation to the part of the fishery, to be references to the Joint Authority.

81 Evidentiary provision

A statement in an arrangement made under this Division that specified waters:

- (a) in the case of an arrangement between the Commonwealth and one State—are waters relevant to that State; or
(b) in the case of any other arrangement—are waters relevant to the States that are parties to the arrangement or are waters relevant to a specified State or States;

must, for all purposes of this Act, be conclusively presumed to be correct.

Part 6—Surveillance and enforcement

Division 1—Officers

83 Appointment of officers

- (1) AFMA may, by instrument, appoint:
 - (a) an officer or employee of the Commonwealth, of the Administration of a Territory (other than a Territory mentioned in paragraph (b)) or of an authority of the Commonwealth; or
 - (b) an officer or employee of a State, the Northern Territory or the Australian Capital Territory, or of an authority of a State or one of those Territories, in relation to whom there is in force an arrangement between the Commonwealth and the State or Territory, as the case may be;to be an officer for the purposes of this Act.
- (2) An officer appointed by AFMA is, in the exercise of his or her powers and performance of his or her functions, subject to the directions of AFMA.

84 Powers of officers

- (1) An officer may:
 - (d) where the officer has reasonable grounds to believe that there is on any land or in any premises anything that may afford evidence as to the commission of an offence against this Act, with the consent of the owner or occupier of the land or premises or under a warrant issued under section 85:
 - (i) enter the land or premises; and
 - (ii) search the land or premises and break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the officer has reasonable grounds to believe that there is any such thing; and

- (iii) examine and take possession of, or secure against interference, any such thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act; and
- (e) where the officer has reasonable grounds to believe that there is in any vehicle or aircraft anything that may afford evidence as to the commission of an offence against this Act, and subject to subsections (1AA) and (1AB):
 - (i) stop and detain the vehicle or detain the aircraft, as the case may be; and
 - (ii) enter and search the vehicle or aircraft; and
 - (iii) break open and search any compartment, container or other receptacle in which the officer has reasonable grounds to believe there is any such thing; and
 - (iv) examine and take possession of, or secure against interference, any such thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act; and
- (f) examine any equipment found in any place, being equipment that the officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in the AFZ; and
- (fa) if a fishing concession provides for the use of equipment of a particular type—require the holder of the concession to give the officer such help as the officer reasonably requires for the purpose of measuring the equipment; and
- (g) subject to subsection (1A), seize, detain, remove or secure:
 - (i) any fish that the officer has reasonable grounds to believe has been taken, processed, carried or landed in contravention of this Act; or
 - (ii) any boat, net, trap or other equipment that the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Act; or

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- (iii) any document or other thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act; and
- (ga) seize all or any of the following that are forfeited to the Commonwealth under section 106A or that the officer has reasonable grounds to believe are forfeited under that section:
 - (i) a boat;
 - (ii) a net, trap or other equipment;
 - (iii) fish; and
- (gb) seize all or any of the following that are forfeited to the Commonwealth under section 106AA or that the officer has reasonable grounds to believe are forfeited under that section:
 - (i) a net, trap or other equipment;
 - (ii) fish; and
- (gc) seize any fish that are the property of the Commonwealth because of the operation of section 106AC or that the officer has reasonable grounds to believe are the property of the Commonwealth because of the operation of that section; and
- (gd) seize anything:
 - (i) that is on, in or attached to a boat and that forms part of the boat; and
 - (ii) that is the property of the Commonwealth because of the operation of section 106AD or that the officer has reasonable grounds to believe is the property of the Commonwealth because of the operation of that section; and
- (h) enter on land or premises specified in a fish receiver permit for the purpose of finding out whether a condition of the permit is being, or has been, complied with or whether a person is contravening or has contravened a provision of this Act and, in furtherance of that purpose:
 - (i) search the land or premises for, and examine, fish; and
 - (ii) search the land or premises for, inspect, take extracts from, and make copies of, any documents relating to the receiving of fish; and

- (iii) if the officer finds, during the course of the search, any thing that he or she believes, on reasonable grounds, may provide evidence of a contravention of a provision of this Act, secure the thing pending the obtaining of a warrant to seize it; and
- (i) with the consent of the holder of a fish receiver permit or under a warrant issued under section 85, seize any thing found during the course of a search that the officer believes, on reasonable grounds, may provide evidence of a contravention of this Act; and
- (j) without warrant, arrest a person whom the officer has reasonable grounds to believe has committed an offence against this Act; and
- (n) require the master of a boat to produce any fishing concession or Treaty licence, or evidence of the grant of any such concession or licence, for or in respect of the boat; and
- (o) take copies of, or extracts from, a fishing concession, Treaty licence or any other document produced in accordance with a requirement under paragraph (n); and
- (p) require the master of a boat in relation to which a fishing concession is in force under this Act or a Treaty boat in respect of which a Treaty licence is in force to give information concerning the boat and its crew and any person on board the boat; and
- (s) require a person found on any land or premises entered under paragraph (d) or in any vehicle or aircraft detained or searched under paragraph (e):
 - (i) to state the person's name and address; or
 - (ii) to produce any documents in the person's possession or under the person's control relating to any fish found on the land or in the premises, vehicle or aircraft; or
 - (iii) to give information concerning any such fish; and
- (t) sell or otherwise dispose of any fish seized by him or her under this Act.

Note: Schedule 1A gives officers powers relating to detention of suspected illegal foreign fishers.

Section 84

- (1AA) Subject to subsection (1AB), the powers of an officer under paragraph (1)(e) in respect of any vehicle or aircraft must not be exercised without either:
- (a) the consent of the owner or person in charge of the vehicle or aircraft to the exercise of those powers; or
 - (b) the obtaining of a warrant under section 85 or 86 authorising the exercise of those powers.

(1AB) If:

- (a) the owner or person in charge of a vehicle or aircraft referred to in subsection (1AA) refuses to consent to the exercise by an officer of powers under paragraph (1)(e); and
- (b) an officer seeking to exercise those powers believes, on reasonable grounds:
 - (i) that there is in the vehicle or aircraft anything that may afford evidence of an offence against this Act; and
 - (ii) that the delay that would occur if an application for a warrant were made (either in person or under section 86) would frustrate the effective execution of the warrant;

those powers may be exercised without a warrant but, if that is done, the officer must:

- (c) if it is practicable to do so, notify the owner or person in charge of a vehicle or aircraft that the officer will be exercising powers under paragraph (1)(e) without a warrant and that the reasons for the exercise of those powers may be requested; and
- (d) as soon as reasonably practicable, record the reasons for the exercise of those powers without a warrant; and
- (e) upon request by the owner or person in charge of the vehicle or aircraft—provide the record of those reasons to the person affected by the exercise of those powers.

- (1A) If an officer takes any action under subparagraph (1)(g)(i) or (ii), the officer must, within 7 days after the action is taken, give written notice of the grounds for the taking of the action to the person believed by the officer:

- (a) if the action is taken in relation to any fish—to have taken, processed, carried or landed the fish, as the case may be; or
- (b) if the action is taken in relation to any boat—to be the owner of the boat; or
- (c) if the action is taken in relation to any net, trap or other equipment—to have used, to be using or to be intending to use the net, trap or other equipment, as the case may be.

Note: Subdivision C of Division 6 deals with notice of seizure of things under paragraph 84(1)(ga), (gb), (gc) or (gd).

- (1B) To avoid doubt, the validity of the seizure of a boat by an officer under paragraph (1)(g) is not affected merely because:
 - (a) the boat is brought or taken under escort to a place; and
 - (b) the boat had to travel on the high seas to reach the place.
- (1BA) If there is a restraint on the liberty of a person on a boat resulting from an officer's exercise of a power under paragraph (1)(g) in relation to a boat:
 - (a) the restraint is not unlawful; and
 - (b) civil or criminal proceedings in respect of the restraint may not be instituted or continued in any court against:
 - (i) the officer; or
 - (ii) any person assisting the officer in the exercise of the power; or
 - (iii) AFMA; or
 - (iv) the Commonwealth.

This subsection is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

- (5) Where an officer (other than a member of the Defence Force who is in uniform) proposes to enter and search, or to detain, a vehicle or aircraft, the officer must, if there is a person in charge of the vehicle or aircraft:
 - (a) where the officer is a prescribed person—produce, for inspection by the person in charge of the vehicle or aircraft, written evidence of the fact that the officer is a prescribed person; or

Section 84

(b) in any other case—produce, for inspection by the person in charge of the vehicle or aircraft, the officer’s identity card; and, if the officer fails to do so, the officer is not authorised to enter and search, or to detain, the vehicle or aircraft.

(6) Where an officer (other than a member of the Defence Force who is in uniform) makes a requirement of a person (in this subsection called the **relevant person**) under subsection (1) the officer must make all reasonable efforts to identify himself or herself and must, unless subsection (6A) applies:

(a) in the case of a prescribed person—produce, for inspection by the relevant person, written evidence of the fact that the officer is a prescribed person; or

(b) in any other case—produce, for inspection by the relevant person, the officer’s identity card;

and, if the officer fails to do so, the relevant person is not obliged to comply with the requirement.

(6A) If the requirement under subsection (1) is made in such circumstances that it is impossible to produce the written evidence referred to in paragraph (6)(a) or the identity card referred to in paragraph (6)(b), as the case requires, at the time of making the requirement, that evidence or identity card must be produced for inspection by the relevant person at the first available opportunity after the making of the requirement.

(7) A reference in this section to an offence against, or a contravention of, this Act or a particular provision of this Act includes a reference to an offence against, or a contravention of:

(a) section 6 of the *Crimes Act 1914*; or

(b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to this Act or that provision.

(8) In this section:

examine includes count, measure, weigh, grade or gauge.

prescribed person means a member or special member of the Australian Federal Police or a member of the police force of a State

or Territory or an officer of Customs (as defined in the *Customs Act 1901*).

this Act includes the regulations.

84B Cooperative Enforcement Agreement

Purpose

- (1) The purpose of this section is to implement the Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands that was done at Paris on 8 January 2007 (the *Cooperative Enforcement Agreement*).

Note 1: In 2010, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 2: The Agreement should be read together with the Treaty between the Government of Australia and the Government of the French Republic on cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands, that was done at Canberra on 24 November 2003. The text of the Treaty is set out in Australian Treaty Series 2005 No. 6 ([2005] ATS 6). In 2010, the text of a treaty in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

International officers

- (2) An international officer may, for the purposes of conducting cooperative enforcement, exercise any of the powers of an officer in this Division. In doing so, the international officer is taken for the purposes of this Act to have exercised the power as an officer.
- (3) The regulations may prescribe conditions for the exercise of a power by an international officer.

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- (4) Subsection 84(6) applies in relation to the exercise of a power by an international officer as if the reference in that subsection to the officer's identity card were a reference to a document:
- (a) issued by an officer; and
 - (b) identifying the international officer as an international officer authorised to conduct cooperative enforcement.
- (5) An international officer is not liable to any civil or criminal proceedings in respect of anything done or omitted to be done in good faith in the exercise or purported exercise of a power conferred on an international officer by subsection (3).

Officers

- (6) An officer may, for the purposes of conducting cooperative enforcement, exercise any powers conferred by the Government of the French Republic on officers in order to give effect to the Cooperative Enforcement Agreement.
- (7) An officer is not liable to any civil or criminal proceedings in respect of anything done or omitted to be done in good faith in the exercise or purported exercise of a power referred to in subsection (6).

Definitions

- (8) In this Act:

cooperative enforcement means cooperative enforcement, as defined in the Cooperative Enforcement Agreement, that is conducted in accordance with that Agreement.

international officer means a person who is authorised to conduct cooperative enforcement by a competent authority of the Government of the French Republic.

84C Customs officers may carry arms in exercise of powers under this Act

- (1) Subject to any directions from the Comptroller-General of Customs, the commander of an Australian Border Force vessel:
 - (a) may issue approved firearms and other approved items of personal defence equipment to officers of Customs under his or her command for the purpose of enabling the safe exercise, by such officers, of powers conferred on them as officers within the meaning of section 4; and
 - (b) must take all reasonable steps to ensure that approved firearms, and other approved items of personal defence equipment, that are available for issue under paragraph (1)(a), are kept in secure storage at all times when not required for use.
- (2) Directions given by the Comptroller-General of Customs for the purposes of subsection 189A(2) of the *Customs Act 1901* relating to the deployment of approved firearms and other approved items of personal defence equipment may extend to the deployment of such firearms and other items of equipment under this section.
- (3) If:
 - (a) approved firearms and other approved items of personal defence equipment are issued to officers of Customs in accordance with subsection 189A(1) of the *Customs Act 1901*; and
 - (b) those officers are subsequently required, while carrying such firearms or other items of equipment, to exercise powers conferred on them under this Act;then:
 - (c) the deployment of such firearms or other items of equipment has effect as if the firearms or other items of equipment had been issued under this section; and
 - (d) any directions given by the Comptroller-General of Customs that relate to any aspect of that deployment have effect accordingly.

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- (4) An officer of Customs is not required under, or by reason of, a law of a State or Territory:
- (a) to obtain a licence or permission for the possession or use of an approved firearm or approved item of personal defence equipment in the circumstances set out in this section; or
 - (b) to register such a firearm or other item of equipment.
- (5) In this section:

approved firearm means a firearm that is an approved firearm for the purposes of section 189A of the *Customs Act 1901*.

approved item of personal defence equipment means an item that is an approved item of personal defence equipment for the purposes of section 189A of the *Customs Act 1901*.

Australian Border Force vessel means a Commonwealth ship (within the meaning of the *Customs Act 1901*) that is under the command of an officer of Customs (including an officer of Customs exercising powers as an officer within the meaning of this Act) and flying the flag mentioned in section 14 of the *Customs Act 1901*.

Comptroller-General of Customs means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

85 When search warrants can be issued

- (1) A magistrate may, upon application by an officer, issue a warrant to search premises if the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.
- (2) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person must state the suspicion, and the grounds for the suspicion, in the information.

- (3) If a magistrate issues a warrant, the magistrate is to set out in the warrant:
- (a) the offence to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the officer who, unless he or she inserts the name of another officer in the warrant, is to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (f) whether the warrant may be executed at any time or only during particular hours.
- (4) The magistrate is also to state that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (3)(c)) found at the premises in the course of the search that the executing officer or a person helping believes on reasonable grounds to be:
- (a) evidential material in relation to an offence to which the warrant relates; or
 - (b) a thing relevant to another offence against this Act or the regulations that is an indictable offence;
- if the executing officer or a person helping believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act or the regulations.
- (5) Paragraph (3)(e) does not prevent the issue of successive warrants in relation to the same premises.
- (6) If the application for the warrant is made under section 86, this section applies as if:
- (a) subsection (1) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (3)(e) referred to 48 hours rather than 7 days.

Section 85A

- (7) A magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises in the Jervis Bay Territory.
- (8) A magistrate in a State or internal Territory may:
 - (a) issue a warrant in relation to premises in that State or Territory; or
 - (b) issue a warrant in relation to premises in an external Territory; or
 - (c) issue a warrant in relation to premises in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate.

85A The things that are authorised by a search warrant

- (1) A warrant authorises the executing officer or a person helping:
 - (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and
 - (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
 - (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
 - (d) to seize other things found at the premises in the course of the search that the executing officer or a person helping believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) evidential material in relation to another offence against this Act or the regulations that is an indictable offence;if the executing officer or a person helping believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence against this Act or the regulations.

Section 85B

- (2) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.
- (3) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

85B Availability of assistance and use of force in executing a warrant

In executing a warrant:

- (a) the executing officer may obtain such help; and
- (b) the executing officer, or a person who is an officer and is helping in executing the warrant may use such force against persons and things; and
- (c) a person who is not an officer and has been authorised to help in executing the warrant may use such force against things; as is necessary and reasonable in the circumstances.

85C Copy of warrant to be given to occupier etc.

- (1) If a warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or a person helping must make available to that person a copy of the warrant.
- (2) The executing officer must produce his or her identity card to the person at the premises.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate or the seal of the relevant court.

85D Specific powers available to officer executing warrant

- (1) In executing a warrant, the executing officer or a person helping may:

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- (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing;take photographs (including video recordings) of the premises or of things at the premises.
- (2) If a warrant is being executed, the executing officer or a person helping may, if the warrant is still in force, complete the execution of the warrant after the officer and all persons helping temporarily cease its execution and leave the premises:
 - (a) for not more than one hour; or
 - (b) for a longer period if the occupier of the premises consents in writing.
- (3) If:
 - (a) the execution of a warrant is stopped by an order of a court; and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant is still in force;the execution of the warrant may be completed.

85E Use of equipment to examine or process things

- (1) The executing officer or a person helping may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.
- (2) If:
 - (a) it is not practicable to examine or process the things at the warrant premises; or
 - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

Section 85F

- (a) inform the occupier of the address of the place, and the time, at which the examination or processing will be carried out; and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or a person helping may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or person believes on reasonable grounds that:
- (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

85F Use of electronic equipment at premises

- (1) The executing officer or a person helping may operate electronic equipment at the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the executing officer or a person helping, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documentation so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or

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- (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;
operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
- (3) A person may seize equipment under paragraph (2)(a) only if:
 - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence against this Act or the regulations.
- (4) If the executing officer or a person helping believes on reasonable grounds that:
 - (a) evidential material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The executing officer or a person helping must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured until:
 - (a) the end of a period of not more than 24 hours; or
 - (b) the equipment has been operated by the expert;whichever happens first.
- (7) If the executing officer or a person helping believes on reasonable grounds that the expert assistance will not be available within 24

hours, he or she may apply to the magistrate for an extension of that period.

- (8) The executing officer or a person helping must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (9) The provisions of this Division relating to the issue of warrants apply, with any modifications that are necessary, to the issuing of an extension.

85G Compensation for damage to electronic equipment

- (1) If:
 - (a) damage is caused to equipment as a result of being operated as mentioned in section 85E or 85F; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

85H Copies of seized things to be provided

- (1) Subject to subsection (2), if a person seizes, under a warrant:

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(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied;

the person must, if requested to do so by the occupier of the premises or by another person who apparently represents the occupier and is present when the warrant is executed, give a copy of the thing or the information to the person who made the request as soon as practicable after the seizure.

(2) Subsection (1) does not apply if:

(a) the thing that has been seized was seized under paragraph 85F(2)(b) or (c); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

85J Occupier entitled to be present during search

(1) If a warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the person impedes the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

85K Receipts for things seized under warrant

(1) If a thing is seized under a warrant or moved under subsection 85E(2), the executing officer or a person helping must provide a receipt for the thing.

(2) If 2 or more things are seized or moved, they may be covered in the one receipt.

86 Warrants by telephone or other electronic means

- (1) An officer may make an application to a magistrate for a warrant by telephone, telex, fax or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.
- (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.
- (4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, 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;the magistrate may complete and sign the same form of warrant as would be issued under section 85.
- (5) If the magistrate decides to issue the warrant, the magistrate is to tell the applicant, by telephone, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given to the magistrate, stating on the form the magistrate's name and the day on which and the time at which the warrant was signed.
- (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

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executed, whichever is the earlier, give or send to the magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

- (8) The magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.
- (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.

87J Use of force to exercise powers

Force to be used only in limited circumstances

- (1) An officer must not use force in the exercise of the officer's powers under a provision of section 84 unless it is necessary to do so:
- (a) to ensure the safety of an officer; or
 - (b) to overcome obstruction of an officer in the exercise of that officer's powers.

Force used must be reasonable

- (2) The force used must not be more than is reasonably required for the relevant purpose described in paragraph (1)(a) or (b).

88 Release of seized property

- (1) Where any property is under the control of an officer because of the exercise by an officer of powers under section 84, AFMA may direct that the property be released:

- (a) in the case of a boat—to the owner or the master of the boat; and
 - (b) in any other case—to the owner of the property or to the person from whose possession the property was seized, or from whose control the property was removed;
- on such conditions (if any) as AFMA thinks fit, including conditions as to the giving of security:
- (c) for payment of the value of the property if it is forfeited; and
 - (d) for the payment of any fines that may be imposed under this Act in respect of offences that AFMA has reason to believe have been committed with the use of, or in relation to, that property; and
 - (e) if the property is a boat and there is a liability under section 112 of the *Maritime Powers Act 2013* for costs incurred in chasing the boat—for those costs.
- (1A) If:
- (a) any property referred to in subsection (1):
 - (i) is also property referred to in section 106; and
 - (ii) was under the control of an officer because an offence referred to in that section is alleged to have been committed in respect of the property; and
 - (b) were the person to be convicted of the offence an order could be made by the court directing the person to pay the costs of the prosecution;
- the conditions on which the property may be released under subsection (1) include a condition as to the giving of security for payment of those costs if the person is convicted of the offence.
- (2) For the purposes of this section:
- (a) a reference to property includes a reference to fish; and
 - (b) property is taken to be under the control of an officer if any person is, in relation to that property, subject to the directions of the officer.

88A Seizure and forfeiture of foreign boats etc.

- (1) The regulations may provide that some or all of the provisions of this Act that relate to seizure and forfeiture of property do not apply in relation to:
 - (a) foreign boats (including nets, traps, equipment or fish on such boats) covered by a specified:
 - (i) international fisheries management organisation; or
 - (ii) international fisheries management measure; or
 - (b) foreign boats covered by the Fish Stocks Agreement; or
 - (c) foreign boats mentioned in paragraph (a) or (b) in specified circumstances.
- (2) The regulations may prescribe procedures to be followed in dealing with property:
 - (a) under the control of an officer; and
 - (b) covered by regulations made under subsection (1).

89 Identity cards

- (1) The CEO must cause an identity card to be issued to an officer appointed under section 83 and may cause such a card to be issued to any other officer.
- (2) An identity card must:
 - (a) contain a recent photograph of the officer to whom it is issued; and
 - (b) be in the approved form.
- (3) A person who stops being an officer must, as soon as practicable, return his or her identity card to the CEO.
- (4) A person who contravenes subsection (3) commits an offence punishable upon conviction by a fine not exceeding 2 penalty units.
- (5) Subsection (4) does not apply if the person has a reasonable excuse.

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Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

(6) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

89A Defensive equipment

- (1) This section is about defensive equipment.
- (2) **Defensive equipment** is:
 - (a) a bulletproof vest; or
 - (b) an extendible baton; or
 - (c) handcuffs; or
 - (d) other equipment prescribed under the regulations.
- (3) The CEO may authorise an officer to be issued with, carry, use and store defensive equipment if the CEO considers:
 - (a) it is reasonably necessary for the officer to use the equipment in order to perform functions or exercise powers under this Act; and
 - (b) the officer has received adequate training in the effective, lawful and safe carriage, use and storage of defensive equipment.
- (4) The CEO may make the authorisation subject to conditions.
- (5) The officer may use the defensive equipment if the officer considers it is reasonably necessary to do so in order to perform functions or exercise powers under this Act or the regulations, subject to:
 - (a) any conditions in the CEO's authorisation; and
 - (b) section 87J.
- (6) A person commits an offence if:
 - (a) the person has been issued with defensive equipment; and
 - (b) the person stops being an officer; and

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(c) the person does not, as soon as practicable, return the defensive equipment to the CEO.

Penalty: 2 penalty units.

(7) Subsection (6) does not apply if the person has a reasonable excuse for not returning the defensive equipment to the CEO as soon as practicable.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

(8) An offence against subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

90 Officer etc. not liable to certain actions

An officer or a person assisting an officer in the exercise of powers under this Act or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the exercise or purported exercise of any power conferred by this Act or the regulations.

Division 2—Fish receiver permits

91 Grant of fish receiver permits

- (1) AFMA may, by notice published in the *Gazette*, declare a specified fishery to be a fishery to which this Division applies.
- (2) AFMA may, upon application made in the approved form, grant to a person a fish receiver permit authorising the person to receive fish from a person engaged in commercial fishing in a specified fishery declared under subsection (1).
- (3) An application made for the grant of a fish receiver permit must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (4) A fish receiver permit is granted subject to the following conditions:
 - (a) if the permit relates to a managed fishery—the permit will cease to have effect if the plan of management for the fishery is revoked under subsection 20(3);
 - (b) the permit may, under subsection 75(7), cease to have effect;
 - (c) the permit may be cancelled under Division 8 of Part 3;
 - (d) no compensation is payable because the permit is cancelled, ceases to have effect or ceases to apply to a fishery.
- (5) A permit under this section:
 - (a) is subject to such other conditions as are specified in the permit; and
 - (b) may specify premises at which fish received under the permit by the holder of the permit are to be kept while in possession of the holder; and
 - (c) comes into force on the day specified for the purpose in the permit, or if no day is so specified, on the day on which it is granted; and

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- (d) subject to this Act, remains in force until the day specified for the purpose in the permit not being a day later than 12 months after the day on which it came into force.
- (6) AFMA may, by written notice given to the holder of the permit, whether or not at the request of the holder, vary or revoke a condition of the permit (not being a condition mentioned in subsection (4)) or specify a condition or a further condition to which the permit is to be subject.
- (7) A permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to AFMA.
- (8) A permit is to be in the approved form.
- (9) Division 8 of Part 3 applies in relation to a permit as if the permit were a fishing concession.
- (10) AFMA may, upon application made by the holder of a permit, renew the permit from time to time for a period that is not greater than 12 months.

92 Holder of fish receiver permit to give information etc.

- (1) An officer may, by written notice given to a person who is the holder of a fish receiver permit, require the person:
 - (a) to give the officer, within such reasonable time as is specified in the notice, such return or information in relation to fish received by the person as is specified in the notice; and
 - (b) to verify any such return or information by statutory declaration.
- (2) The regulations may make provision:
 - (a) requiring holders of fish receiver permits to make and keep accounts and other records in respect of fish received by them; and
 - (b) requiring such persons to give returns or information in relation to fish received by them, not being returns or information mentioned in subsection (1).

93 Offences in relation to returns etc.

- (1) A holder of a fish receiver permit must not refuse or fail to give a return or information that the person is required to give under section 92 or under regulations made for the purposes of that section.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) In subsection (1), strict liability applies to the physical element of circumstance, that the requirement is under section 92 or under regulations made for the purposes of that section.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Division 3—Foreign fishing boats—port permits

94 Grant of port permits

- (1) AFMA may, upon application made in the approved form, if it appears to AFMA to be appropriate to do so for the purpose of monitoring movements of foreign fishing boats, grant to a person a port permit authorising the person, or a person acting on that person's behalf to bring a specified foreign fishing boat in respect of which a foreign fishing licence is not in force:
 - (a) from a point outside the AFZ to a specified port in Australia or in an external Territory; and
 - (b) from that port to a point outside the AFZ.
- (2) An application made for the grant of a port permit must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (3) A port permit is granted subject to the following conditions:
 - (a) the permit may be revoked under subsection (5);
 - (b) no compensation is payable because the permit is so revoked.
- (4) A permit granted under this section:
 - (a) is subject to such other conditions as are specified in the permit; and
 - (b) comes into force on the day specified for the purpose in the permit or, if no day is so specified, on the day on which it is granted; and
 - (c) subject to this Act, remains in force until the day specified for the purpose in the permit; and
 - (d) is authority for entry to the specified port on such number of occasions as is specified in the permit.
- (5) AFMA may, by written notice given to the holder of a permit:
 - (a) revoke the permit; or

- (b) whether or not at the request of the holder, vary or revoke the conditions to which the permit is subject (not being a condition mentioned in subsection (3)) or specify a condition or a further condition to which the permit is to be subject.
- (6) A permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to AFMA.
- (7) A permit is to be in the approved form.
- (8) In this section:

foreign fishing boat means a foreign boat:

- (a) that is equipped for fishing; or
- (b) that AFMA has reasonable grounds to believe is being used, or is intended to be used, in activities in support of fishing by foreign boats.

Division 4—Enforcement generally

95 Offences

- (1) A person must not:
 - (a) at a place in the AFZ, engage in commercial fishing unless:
 - (i) the person is, or is acting on behalf of, the holder of a fishing concession, or a scientific permit, that is in force authorising commercial fishing at that place; or
 - (ii) if a Treaty boat is used—a Treaty licence is in force in respect of the boat authorising commercial fishing at that place; or
 - (b) in the AFZ, be in charge of a Treaty boat that is being used for commercial fishing unless a Treaty licence is in force in respect of the boat; or
 - (c) in the AFZ, have a fish in the person's possession or under his or her control in a boat at a time when the taking of the fish was not authorised by a fishing concession or a scientific permit; or
 - (d) being the holder of a fishing concession, scientific permit, fish receiver permit, port permit or foreign master fishing licence that is in force, contravene a condition of the fishing concession, permit or licence or a provision of a temporary order; or
 - (e) being the holder of a fishing concession, scientific permit, fish receiver permit or port permit that is in force, cause or permit a person acting on his or her behalf to contravene a condition of the fishing concession or permit or a provision of a temporary order, as the case may be; or
 - (f) being a person acting on behalf of the holder of a fishing concession, scientific permit, fish receiver permit or port permit that is in force, contravene a condition of the fishing concession or permit or a provision of a temporary order, as the case may be; or

- (g) keep or purport to keep a logbook, or furnish or purport to furnish a logbook or return, relating to a matter specified in subsection 42(1B) knowing that the logbook so kept or the logbook or return so furnished contains a statement in respect of that matter that is false or misleading in a material particular.
- (1AA) Paragraphs (1)(d), (e) and (f) (and the rest of this section so far as it relates to those paragraphs) apply whether the contravention occurs inside or outside the outer limits of the AFZ.
- (1A) A person does not contravene subsection (1) because of an act or omission that the person is authorised to do, or not to do, as the case may be:
- (a) under the management plan for the relevant fishery; or
 - (b) under regulations made for the relevant fishery; or
 - (c) in relation to a by-catch under regulations made for the purposes of paragraph 14(2)(c).
- (2) A person who contravenes paragraph (1)(a) or (b) with the use of, or in relation to, a foreign boat or in relation to a foreign fishing licence commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (3) An offence mentioned in subsection (2) is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (4) If an offence mentioned in subsection (2) is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.
- (5) A person who contravenes subsection (1) in circumstances in which the person does not commit an offence against subsection (2) commits an offence punishable, on conviction, by a fine not exceeding 250 penalty units.
- (5A) Strict liability applies to subsections (2) and (5).

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- (6) It is a defence to a prosecution for an offence arising under paragraph (1)(c) if the person charged satisfies the court that the fish was not taken in the AFZ.
- (7) A prosecution for an offence against subsection (2) or (5) may be commenced within 2 years after the commission of the offence.

96 Removing fish from traps etc.

A person must not, in the AFZ, remove a fish from a net, trap or other equipment for the taking of fish unless the person is the owner of the net, trap or other equipment or is acting with the authority of the owner.

Penalty: 125 penalty units.

97 Persons not to receive fish in certain circumstances

- (1) A person who is not the holder of a fish receiver permit that is in force must not, otherwise than for the person's private or domestic use, receive fish from a person whom the first-mentioned person knows, or has reason to suspect, to be engaged in fishing in a fishery in relation to which a declaration under subsection 91(1) is in force.

Penalty: 125 penalty units.

- (2) Subsection (1) does not apply to a person who receives fish as the employee or agent of the holder of a fish receiver permit.

97A E-monitoring equipment and e-monitoring data offences

E-monitoring equipment

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the person does not have written authority from AFMA to engage in the conduct; and

- (c) the conduct directly or indirectly prevents or hinders the operation of e-monitoring equipment installed, carried or used in compliance with a condition of a fishing concession or scientific permit.

Penalty: Imprisonment for 2 years or 250 penalty units, or both.

E-monitoring data

- (2) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the person does not have written authority from AFMA to engage in the conduct; and
 - (c) the conduct directly or indirectly results in modification of, damage to, or destruction of, e-monitoring data.

Penalty: Imprisonment for 2 years or 250 penalty units, or both.

98 Court may make certain orders

- (1) Where a court convicts a person of an offence arising out of a contravention of paragraph 95(1)(d), (e) or (f), the court may, in addition to imposing a penalty in respect of that offence, order that the person must not, during such period as the court determines, be on a boat in the AFZ with the intention of engaging in commercial fishing.
- (1A) A court may order a person (including a foreigner) not to be on any Australian-flagged boat outside the AFZ for the purposes of commercial fishing during a period specified by the court if the court convicted the person of an offence:
 - (a) involving an Australian-flagged boat and a contravention of paragraph 95(1)(d), (e) or (f); or
 - (b) against section 105A, 105AA, 105AB, 105B or 105C (which deal with an Australian-flagged boat beyond the AFZ); or
 - (c) against section 105E, 105EA, 105F, 105FA, 105H or 105I.

Section 98

- (2) A person who contravenes an order made under subsection (1) or (1A) commits an offence punishable, on conviction, imprisonment for 12 months.
- (3) If:
- (a) a court convicts a person of an offence against this Act or any other Act; and
 - (b) the offence was committed while the person was doing something authorised by a fishing concession held by the person;
- the court may, in addition to imposing a penalty in respect of the offence or making any other order, make an order:
- (c) cancelling the fishing concession; or
 - (d) suspending the operation of the fishing concession for a period stated in the order.
- (4) A period determined under subsection (1) or stated in an order suspending the operation of a fishing concession made under subsection (3):
- (a) may commence at the time of the making of the determination or order, or at a later time, as specified by the court; and
 - (b) may exclude any period that the court identifies as not counting towards the period so determined or ordered.

Division 5—Foreign boats—additional enforcement provisions

99 Using foreign boat for recreational fishing—strict liability offence

- (1) A person must not, in the AFZ:
 - (a) use a foreign boat for recreational fishing; or
 - (b) use a foreign boat for processing or carrying fish that have been taken in the course of recreational fishing with the use of that boat or another boat.

Penalty: 250 penalty units.

- (2) Strict liability applies to subsection (1).

100 Using foreign boat for fishing in AFZ—strict liability offence

- (1) A person must not, at a place in the AFZ, use a foreign boat for commercial fishing unless:
 - (a) there is in force a foreign fishing licence authorising the use of the boat at that place; or
 - (b) if the boat is a Treaty boat—a Treaty licence is in force in respect of the boat authorising the use of the boat at that place.

- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 2,500 penalty units.

- (2A) Strict liability applies to subsection (2).

- (3) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.

- (4) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.

Section 100A

100A Offence of using foreign boat for fishing in AFZ

- (1) A person commits an offence if:
 - (a) the person intentionally uses a boat; and
 - (b) the boat is a foreign boat and the person is reckless as to that fact; and
 - (c) the use of the boat is for commercial fishing and the person is reckless as to that fact; and
 - (d) the boat is at a place in the AFZ at the time of the use and the person is reckless as to that fact.
- (2) The offence is punishable on conviction:
 - (a) if the boat involved in the offence has a length of, or exceeding, 24 metres—by a fine of not more than 7,500 penalty units; and
 - (b) if the boat involved in the offence has a length of less than 24 metres—by a fine of not more than 5,000 penalty units.
- (2A) For the purposes of subsection (2), the length of a boat is the overall length of the boat determined in accordance with section 10 of the *Shipping Registration Act 1981*.
- (3) The offence is an indictable offence.
- (4) Subsection (1) does not apply if:
 - (a) a foreign fishing licence is in force authorising the use of the boat at the place; or
 - (b) the boat is a Treaty boat and a Treaty licence is in force in respect of the boat authorising the use of the boat at the place.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

100B Using foreign boat for fishing in territorial sea within AFZ

- (1) A person commits an offence if:
 - (a) the person intentionally uses a boat; and
-

- (b) the boat is a foreign boat and the person is reckless as to that fact; and
- (c) the use of the boat is for commercial fishing and the person is reckless as to that fact; and
- (d) the boat is at a place that is, at the time of the use, in a part of the territorial sea of Australia that is in the AFZ.

Penalty:

- (a) if the boat involved in the offence has a length of, or exceeding, 24 metres—7,500 penalty units or 3 years imprisonment, or both; or
- (b) if the boat involved in the offence has a length of less than 24 metres—5,000 penalty units or 2 years imprisonment, or both.

(1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The reference to the AFZ in paragraph (1)(d) does not include a reference to coastal waters taken to be in the AFZ because of section 76.
- (3) For the purposes of the penalty at the end of subsection (1), the length of a boat is the overall length of the boat determined in accordance with section 10 of the *Shipping Registration Act 1981*.
- (4) Subsection (1) does not apply if:
 - (a) a foreign fishing licence is in force authorising the use of the boat at the place; or
 - (b) the boat is a Treaty boat and a Treaty licence is in force in respect of the boat authorising the use of the boat at the place.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Section 101

101 Having foreign boat equipped for fishing—strict liability offence

- (1) A person must not, at a place in the AFZ, have in his or her possession or in his or her charge a foreign boat equipped for fishing unless:
- (a) the use, or presence, of the boat at that place is authorised by a foreign fishing licence, or a port permit; or
 - (b) a Treaty licence is in force in respect of the boat; or
 - (c) the boat's fishing equipment is stowed and the boat is at that location in accordance with the approval of AFMA given under, and in accordance with, the regulations; or
 - (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or
 - (e) the use of the boat for scientific research purposes in that area is authorised under a scientific permit.
- (1A) For the purposes of paragraphs (1)(c) and (d), a boat's fishing equipment is not stowed unless all of the boat's:
- (a) nets, traps and other fishing equipment; and
 - (b) associated equipment, including buoys and beacons;
- are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 2,500 penalty units.
- (2A) Strict liability applies to subsection (2).
- (3) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (4) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.

101A Offence of having foreign boat equipped for fishing

- (1) A person commits an offence if:
 - (a) the person intentionally has in his or her possession or charge a boat; and
 - (b) the boat is a foreign boat and the person is reckless as to that fact; and
 - (c) the boat is equipped for fishing and the person is reckless as to that fact; and
 - (d) the boat is at a place in the AFZ and the person is reckless as to that fact.
 - (2) The offence is punishable on conviction by a fine not more than 5,000 penalty units.
 - (3) The offence is an indictable offence.
 - (4) Subsection (1) does not apply if:
 - (a) the use or presence of the boat at the place is authorised by a foreign fishing licence or port permit; or
 - (b) a Treaty licence is in force in respect of the boat; or
 - (c) the boat's fishing equipment is stowed and the boat is at the place in accordance with the approval of AFMA given under, and in accordance with, the regulations made for the purposes of paragraph 101(1)(c); or
 - (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or
 - (e) the use of the boat for scientific research purposes in the place is authorised under a scientific permit.
- Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.
- (5) For the purposes of paragraphs (4)(c) and (d), a boat's fishing equipment is not stowed unless all of the boat's:
 - (a) nets, traps and other fishing equipment; and
 - (b) associated equipment, including buoys and beacons;

Section 101AA

are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.

101AA Having foreign boat equipped for fishing in territorial sea within AFZ

- (1) A person commits an offence if:
- (a) the person intentionally has in his or her possession or charge a boat; and
 - (b) the boat is a foreign boat and the person is reckless as to that fact; and
 - (c) the boat is equipped for fishing and the person is reckless as to that fact; and
 - (d) the boat is at a place that is in a part of the territorial sea of Australia that is in the AFZ.

Penalty: 5,000 penalty units or 2 years imprisonment, or both.

- (1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Subsection (1) does not apply if:
- (a) the use or presence of the boat at the place is authorised by a foreign fishing licence or port permit; or
 - (b) a Treaty licence is in force in respect of the boat; or
 - (c) the boat's fishing equipment is stowed and the boat is at the place in accordance with the approval of AFMA given under, and in accordance with, the regulations made for the purposes of paragraph 101(1)(c); or
 - (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or
 - (e) the use of the boat for scientific research purposes in the place is authorised under a scientific permit.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

Section 101B

- (2A) For the purposes of paragraphs (2)(c) and (d), a boat's fishing equipment is not stowed unless all of the boat's:
- (a) nets, traps and other fishing equipment; and
 - (b) associated equipment, including buoys and beacons;
- are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.
- (3) A reference to the AFZ in this section does not include a reference to coastal waters taken to be in the AFZ because of section 76.

101B Using boat outside AFZ to support illegal foreign fishing in AFZ

- (1) A person (the *supporter*) commits an offence if:
- (a) the supporter intentionally uses a boat (the *support boat*); and
 - (b) the support boat is outside the AFZ but not in the territorial sea of a foreign country, and the supporter is reckless as to that fact; and
 - (c) the use of the support boat is directly in support of, or in preparation for:
 - (i) the use of a foreign boat (other than the support boat) by a person in the AFZ in contravention of section 100 or 100A; or
 - (ii) a person having possession or charge of a foreign boat (other than the support boat) in the AFZ in contravention of section 101 or 101A;and the supporter is reckless as to that fact.
- (2) The offence is punishable on conviction by a fine not more than 5,000 penalty units.
- (6) This section applies to all persons (including foreigners) and all boats (including foreign boats).

102 Certain foreign boats not to enter Australian ports

- (1) A person, being the master of a foreign fishing boat who, otherwise than in accordance with:
-

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- (a) a foreign fishing licence or a port permit; or
 - (b) the provisions of a prescribed agreement between the Commonwealth and another country; or
 - (c) the direction of a person exercising powers under a law of the Commonwealth or a law of a State or Territory;
- brings the boat into a port in Australia or in an external Territory commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (2) Where:
- (a) a foreign fishing boat is brought into a port in Australia or in an external Territory under a port permit; and
 - (b) the permit is subject to a condition limiting the period during which the boat may remain in that port; and
 - (c) the boat remains in the port in contravention of that condition;
- then, except where the master of the foreign fishing boat ought in the circumstances to be excused, the master commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person charged satisfies the court that:
- (a) the boat was brought into the port at a time when the boat was engaged in operations that included the carrying of cargo, in the ordinary course of trade, between Australia and a foreign country, between Australia and an external Territory or between an external Territory and a country other than Australia; or
 - (b) the boat was being lawfully imported into Australia or the external Territory, as the case may be, by or on behalf of a person who was, or by or on behalf of persons each of whom was, at the time when the boat was brought into the port:
 - (i) a resident of Australia or of an external Territory; or
 - (ii) a company incorporated in Australia or in an external Territory; or

- (c) an unforeseen emergency rendered it necessary to bring the boat into a port in Australia or in an external Territory in order to secure the safety of human life or of the boat.
- (4) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (5) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.
- (5A) An offence under this section is an offence of strict liability.
Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (6) In this section:
foreign fishing boat means a foreign boat:
 - (a) that is equipped for fishing; or
 - (b) that AFMA has reasonable grounds to believe is being used, or is intended to be used, in activities in support of fishing by foreign boats.

103 Foreign boats not to land fish in Australia

- (1) A person commits an offence if:
 - (a) the person is the master of a foreign boat; and
 - (b) the person intentionally lands or tranships (or causes to be landed or transhipped) fish from the boat at a place; and
 - (c) the place is in Australia or an external Territory and the person is reckless as to that fact.
- (1A) The offence is punishable on conviction by a fine not more than 500 penalty units.
- (1B) Subsection (1) does not apply if:
 - (a) the fish were landed or transhipped in accordance with:
 - (i) the terms of a foreign fishing licence; or

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- (ii) an entry under paragraph 21(2)(b) of the *Torres Strait Fisheries Act 1984*; or
 - (iii) the terms of an approval given by the Minister; or
- (b) the person has a reasonable excuse for causing the fish to be landed or transhipped.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the *Criminal Code*.

(1C) The Minister may give a person written approval of the landing or transhipment of fish. The approval may be expressed to be subject to conditions.

(1D) The conditions to which an approval may be expressed to be subject include:

- (a) a condition that the person (the **approved person**) to whom the approval relates notify a specified person of the landing or transhipment; and
- (b) a condition that the approved person give a specified person a return of the species and quantity of fish landed or transhipped; and
- (c) a condition that the landing or transhipment occur under the supervision of a specified person.

This does not limit subsection (1C).

(2) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.

(3) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.

(4) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

104 Foreign boats not to contravene condition of Treaty licence

- (1) A person must not, in an area of the AFZ that is within the Treaty area:
 - (a) use a Treaty boat; or
 - (b) do an act or omit to do an act on, or in relation to, a Treaty boat;in respect of which a Treaty licence is in force, in contravention of a requirement that is, under the Treaty, a condition of the Treaty licence.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (3) An offence mentioned in subsection (1) is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (4) If an offence mentioned in subsection (1) is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.
- (4A) An offence mentioned in subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5) For the purposes of subsection (1), the use of an aircraft in association with the fishing activities of a Treaty boat is taken to be an act done or omitted to be done in relation to the Treaty boat.
- (6) Where a court convicts a person of an offence arising out of a contravention of subsection (1), the court may, in addition to imposing a penalty in respect of that offence, order that the person must not, during such period as the court determines, be on a boat in the AFZ with the intention of engaging in fishing.
- (7) A person who contravenes such an order commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

Part 6 Surveillance and enforcement

Division 5 Foreign boats—additional enforcement provisions

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105 Certain prosecutions to require consent of Minister

A prosecution for an offence against this Act or the regulations that is alleged to have been committed on, with the use of, or in relation to, a Treaty boat, must not be instituted except with the Minister's written consent.

Division 5A—Offences in places beyond the AFZ

Subdivision A—Australian-flagged boats beyond the AFZ

105A Australian-flagged boat with fish on high seas

- (1) A person commits an offence if:
 - (a) the person intentionally has a fish in his or her possession or control; and
 - (b) the fish is on an Australian-flagged boat on the high seas and the person is reckless as to that fact; and
 - (c) the taking of the fish is not authorised by a fishing concession or scientific permit and the person is reckless as to that fact.
- (2) The offence is punishable on conviction by a fine not more than 500 penalty units.

105AA Person fishing for conserved fish stock on high seas without a concession—strict liability

- (1) A person commits an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the fishing is for a conserved fish stock; and
 - (c) the boat is an Australian-flagged boat; and
 - (d) the boat is on the high seas in a part of the conservation area for the fish stock; and
 - (e) the fishing is not authorised by a fishing concession.
- (2) The offence is punishable on conviction by a fine of not more than 60 penalty units.
- (3) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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105AB Person fishing for conserved fish stock on high seas without a concession

- (1) A person commits an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the fishing is for a conserved fish stock; and
 - (c) the boat is an Australian-flagged boat; and
 - (d) the boat is on the high seas in a part of the conservation area for the fish stock; and
 - (e) the fishing is not authorised by a fishing concession.
- (2) The offence is punishable on conviction by a fine of not more than 500 penalty units.

105B Australian-flagged boat on high seas equipped for fishing

- (1) A person commits an offence if:
 - (a) a person intentionally has in his or her possession or charge an Australian-flagged boat; and
 - (b) the boat is equipped with nets, traps or other equipment for fishing and the person is reckless as to that fact; and
 - (c) the boat is at a place on the high seas and the person is reckless as to that fact.
- (2) The offence is punishable on conviction by a fine not more than 500 penalty units.
- (3) Subsection (1) does not apply if:
 - (a) the person holds a fishing concession or scientific permit authorising the boat to be at that location equipped with nets, traps or other equipment for fishing; or
 - (b) the person is acting on behalf of the holder of such a concession or permit; or
 - (c) the boat is engaged solely in the ordinary course of trade of carrying cargo between:
 - (i) Australia and a foreign country; or
 - (ii) Australia and an external Territory; or

- (iii) an external Territory and a foreign country; or
- (iv) 2 external Territories; or
- (d) the person has a reasonable excuse.

Note: Even if subsection (1) does not apply because the person holds, or acts for the holder of, a fishing concession or scientific permit, the person will commit an offence under section 95 if the person contravenes a condition of the concession or permit.

- (4) The only burden of proof that a defendant bears in respect of subsection (3) is the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter in question existed.

105C Australian-flagged boat fishing in foreign waters

- (1) A person commits an offence if:
 - (a) the person intentionally uses an Australian-flagged boat for fishing; and
 - (b) the boat is in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country and the person is reckless as to that fact; and
 - (c) the law of the country requires the person to have an authorisation (however described) given under the law of the country for the fishing and the person is reckless as to that fact.
- (2) The offence is punishable on conviction by a fine not more than 500 penalty units.
- (3) Subsection (1) does not apply if the person has an authorisation (however described) issued under the law of the country for the fishing.
- (4) The only burden of proof that a defendant bears in respect of subsection (3) is the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter in question existed.

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- (5) If the person has been convicted or acquitted in the foreign country of an offence involving the fishing, the person cannot be convicted of an offence under this section involving the fishing.

105D Authorising foreign officials' action affecting Australian-flagged boats

Boarding boats suspected of illegal fishing in foreign waters

- (1) On behalf of Australia, AFMA may authorise officials of a foreign country that is party to the Fish Stocks Agreement or that participates in an international fisheries management organisation to board and inspect an Australian-flagged boat on the high seas if:
- (a) AFMA or Australia has received a request from the appropriate authority of the foreign country for that country's officials to board and inspect the boat; and
 - (b) AFMA has reasonable grounds to believe that the boat has been used for fishing in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of the foreign country without an authorisation (however described) given under the law of that country; and
 - (c) AFMA is satisfied that the boarding and inspection will be carried out in accordance with the Fish Stocks Agreement or measures established by the international fisheries management organisation.

Investigating breach of international fisheries management measures

- (2) On behalf of Australia, AFMA may authorise an authority of a foreign country that is party to the Fish Stocks Agreement or that participates in an international fisheries management organisation to investigate an alleged contravention of an international fisheries management measure involving an Australian-flagged boat if:
- (a) an official of the foreign country has boarded the boat on the high seas in an area covered by the international fisheries management organisation; and

- (b) the appropriate authority of the foreign country has notified AFMA or Australia that the official has reasonable grounds for believing that the boat has been used in contravention of the international fisheries management measure; and
- (c) AFMA is satisfied that the investigation will be carried out in accordance with the Fish Stocks Agreement or measures established by the international fisheries management organisation.

Revocation of authorisation by AFMA

- (3) AFMA may revoke an authorisation AFMA has given under this section.

Form of authorisation or revocation by AFMA

- (4) An authorisation, or revocation of an authorisation, by AFMA must be in writing or by electronic transmission. However, an authorisation or revocation cannot be made by electronic transmission of an oral message.

Enforcement action for breach of international fisheries management measures

- (5) On behalf of Australia, the Attorney-General may authorise in writing an authority of a foreign country to take specified action to enforce a law of the foreign country against a contravention of an international fisheries management measure on the high seas involving an Australian-flagged boat if:
 - (a) AFMA has authorised an authority of the foreign country under subsection (2) to investigate the alleged contravention; and
 - (b) the appropriate authority of the foreign country has communicated the results of the investigation to Australia; and
 - (c) the Attorney-General is satisfied that the action will be taken in accordance with the Fish Stocks Agreement or measures

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established by the international fisheries management organisation.

Revocation of authorisation by Attorney-General

- (6) The Attorney-General may revoke in writing an authorisation he or she has given under this section.

Subdivision B—Using foreign boat to contravene international fisheries management measure

105E Contravention on high seas—strict liability

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the person contravenes an international fisheries management measure in relation to the fishing; and
 - (c) the boat is on the high seas; and
 - (d) the boat is a foreign boat.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country of nationality of the boat.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

105EA Contravention on high seas

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the person contravenes an international fisheries management measure in relation to the fishing; and

- (c) the boat is on the high seas; and
- (d) the boat is a foreign boat.

Penalty: 500 penalty units.

- (2) Strict liability applies to paragraphs (1)(c) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country of nationality of the boat.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

105EB Attorney-General's consent required for prosecution

- (1) The Attorney-General's written consent is required before a charge of an offence against section 105E or 105EA, alleged to have been committed by a person other than an Australian national, can proceed to hearing or determination.
- (2) Before granting such a consent, the Attorney-General must take into account any views expressed by the government of the country of nationality of the boat alleged to be involved in the offence.
- (3) Even though the Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay:
- (a) the arrest of the suspected offender or proceedings related to arrest (such as proceedings for the issue and execution of a warrant); or
 - (b) the laying of a charge against the suspected offender; or
 - (c) proceedings for the extradition to Australia of the suspected offender; or
 - (d) proceedings for remanding the suspected offender in custody or on bail.

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- (4) If the Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay proceedings on the charge.
- (5) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Attorney-General in accordance with this section will be accepted, in the absence of proof to the contrary, as proof of such consent.

105F Australian national on foreign boat in foreign waters—strict liability

- (1) A person commits an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the person is an Australian national; and
 - (c) the person contravenes an international fisheries management measure in relation to the fishing; and
 - (d) the boat is in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country; and
 - (e) the boat is a foreign boat.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country covered by paragraph (1)(d).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

105FA Australian national on foreign boat in foreign waters

- (1) A person commits an offence if:
-

- (a) the person uses a boat for fishing; and
- (b) the person is an Australian national; and
- (c) the person contravenes an international fisheries management measure in relation to the fishing; and
- (d) the boat is in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country; and
- (e) the boat is a foreign boat.

Penalty: 500 penalty units.

- (2) Strict liability applies to paragraphs (1)(d) and (e).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country covered by paragraph (1)(d).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Subdivision C—Unauthorised foreign boat on high seas

105H Unauthorised fishing—strict liability

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the boat is a foreign boat; and
 - (c) the boat is on the high seas; and
 - (d) a law of the country of nationality of the boat requires the fishing to be authorised (however described); and
 - (e) the fishing is not so authorised.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

105I Unauthorised fishing

- (1) A person commits an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the boat is a foreign boat; and
 - (c) the boat is on the high seas; and
 - (d) a law of the country of nationality of the boat requires the fishing to be authorised (however described); and
 - (e) the fishing is not so authorised.

Penalty: 500 penalty units.

105J Attorney-General's consent required for prosecution

- (1) The Attorney-General's written consent is required before a charge of an offence against this Subdivision, alleged to have been committed by a person other than an Australian national, can proceed to hearing or determination.
- (2) Before granting such a consent, the Attorney-General must take into account any views expressed by the government of the country of nationality of the boat alleged to be involved in the offence.
- (3) Even though the Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay:
 - (a) the arrest of the suspected offender or proceedings related to arrest (such as proceedings for the issue and execution of a warrant); or
 - (b) the laying of a charge against the suspected offender; or
 - (c) proceedings for the extradition to Australia of the suspected offender; or
 - (d) proceedings for remanding the suspected offender in custody or on bail.

- (4) If the Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay proceedings on the charge.
- (5) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Attorney-General in accordance with this section will be accepted, in the absence of proof to the contrary, as proof of such consent.

Part 6 Surveillance and enforcement

Division 5B Provisions relating to detention of suspected illegal foreign fishers

Section 105Q

**Division 5B—Provisions relating to detention of suspected
illegal foreign fishers**

**105Q Provisions relating to detention of suspected illegal foreign
fishers**

Schedule 1A has effect.

Division 6—General

Subdivision A—Forfeiture by court order

106 Forfeiture of things used in certain offences

- (1) Where a court convicts a person of an offence against section 13 or subsection 95(5) the court may order the forfeiture of all or any of the following:
 - (a) if a boat was used in the commission of the offence—that boat; or
 - (b) a net, trap or equipment that was on board that boat at the time of the commission of the offence, or that was used in the commission of the offence; or
 - (c) fish on board that boat at that time or in relation to which the offence was committed; or
 - (d) the proceeds of the sale of fish of the kind referred to in paragraph (c).
- (2) Where a court convicts a person of an offence against section 102, 103 or 104 or Division 5A of Part 6 the court may order the forfeiture of all or any of the following:
 - (a) the boat in relation to which the offence is committed;
 - (b) a net, trap or equipment on board that boat at the time of the offence;
 - (c) fish on board that boat at that time or in relation to which the offence is committed;
 - (d) fish landed in contravention of section 103;
 - (e) the proceeds of the sale of any such fish.
- (2A) If a court convicts a person:
 - (a) of an offence against paragraph 95(1)(g) of this Act; or
 - (b) of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* that relates to this Act;in respect of a logbook kept or purported to be kept, or a logbook or return furnished or purported to be furnished, under section 42

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of this Act, the court may order the forfeiture of all or any of the following:

- (c) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting or processing of fish—any boat employed in that activity;
- (d) if the logbook or return related, in whole or in part, to the taking or processing of fish—any net, trap or equipment on board a boat employed in that taking or processing for purposes related to that taking or processing;
- (e) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting or processing of fish—any fish on board a boat employed in that activity that were, or should have been, covered by the logbook or return;
- (f) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting, receipt or processing of fish—the proceeds of the sale of the fish that were, or should have been, covered by the logbook or return.

106AAA Forfeiture of additional things on forfeited boats

- (1) This section applies if:
 - (a) a court orders a boat to be forfeited under section 106 because:
 - (i) it was used in the commission of an offence (the *relevant offence*) against section 13 or subsection 95(5); or
 - (ii) it is a boat in relation to which an offence (also referred to as the *relevant offence*) against section 102, 103 or 104 or Division 5A of Part 6 was committed; and
 - (b) at the time the court makes the order, there are nets, traps, equipment or fish (the *additional things*) on the boat that the court cannot order to be forfeited under section 106.

Forfeiture within 2 years

- (2) If the order for the boat to be forfeited is made within 2 years after the commission of the relevant offence, the court may order the forfeiture of the additional things.

Things owned by the person who owned the boat

- (3) If the additional things are owned by the person who owned the boat immediately before the relevant offence was committed, the court may order the forfeiture of the additional things.
- (4) For the purposes of subsection (3), the additional things are taken, unless the contrary is proved, to be owned by the person who owned the boat immediately before the relevant offence was committed.

Things owned by persons who commit offences

- (5) If the additional things are owned:
- (a) by the person who committed the relevant offence; or
 - (b) by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence;
- the court may order the forfeiture of the additional things.
- (6) For the purposes of subsection (5), the additional things are taken, unless the contrary is proved, to be owned:
- (a) for the purposes of paragraph (5)(a)—by the person who committed the relevant offence; and
 - (b) for the purposes of paragraph (5)(b)—by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence.
-

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- (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the operation of another subsection of this section.

106AAB Forfeited things become the property of the Commonwealth

Any boat or other property (including fish) ordered by a court to be forfeited under this Subdivision becomes the property of the Commonwealth and must be dealt with or disposed of in accordance with the directions of the Minister.

106AAC Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

Subdivision B—Automatic forfeiture of things

106A Forfeiture of things used in certain offences

- (1) The following things are forfeited to the Commonwealth:
- (a) a foreign boat used in an offence against:
 - (i) subsection 95(2); or
 - (ii) section 99; or
 - (iii) section 100; or
 - (iv) section 100A; or
 - (v) section 100B; or
 - (vi) section 101; or
 - (vii) section 101A; or
 - (viii) section 101AA;
 - (b) a boat used in an offence against section 101B as a support boat (as defined in that section);
 - (c) a net or trap, or equipment, that:

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- (i) was on a boat described in paragraph (a) or (b) at the time of the offence mentioned in that paragraph; or
- (ii) was used in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B;

(d) fish:

- (i) on a boat described in paragraph (a) or (b) at the time of the offence mentioned in that paragraph; or
- (ii) involved in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B.

Note: Paragraph 84(1)(ga) allows an officer to seize a thing that is forfeited under this section or that the officer has reasonable grounds to believe is forfeited.

(2) If:

- (a) a boat is forfeited to the Commonwealth under subsection (1) because it was used in the commission of an offence; and
- (b) the boat is seized under paragraph 84(1)(ga) or under section 67 of the *Maritime Powers Act 2013*;

any nets, traps or equipment on the boat at the time it is seized are taken, unless the contrary is proved:

- (c) for the purposes of subparagraph (1)(c)(i)—to have been on the boat at the time of the offence; and
- (d) for the purposes of subparagraph (1)(c)(ii)—to have been used in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B.

(3) If:

- (a) a boat is forfeited to the Commonwealth under subsection (1) because it was used in the commission of an offence; and
- (b) the boat is seized under paragraph 84(1)(ga) or under section 67 of the *Maritime Powers Act 2013*;

any fish on the boat at the time it is seized are taken, unless the contrary is proved:

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- (c) for the purposes of subparagraph (1)(d)(i)—to have been on the boat at the time of the offence; and
- (d) for the purposes of subparagraph (1)(d)(ii)—to have been involved in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B.

106AA Forfeiture of additional things on seized boats

- (1) This section applies if:
 - (a) a boat is forfeited to the Commonwealth under section 106A because it was used in the commission of an offence (the *relevant offence*); and
 - (b) the boat is seized under paragraph 84(1)(ga) or under section 67 of the *Maritime Powers Act 2013*; and
 - (c) at the time the boat is seized, there are nets, traps, equipment or fish (the *additional things*) on the boat that have not been forfeited under section 106A.

Seizure within 2 years

- (2) If the boat is seized within 2 years after it is forfeited, the additional things are forfeited to the Commonwealth at the time the boat is seized.

Things owned by the person who owned the boat

- (3) If the additional things are owned by the person who owned the boat immediately before the relevant offence was committed, the additional things are forfeited to the Commonwealth at the time the boat is seized.
- (4) For the purposes of subsection (3), the additional things are taken, unless the contrary is proved, to be owned by the person who owned the boat immediately before the relevant offence was committed.

Things owned by persons who commit offences

- (5) If the additional things are owned:
- (a) by the person who committed the relevant offence; or
 - (b) by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence;
- the additional things are forfeited to the Commonwealth at the time the boat is seized.
- (6) For the purposes of subsection (5), the additional things are taken, unless the contrary is proved, to be owned:
- (a) for the purposes of paragraph (5)(a)—by the person who committed the relevant offence; and
 - (b) for the purposes of paragraph (5)(b)—by a person who committed an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence.
- (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the operation of another subsection of this section.

106AB Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

Subdivision BA—Automatic ownership of things

106AC Fish taken with Commonwealth property

If:

- (a) a thing is forfeited to the Commonwealth under section 106 or 106A; and
- (b) the thing is used for, or in the taking of, fish:
 - (i) after it is forfeited; and
 - (ii) without the written permission of the Minister for such use;

the fish are the property of the Commonwealth.

106AD Things on, in or attached to boats

At any time during which a boat is the property of the Commonwealth because:

- (a) the court has ordered the forfeiture of the boat under section 106; or
- (b) the boat is forfeited under section 106A;

anything on, in or attached to the boat that forms part of the boat is also the property of the Commonwealth.

106AE Rights and interests of the Commonwealth not limited

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

Subdivision C—Dealing with things seized

106B Application of this Subdivision

This Subdivision sets out rules about the following:

- (a) a thing that an officer seizes under paragraph 84(1)(ga) or (gb):

- (i) because the thing is forfeited under Subdivision B; or
- (ii) because the officer has reasonable grounds to believe the thing is forfeited under Subdivision B;
- (b) a thing that an officer seizes under paragraph 84(1)(gc) or (gd):
 - (i) because the thing is the property of the Commonwealth because of the operation of Subdivision BA; or
 - (ii) because the officer has reasonable grounds to believe the thing is the property of the Commonwealth because of the operation of Subdivision BA.

106C Notice of seizure

Giving notice

- (1) The officer must give written notice of the seizure of the thing:
 - (a) if the thing is, or was on, a boat, or was used in connection with a boat:
 - (i) to the person who was the master of the boat immediately before the seizure; or
 - (ii) to the person whom the officer has reasonable grounds to believe was the master of the boat immediately before the seizure; or
 - (b) in a case not covered by paragraph (a):
 - (i) to the owner of the thing; or
 - (ii) to the person who had possession, custody or control of the thing immediately before it was seized.
- (1A) However, if the officer cannot conveniently give the notice to the person in person, the officer may give written notice of the seizure of the thing by fixing the notice to a prominent part of the thing, unless the thing is a fish.

Content of notice

- (2) The notice must:
 - (a) identify the thing; and

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- (b) state that the thing has been seized; and
- (c) state that the thing will be condemned as forfeited unless the owner of the thing or the person who had possession, custody or control of the thing immediately before it was seized gives the CEO within 30 days a written claim in English for the thing; and
- (d) specify the address of the CEO.

Note: Section 106E condemns the thing if it is not claimed within 30 days.
Section 106G condemns the thing if it is claimed but the claimant does not get a court order supporting the claim.

106D Dealing with thing before it is condemned

- (1) On behalf of the Commonwealth, AFMA may cause the thing to be disposed of or destroyed if it is a boat and AFMA is satisfied that:
 - (a) the boat is unseaworthy; or
 - (b) the boat poses a serious risk to safety or public health; or
 - (ba) the boat poses an unacceptable level of biosecurity risk (within the meaning of the *Biosecurity Act 2015*); or
 - (c) the boat poses a serious risk of damage to other property or the environment; or
 - (d) the expenses of custody and maintenance of the boat between its seizure and condemnation are likely to be greater than its value.
- (2) If AFMA causes the boat to be disposed of, it may cause the disposal to be made subject to specified conditions.
- (3) The table lists some other provisions relevant to dealing with things before they are condemned as forfeited to the Commonwealth:

Provisions about dealing with things before they are condemned

Item	Provision	Subject of provision
1	Paragraph 84(1)(t)	Officer's power to dispose of seized fish
2	Section 88	Release of seized property

106E Thing condemned if not claimed in time

- (1) By force of this subsection, the thing is condemned as forfeited to the Commonwealth 30 days after notice of seizure of the thing has been given under section 106C, unless:
 - (a) within the 30 days the owner of the thing or the person who had possession, custody or control of it immediately before it was seized gives the CEO a written claim for the thing; and
 - (b) the claim is in English; and
 - (c) the claim sets out an address for service on the person making the claim.
- Note: Section 106H requires things condemned as forfeited to be dealt with in accordance with the Minister's directions.
- (2) A person may claim the thing even if it is disposed of or destroyed before or after the claim.

106F Dealing with claim for thing

- (1) If the thing is claimed as described in section 106E:
 - (a) an officer may retain possession of the thing without starting any proceedings for the condemnation of the goods; and
 - (b) the CEO may give the claimant a written notice stating that the thing will be condemned if the claimant does not institute proceedings against the Commonwealth within 2 months:
 - (i) to recover the thing; or
 - (ii) for a declaration that the thing is not forfeited.
- Note 1: An officer may retain possession even if the CEO does not give notice. If so, the claimant will be able to recover the thing only if it is released under section 88 or a court orders its release to the claimant.
- Note 2: If the CEO does give the notice and the claimant institutes proceedings, whether the claimant recovers the thing will depend on the outcome of the proceedings.
- (2) The CEO may give the notice to the claimant by posting it prepaid as a letter to the last address of the claimant that is known to the CEO. If the CEO does so, the letter is taken to be properly

Section 106G

addressed for the purposes of section 29 of the *Acts Interpretation Act 1901*.

- (3) Subsection (2) does not limit the ways in which the notice may be given.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how a notice can be given, and when it is taken to be given.

- (4) To avoid doubt, the CEO may give the notice even if the thing has been released under section 88.

106G Condemnation of thing if it is claimed

Application

- (1) This section applies if the CEO gives the claimant a notice under section 106F about instituting proceedings:
- (a) to recover the thing; or
 - (b) for a declaration that the thing is not forfeited.

Condemnation if proceedings not started within 2 months

- (2) By force of this subsection, the thing is condemned as forfeited to the Commonwealth 2 months after the notice is given if the claimant does not institute the proceedings within that period.

Condemnation at end of proceedings started within 2 months

- (3) By force of this subsection, the thing is condemned as forfeited to the Commonwealth at the end of the proceedings that are instituted by the claimant against the Commonwealth within 2 months of the claimant being given the notice if, at the end of the proceedings, there is not:
- (a) an order for the claimant to recover the thing; or
 - (b) an order for the Commonwealth to pay the claimant the proceeds of the sale of the thing if it has been sold before the end of the proceedings; or
 - (c) an order for the Commonwealth to pay the claimant the market value of the thing at the time it was disposed of

(except by sale) or destroyed, if it has been disposed of
(except by sale) or destroyed before the end of the
proceedings; or

(d) a declaration that the thing is not forfeited.

End of proceedings that go to judgment

- (4) For the purposes of subsection (3), if the proceedings go to judgment, they end:
- (a) at the end of the period for lodging an appeal against the judgment, if no appeal is lodged within that period; or
 - (b) when the appeal lapses or is finally determined, if an appeal is lodged against the judgment within that period.

Proceedings relating to thing that has been disposed of

- (5) Proceedings relating to the thing may be instituted or continued even if it is disposed of or destroyed.

Order for payment if thing has been disposed of or destroyed

- (6) If the court hearing the proceedings decides that it would have ordered that the thing be delivered to a person apart from the fact that the thing had been disposed of or destroyed, the court must order the Commonwealth to pay the person an amount equal to:
- (a) the proceeds of the sale of the thing, if it has been sold before the end of the proceedings; or
 - (b) the market value of the thing at the time it was disposed of (except by sale) or destroyed, if it has been disposed of (except by sale) or destroyed before the end of the proceedings.

106H Dealing with thing after it is condemned

If the thing is condemned as forfeited to the Commonwealth, the thing must be dealt with or disposed of in accordance with the directions of the Minister.

106HA Evidence

- (1) For the purposes of proceedings taken:
 - (a) to recover a thing forfeited under Subdivision B; or
 - (b) for a declaration that a thing seized under paragraph 84(1)(ga) or (gb) is not forfeited under Subdivision B;if a person has been convicted of an offence mentioned in paragraph 106A(1)(a) or (b), the person is taken, unless the contrary is proved, to have committed the offence.
- (2) Subsection (1) does not apply in relation to a conviction:
 - (a) in respect of which a review or appeal (however described) has been instituted but not finally determined; or
 - (b) that has been quashed or set aside; or
 - (c) in respect of which a pardon has been given.

Subdivision E—Obstruction of officers

108 Obstruction of officers etc.

- (1) A person must not:
 - (a) fail to facilitate by all reasonable means the boarding of a boat by an officer; or
 - (b) refuse to allow a search to be made that is authorised by or under this Act; or
 - (c) refuse or neglect to comply with a requirement made by an officer under section 84; or
 - (d) when lawfully required to state the person's name and address to an officer, state a false name or address to the officer; or
 - (e) use abusive or threatening language to an officer or other person exercising a power or performing a function under this Act; or
 - (f) assault, resist or obstruct an officer or other person exercising a power or performing a function under this Act in the exercise of the power or performance of the function; or

(g) impersonate an officer.

Penalty: Imprisonment for 12 months.

(2) Paragraphs (1)(b) and (c) do not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

(3) In paragraph (1)(c), strict liability applies to the physical element of circumstance, that the requirement is under section 84.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Subdivision F—Enforcement action under this Act prevails over other action

108A Seizure or forfeiture has effect despite other proceedings

- (1) The seizure, detention or forfeiture of a boat or any other property (including fish) under this Act has effect despite:
- (a) any or all of the following events (each of which is an *admiralty event*):
 - (i) the arrest of the boat under the *Admiralty Act 1988*;
 - (ii) the making of an order for the sale of the boat by a court in proceedings brought under the *Admiralty Act 1988*;
 - (iii) the sale of the boat under an order made by a court in proceedings brought under the *Admiralty Act 1988*; or
 - (b) any action (a *PPSA event*) taken in relation to the enforcement under Part 4.3 of the *Personal Property Securities Act 2009* of a PPSA security interest in the boat or other property.
- (2) Subsection (1) has effect regardless of whether the seizure, detention or forfeiture, or the event that was the basis for the seizure, detention or forfeiture, occurred before or after the admiralty event or the PPSA event.

Subdivision G—Disclosures relating to illegal fishing activities

108B Minister may disclose information relating to illegal fishing activities

- (1) The Minister may disclose, or authorise a prescribed agency within the meaning of subsection (3) to disclose on the Minister's behalf, information relating to fishing activities that may involve a breach of the laws of Australia or of a foreign country, including personal information relating to the fishing activities of individuals that may involve such a breach, to:
 - (a) the government of a foreign country; or
 - (b) an instrumentality of such a government; or
 - (c) an international intergovernmental body.
- (2) In disclosing the information, or in authorising its disclosure, the Minister may require that it:
 - (a) not be disclosed by the government, instrumentality or body to which it is provided; or
 - (b) be disclosed only for such purposes, and on such conditions, as the Minister specifies.
- (3) An agency is a prescribed agency for the purposes of subsection (1) if:
 - (a) it is an agency within the meaning of section 7 of the *Public Service Act 1999*; and
 - (b) it is declared by the regulations to be a prescribed agency for the purposes of that subsection.

Part 7—Collection of levy and charge

Division 1—Collection of levy imposed by the Fishing Levy Act 1991

109 Interpretation

In this Division:

levy means levy imposed by the *Fishing Levy Act 1991*.

110 When is levy due?

Levy is due and payable at a time or times ascertained in accordance with the regulations.

111 Payment by instalments

- (1) The regulations may provide for the payment of an amount of levy to be made by instalments, and, subject to subsection (2), each instalment is due and payable at a time ascertained in accordance with the regulations.
- (2) If:
 - (a) the regulations provide for the payment of an amount of levy to be made by instalments; and
 - (b) an instalment is not paid at or before the time due for payment of the instalment;the whole of the amount of levy unpaid becomes due and payable at that time.

112 Penalty for non-payment

If an amount of levy remains unpaid after the day on which it becomes due for payment, there is payable to the Commonwealth by way of penalty, in addition to that amount of levy, an amount

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calculated at the rate of 20% per annum upon the amount of levy from time to time remaining unpaid, to be calculated from the time when the amount of levy became payable.

113 Recovery of levy and other amounts

(1) The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) an amount payable under section 112.

(1A) If:

- (a) levy is due and payable in respect of a statutory fishing right in respect of a period; and
- (b) that statutory fishing right is surrendered before any fishing activities are undertaken under the statutory fishing right during that period;

AFMA may, on behalf of the Commonwealth, by written notice given to the holder of the statutory fishing right, waive:

- (c) the levy payable in respect of that statutory fishing right in respect of the period; and
- (d) if any amount is payable under section 112 in respect of that levy—the amount so payable.

(2) If:

- (a) levy is due and payable in respect of a fishing permit granted under section 32; and
- (b) that permit is surrendered before any fishing activities are undertaken under the permit;

AFMA may, on behalf of the Commonwealth, by written notice given to the holder of the permit, waive:

- (c) the levy payable in respect of that permit; and
- (d) if any amount is payable under section 112 in respect of that levy—the amount so payable.

Division 2—Collection of levy imposed by the Foreign Fishing Licences Levy Act 1991

114 Interpretation

In this Division:

levy means levy imposed by the *Foreign Fishing Licences Levy Act 1991*.

115 Arrangements between AFMA and person by whom levy payable

AFMA may make arrangements with a person by whom an amount of levy is, or will become, payable in relation to:

- (a) the time for payment; or
 - (b) the manner of payment;
- of the amount of levy or any part of that amount.

116 When is levy due?

An amount of levy on the grant of a licence becomes due and payable:

- (a) where AFMA has, under section 115, made arrangements with a person by whom the amount of levy is or will become payable in relation to the time for payment of the amount of levy or any part of that amount—in accordance with the arrangements; and
- (b) in any other case—at the end of the period of 30 days after the grant of the licence.

117 Penalty for non-payment

Where a person who is liable to pay an amount of levy fails to pay that amount or any part of that amount to the Commonwealth at or before the time when that amount becomes due and payable, the

Part 7 Collection of levy and charge

Division 2 Collection of levy imposed by the Foreign Fishing Licences Levy Act 1991

Section 118

person is liable to pay to the Commonwealth, by way of penalty, in addition to that amount of levy, an amount calculated at the rate of 10% per month upon the amount of levy from time to time remaining unpaid, computed for the period commencing on the day on which that amount of levy became due and payable and ending on the day specified in the licence as being the day until which the licence is to remain in force.

118 Recovery of levy and other amounts

The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) an amount payable under section 117.

Division 3—Collection of charge imposed by the Statutory Fishing Rights Charge Act 1991

119 Interpretation

In this Division:

charge means charge imposed by the *Statutory Fishing Rights Charge Act 1991*.

120 When is charge due?

Subject to section 121, charge is due and payable:

- (a) at a time or times ascertained in accordance with the regulations; or
- (b) if the regulations do not make such provision—at the time of the grant of the statutory fishing right.

121 Payment by instalments

- (1) The regulations may provide for the payment of an amount of charge to be made by instalments, and subject to subsection (2), each instalment is due and payable at a time ascertained in accordance with the regulations.
- (2) If:
 - (a) the regulations provide for the payment of an amount of charge to be made by instalments; and
 - (b) an instalment is not paid at or before the time due for payment of the instalment;the whole of the amount of the charge unpaid becomes due and payable at that time.

Part 7 Collection of levy and charge

Division 3 Collection of charge imposed by the Statutory Fishing Rights Charge Act 1991

Section 122

122 Penalty for non-payment

If an amount of charge remains unpaid after the day on which it becomes due for payment, there is payable to the Commonwealth, by way of penalty, in addition to that amount of charge, an amount calculated at the rate of 20% per annum upon the amount of charge from time to time remaining unpaid, to be calculated from the time when the amount of charge became payable.

123 Recovery of charge and other amounts

The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) charge that is due and payable; and
- (b) an amount payable under section 122.

Part 8—Review by the Statutory Fishing Rights Allocation Review Panel

Division 1—Establishment etc. of Panel

124 Establishment of Panel

A Statutory Fishing Rights Allocation Review Panel is established.

125 Constitution

The Panel is to consist of the following members:

- (a) a Principal Member;
- (b) such other members as are appointed in accordance with this Act, not exceeding the number (if any) specified in the regulations.

126 Appointment of members

- (1) The members of the Panel are to be appointed by the Minister.
- (2) A person may not be appointed as a member for more than 3 consecutive terms.
- (3) Members of the Panel, other than the Principal Member, are to be appointed from persons nominated under Division 2.
- (4) Subject to this Part, a member holds office for such term (not exceeding 4 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Part.
- (5) A member is to be appointed as a part-time member.
- (6) The appointment of a person as a member is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

Section 127

127 Qualifications etc. of Principal Member

The Minister is to appoint a person to be the Principal Member of the Panel only if the Minister is satisfied that the person has had experience at a high level in industry, commerce or public administration or in the practice of a profession.

128 Acting Principal Member

The Minister may appoint a person to act in the office of Principal Member:

- (a) during a vacancy in that office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Principal Member is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Principal Member.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

129 Constitution of Panel for exercise of powers

For the purpose of a particular review, the Panel is to be constituted by:

- (a) the Principal Member; and
- (b) 2 members selected by the Principal Member.

130 Member unable to complete review

If the Panel has commenced or completed a review of a decision but has not finally determined the matter and one of the members (other than the Principal Member) constituting the Panel for the purposes of the review has:

- (a) ceased to be a member; or
- (b) ceased to be available for the purposes of the review, whether because of the operation of section 134 or otherwise;

the hearing and determination, or the determination, of the review is to be completed by the Panel constituted by the remaining members.

131 Remuneration and allowances of members

- (1) A member is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the member is to be paid such remuneration as is prescribed.
- (2) A member is to be paid such allowances as are prescribed.
- (3) Where:
 - (a) a person who is a member of, or a candidate for election to, the Parliament of a State; and
 - (b) under the law of the State, the person would not be eligible to remain, or to be elected, as a member of that Parliament if the person were entitled to remuneration or allowances under this Act;the person must not be paid remuneration or allowances under this Act, but is to be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.
- (4) Where a member:
 - (a) is a member of the Parliament of a State, but subsection (3) does not apply in relation to the person; or
 - (b) is in the service or employment of a State, or an authority of a State, on a full-time basis; or
 - (c) holds or performs the duties of an office or position established by or under a law of a State on a full-time basis;it is a condition of the person's holding office under this Act that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to the amount of the remuneration.
- (5) An amount payable under subsection (4) may be recovered by the State as a debt due to the State.

Section 132

(6) This section has effect subject to the *Remuneration Tribunal Act 1973*.

(7) In this section:

Parliament means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly for the Australian Capital Territory; and
- (b) in relation to the Northern Territory—the Legislative Assembly of the Northern Territory.

State includes the Australian Capital Territory and the Northern Territory.

132 Other terms and conditions

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.

133 Resignation

A member of the Panel may resign by giving to the Minister a signed notice of resignation.

134 Disclosure of interests

- (1) Where a member is, or is to be, a member of the Panel constituted for the purposes of a review and has a conflict of interest in relation to the review, the member:
 - (a) must disclose the matters giving rise to that conflict to the parties to the proceeding; and
 - (b) except with the consent of all the parties to the proceeding, must not take part in the review or exercise any powers in relation to the review.
- (2) Where the Principal Member becomes aware that a member is, or is to be, a member of the Panel as constituted for the purposes of a

review and that the member has a conflict of interest in relation to the review:

- (a) if the Principal Member considers that the member should not take part, or should not continue to take part, in the review—the Principal Member must direct the member accordingly; or
 - (b) in any other case—the Principal Member must disclose the member's interest to all the parties to the proceedings.
- (3) Where the Principal Member discloses the member's interest to all the parties to the proceedings, the member must not, except with the consent of all the parties, take part in the review or exercise any powers in relation to the review.
- (4) For the purposes of this section, a member has a conflict of interest in relation to a review by the Panel if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that review.

135 Termination of appointment

- (1) The Minister may terminate the appointment of a member of the Panel for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) inefficiency or incompetence.
- (2) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Minister may terminate the appointment of the member.

136 Registries

The Minister is to arrange for the establishment of such Registries of the Panel as the Minister thinks fit.

Section 137

137 Officers of Panel

- (1) There are to be a Registrar of the Panel and such Deputy Registrars and other officers of the Panel as are required.
- (2) The Registrar, Deputy Registrars and other officers of the Panel are to be appointed by the Minister.
- (3) The officers of the Panel have:
 - (a) such duties, powers and functions as are provided by this Act and the regulations; and
 - (b) such other duties and functions as the Principal Member directs.
- (4) The Registrar, Deputy Registrars and other officers of the Panel are to be persons engaged under the *Public Service Act 1999*.

138 Acting appointments

- (1) The Minister may appoint a person engaged under the *Public Service Act 1999* to act in a Panel office:
 - (a) during a vacancy in the office; or
 - (b) during a period when the holder of the office is absent from duty.
- (2) In this section:

Panel office means:

 - (a) the office of the Registrar of the Panel; or
 - (b) an office of Deputy Registrar of the Panel; or
 - (c) the office of any other officer of the Panel appointed under section 137.

Division 2—Nomination and selection process for members of the Panel

139 Presiding Member

- (1) The Minister is to appoint a person to be the Presiding Member of Australian Fisheries Management Authority Selection Committees.
- (2) The Presiding Member is to be appointed on a part-time basis.
- (3) Subject to this Division, the Presiding Member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible to be re-appointed once in accordance with this Act.

140 Acting Presiding Member

The Minister may appoint a person to act as Presiding Member:

- (a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Presiding Member is absent from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

141 Request for nominations

- (1) The Minister may, by written notice given to the Presiding Member, request the Presiding Member to establish a Selection Committee for the purpose of:
 - (a) nominating a person or persons for appointment (otherwise than as the Principal Member) as a member or members of the Panel; or

Section 141A

- (b) if there is a vacancy caused by the resignation of, or the ending of the appointment of, any member (other than the Principal Member)—nominating a person for appointment.
- (2) The Minister is to specify in the notice a period within which the Selection Committee is to comply with the notice.

141A Selection Committee

- (1) Where the Presiding Member receives a request under section 141, he or she must:
 - (a) establish a Selection Committee for the purpose of nominating a person or persons for appointment to the Panel; and
 - (b) give to the body that is the peak industry body within the meaning of the *Fisheries Administration Act 1991* a written notice requesting the body to nominate to the Minister persons for appointment to the Selection Committee; and
 - (c) give to the Ministerial Council a written notice requesting the Council to nominate to the Minister a person for appointment to the Selection Committee; and
 - (d) take reasonable steps to inform members of the public (which may consist of advertising in a newspaper circulating generally throughout the Commonwealth), and members of such groups of persons (if any) as the Presiding Member thinks appropriate, of the following matters:
 - (i) that nominations are being sought for appointment of a person or persons to the Panel;
 - (ii) the qualifications for nomination required by a person.
- (2) The function of the Selection Committee is, in accordance with the request of the Minister, to nominate a person or persons for appointment to the Panel.
- (3) The Selection Committee has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its function.

141B Membership of Selection Committee

- (1) A Selection Committee is to consist of the following members:
 - (a) the Presiding Member;
 - (b) 2 members determined by the Minister, one of whom has knowledge of environmental conservation issues;
 - (c) 2 members nominated by the peak industry body referred to in paragraph 141A(1)(b);
 - (d) a member nominated by the Ministerial Council.
- (2) A Selection Committee member referred to in paragraph (1)(b), (c) or (d) is to be appointed by the Minister in writing and holds office on a part-time basis.

141C Selection of nominees

- (1) A Selection Committee must only nominate for appointment as members of the Panel persons who have expertise in one or more of the following fields:
 - (a) commercial fishing;
 - (b) fishing industry operations other than commercial fishing;
 - (c) fisheries science;
 - (d) natural resource management;
 - (e) marine ecology;
 - (f) economics;
 - (g) business management;
 - (h) such other fields (if any) as are prescribed.
- (2) In selecting persons for nomination, a Selection Committee must try to choose such persons as will ensure, as far as practicable, that the members of the Panel collectively possess expertise in all of the fields referred to in subsection (1).
- (3) A Selection Committee must not nominate a person who is:
 - (a) a member of the Selection Committee; or
 - (b) a commissioner of the Commission; or
 - (c) under subsection 126(2), ineligible for appointment.

Section 141D

141D Nomination

- (1) Within the period specified in a notice under section 141:
 - (a) the Selection Committee must select a person or persons for nomination according to the request; and
 - (b) the Presiding Member must, on behalf of the Committee, nominate the person or persons selected by the Committee.
- (2) A nomination must:
 - (a) be in writing; and
 - (b) be given to the Minister.
- (3) A Selection Committee must select only one person in respect of each appointment to be made by the Minister.
- (4) Where a person is nominated for appointment, the Presiding Member must attach to the nomination a statement setting out:
 - (a) details of the person's qualifications and experience; and
 - (b) any other information regarding the person that the Committee considers will assist the Minister in deciding whether to appoint the person.

141E Rejection of nominations

- (1) If the Minister is not satisfied that a person nominated by a Selection Committee is suitable for appointment, the Minister may give the Presiding Member written notice that he or she rejects the nomination of the person.
- (2) The Minister may include in a notice of rejection a further request under section 141 for a nomination of a person for appointment to the position concerned.

141F Meetings of a Selection Committee

- (1) Meetings of a Selection Committee are to be held at such times and places as the Committee determines.
- (2) The Presiding Member may convene a meeting of a Committee.

- (3) At a meeting, the following persons constitute a quorum:
 - (a) the Presiding Member;
 - (b) a member referred to in paragraph 141B(1)(b);
 - (c) a member referred to in paragraph 141B(1)(c);
 - (d) one other member who may also be a member referred to in one of those paragraphs.
- (4) The Presiding Member is to preside at all meetings of a Committee.
- (5) A question arising at a meeting of a Committee is to be decided by a majority of the votes of the members present and voting.
- (6) At a meeting of a Committee, the Presiding Member has a deliberative vote and, if there is an equality of votes, also has a casting vote.
- (7) A Committee must keep a record of its proceedings.
- (8) The procedure of a Committee is to be as determined by the Committee.

141G Remuneration and allowances

- (1) The Presiding Member of a Selection Committee is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the Presiding Member is to be paid such remuneration as is prescribed.
- (2) The Presiding Member is to be paid such allowances as are prescribed.
- (3) A member (other than the Presiding Member) is to be paid such travelling allowance as is prescribed.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Section 141H

141H Leave of absence

- (1) The Minister may grant to the Presiding Member leave of absence from a meeting of a Selection Committee.
- (2) The Presiding Member may grant to another member of a Committee leave of absence from a meeting of the Committee.

141J Resignation

A member of a Selection Committee may resign by giving to the Minister a signed notice of resignation.

141K Termination of appointment of member of Selection Committee

- (1) The Minister may terminate the appointment of a member of a Selection Committee for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) inefficiency or incompetence.
- (2) If a member of a Committee:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit; or
 - (b) fails, without reasonable excuse, to comply with his or her obligations under section 141L; or
 - (c) is absent, without leave of absence, from 3 consecutive meetings of the Committee;the Minister may terminate the appointment of the member.

141L Disclosure of interests by members of Selection Committees

- (1) Where:
 - (a) a member of a Selection Committee has a direct or indirect interest in a matter being considered, or about to be considered, by the Committee; and

- (b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter;
the member must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

141M Resolutions without meetings

- (1) Where:
 - (a) copies of a document setting out a proposed resolution of a Selection Committee are received by at least 4 members of the Committee, of whom one is the Presiding Member; and
 - (b) at least 4 such members, being members who would constitute a quorum at a meeting of the Committee, sign a copy of the document;the Committee is taken to have passed a resolution in the terms set out in the document at a meeting of the Committee.
- (2) The resolution is taken to have been passed:
 - (a) on the day on which copies of the document were signed by members; or
 - (b) if the copies were signed on different days—on the latest of those days.

141N Consultants etc.

- (1) The Presiding Member may, on behalf of a Selection Committee, engage persons as consultants to assist the Committee in the performance of its functions.
- (2) The Presiding Member may only engage persons who have suitable qualifications and experience.

Section 141P

- (3) The Presiding Member may, on behalf of a Selection Committee, engage persons to perform clerical or administrative services in connection with the performance of the Committee's functions.
- (4) The terms and conditions of engagement of persons under subsection (1) or (3) are to be determined by the Committee.

141P Presiding Member to abolish Selection Committee

Where:

- (a) the Minister has appointed to the Panel a person or persons nominated by a Selection Committee; and
- (b) the Committee has not made any nominations for appointment that have yet to be accepted or rejected by the Minister; and
- (c) there are no matters in a request by the Minister under section 141 or 141E that are still to be dealt with by the Committee;

the Presiding Member must abolish the Committee.

141Q Annual reports of Selection Committees

- (1) The Presiding Member must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operations, during the immediately preceding financial year, of Selection Committees (if any) established by the Presiding Member or any other Presiding Member.
- (2) Where the first appointment of a Presiding Member does not begin on 1 July, subsection (1) has effect in relation to the period beginning on the day the appointment begins and ending on the next 30 June as if:
 - (a) if the period is less than 3 months—the period were included in the next financial year; or
 - (b) in any other case—the period were a financial year.
- (3) A report for a financial year may, subject to agreement between the Presiding Member and the Secretary of the Department, be

included, as a discrete part, in the annual report of the Department for that financial year.

- (4) If subsection (3) does not apply to a report under this section, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Division 3—Review by Panel

142 Function

- (1) The Panel has the function of reviewing decisions mentioned in subsection 23(1) made by AFMA or a Joint Authority as to the person or persons to whom the grant of a fishing right in a managed fishery is to be made.
- (2) It is not a function of the Panel to review the first decision to grant fishing rights made by AFMA under the first plan of management determined by AFMA for the fishery known as the Northern Prawn Fishery or for the fishery known as the Southern Bluefin Tuna Fishery.

143 Application to Panel for review

- (1) A person who:
 - (a) is dissatisfied with a decision that is reviewable under section 142; and
 - (b) was registered under section 26 in relation to the grant of a fishing right to which the decision relates;may, within 14 days after being notified by AFMA or by the Joint Authority of the decision, by written notice, apply to the Panel for review of the decision.
- (2) An application for review must:
 - (a) include details of the decision in respect of which review is sought; and
 - (b) include details of the reasons why the review is sought.

144 AFMA or Joint Authority to be notified of application for review

- (1) Where an application for a review of a decision is made under section 143, the Principal Member must, as soon as practicable, give written notice of the making of the application:

- (a) to AFMA or the Joint Authority, whichever made the decision; and
 - (b) to each other person who was registered under section 26 in relation to the grant of a fishing right to which the decision related.
- (2) Where AFMA or a Joint Authority is notified of an application for review, it must, within 14 days of being so notified, give to the Principal Member a copy of:
- (a) the reasons for the decision; and
 - (b) each other document or part of a document that is in the possession or control of AFMA or the Joint Authority and is considered by it to be relevant to the review of the decision, including, if required by the Panel, documents relating to the general state of the fishery to which the decision under review relates.
- (3) A person (including AFMA), or a Joint Authority, to whom a notice is given under subsection (1) is a party to the proceeding before the Panel.

145 Arrangements for hearing of application

- (1) If an application is made to the Panel for review of a decision, the Principal Member must fix the date, time and place for the hearing of the application.
- (2) The Principal Member must give to each party to a proceeding before the Panel written notice of the date, time and place fixed for the hearing of the application.

146 Powers of the Panel etc.

- (1) For the purposes of the review of a decision, the Panel may:
 - (a) take evidence on oath or affirmation; and
 - (b) adjourn the review from time to time.

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- (2) The Principal Member may, in relation to a review:
 - (a) summon a person to appear before the Panel to give evidence; and
 - (b) summon a person to produce to the Panel such documents as are referred to in the summons; and
 - (c) require a person appearing before the Panel to give evidence to take an oath or to make an affirmation; and
 - (d) administer an oath or affirmation to a person so appearing.
- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.
- (4) A person appearing before the Panel to give evidence is not entitled:
 - (a) to be represented before the Panel by any other person; or
 - (b) to examine or cross-examine any other person appearing before the Panel to give evidence.
- (5) Despite anything else contained in this section, the Panel may accept from a person, instead of oral evidence, a written statement verified by statutory declaration.

147 Procedure of Panel

- (1) In a proceeding before the Panel:
 - (a) the procedure of the Panel is, subject to this Act and the regulations, within the discretion of the Panel; and
 - (b) the proceeding is to be conducted with as little formality and technicality, and as quickly, as the requirements of this Act and a proper consideration of the matter before the Panel permit; and
 - (c) the Panel is not bound by rules of evidence but may inform itself on any matter in any way it thinks appropriate.
- (2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of an application may be given:

- (a) where the hearing has not commenced—by the Principal Member or by a member authorised by the Principal Member to give directions for the purposes of this paragraph; and
 - (b) where the hearing of the application has commenced—by the Principal Member or by any other member authorised by the Principal Member to give such directions.
- (3) A direction may be varied or revoked at any time by any member empowered to give such a direction.
 - (4) The Principal Member may at any time vary or revoke an authorisation under this section.

148 Representation before Panel

At the hearing of an application, a party to the proceeding may appear in person or may be represented by some other person.

149 Oral evidence usually given in public

- (1) Subject to this section, the Panel is to take oral evidence in public.
- (2) Where the Panel is satisfied that it is in the public interest to do so, the Panel may direct that particular oral evidence, or oral evidence for the purposes of a particular review, is to be taken in private.
- (3) Where the Panel gives a direction under subsection (2), it may give directions as to the persons who may be present when the oral evidence is given.

150 Powers in relation to decisions under review

- (1) The Panel may, for the purposes of reviewing a decision, exercise all the powers and discretions that are conferred by this Act on the person or persons who made the decision.
- (2) The Panel may:
 - (a) affirm the decision; or
 - (b) vary the decision; or

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- (c) set the decision aside and substitute a new decision.
- (3) If the Panel:
 - (a) varies the decision; or
 - (b) sets aside the decision and substitutes a new decision;the decision as varied or substituted is (except for the purposes of applications to the Panel for review or of appeals from decisions of the Panel) taken to be a decision of AFMA or the Joint Authority, as the case may be.
- (4) A decision made by the Panel takes effect when the applicant is notified of the decision under subsection 160(2).

151 Withdrawal of application for review

- (1) An applicant for review of a decision may withdraw the application at any time.
- (2) A withdrawal may be made by sending or delivering written notice of withdrawal to the Panel.

152 Power to dismiss application

- (1) If:
 - (a) a person makes an application to the Panel for review of a decision; and
 - (b) the Principal Member is satisfied, either after having communicated with the person or having made reasonable attempts to contact the person and having failed to do so, that the person does not intend to proceed with the application;the Principal Member may dismiss the application.
- (2) If the Principal Member dismisses an application under subsection (1) the application is taken to have been withdrawn at the time when the application is dismissed.

153 Refusal to be sworn or to answer questions etc.

- (1) A person appearing before the Panel to give evidence must not:
- (a) when required under section 146 either to take an oath or to make an affirmation—refuse or fail to comply with the requirement; or
 - (b) refuse or fail to answer a question that the person is required to answer by the Panel.

Penalty: 30 penalty units.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the requirement is under section 146.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) A person must not refuse or fail to produce a document that a person is required to produce by a summons under section 146 served on the person as prescribed.

Penalty: 30 penalty units.

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

- (2B) In subsection (2), strict liability applies to the physical element of circumstance, that the requirement is under section 146.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A person appearing before the Panel to give evidence must not intentionally give evidence, knowing that it is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

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154 Majority decision

Any question relating to the review of a decision before the Panel is to be decided:

- (a) according to the opinion of a majority of the members constituting the Panel for the purposes of the review; or
- (b) if the Panel, for a reason mentioned in section 130, is constituted by the Principal Member and another member—according to the opinion of the Principal Member.

155 Panel may restrict publication of certain matters

- (1) Where the Panel is satisfied, in relation to a review, that it is in the public interest that:
 - (a) any evidence given before the Panel; or
 - (b) any information given to the Panel; or
 - (c) the contents of any document produced to the Panel;should not be published, or should not be published except in a particular manner and to particular persons, the Panel may give a written direction accordingly.

- (2) A person must not contravene a direction given by the Panel under subsection (1).

Penalty: Imprisonment for 6 months.

- (3) Where the Panel has given a direction under subsection (1) in relation to the publication of any evidence or information or of the contents of a document, the direction does not:
 - (a) excuse the Panel from its obligations under section 160; or
 - (b) prevent a person from communicating to another person a matter contained in the evidence, information or document if the first-mentioned person has knowledge of the matter otherwise than because of the evidence or information having been given or the document having been produced to the Panel.

156 Failure of witness to attend

- (1) A person who has been served, as prescribed, with a summons to appear before the Panel to give evidence and tendered reasonable expenses 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 a member.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

157 Protection of members and persons giving evidence

- (1) A member has, in the performance of his or her duties as a member, the same protection and immunity as a member of the Administrative Appeals Tribunal.
- (2) Subject to this Part, a person summoned to attend, or appearing, before the Panel to give evidence has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, as a witness in a proceeding before the Administrative Appeals Tribunal.

158 Fees for persons giving evidence

- (1) A person, other than a party to a proceeding, summoned to appear before the Panel to give evidence is entitled to be paid, in respect of his or her attendance, fees and allowances for expenses, fixed by or in accordance with the regulations.

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- (2) The fees and allowances are to be paid:
- (a) where a party to a proceeding notifies the Panel that he or she wants the Panel to obtain evidence from the person—by the party; and
 - (b) in any other case—by AFMA.

159 Person must not obstruct etc.

A person must not:

- (a) obstruct or hinder the Panel or a member in the performance of the functions of the Panel; or
- (b) disrupt the taking of evidence by the Panel.

Penalty: Imprisonment for 6 months.

160 Procedure following Panel decision

- (1) Where the Panel makes its decision on a review, the panel is to prepare a written statement:
 - (a) setting out the decision of the Panel on the review; and
 - (b) setting out the reasons for the decision.
- (2) The Panel must give each party to the proceeding a copy of the statement as soon as practicable after the decision concerned is made.

Division 4—Appeals

161 Appeal to Federal Court of Australia on question of law

- (1) An appeal lies to the Federal Court of Australia, on a question of law, from any decision of the Panel made under this Part.
- (2) An appeal may be instituted by a party to a proceeding before the Panel.
- (3) An appeal must be instituted within 28 days after the appellant is notified under subsection 160(2) of the decision concerned.
- (4) The Federal Court of Australia is to hear and determine the appeal and may make such order as it thinks appropriate.
- (5) Without limiting the generality of subsection (4), the orders that may be made by the Federal Court of Australia on an appeal include:
 - (a) an order affirming or setting aside the Panel's decision; and
 - (b) an order remitting the matter to be reviewed and decided again, either with or without the taking of further evidence, by the Panel in accordance with the directions of that court.

162 Operation etc. of decision subject to appeal

- (1) Subject to this section, the institution of an appeal to the Federal Court of Australia from a decision of the Panel does not:
 - (a) affect the operation of the decision; or
 - (b) prevent the taking of action to implement the decision; or
 - (c) prevent the taking of action in reliance on the making of the decision.
- (2) Where an appeal is instituted in the Federal Court of Australia from a decision of the Panel, that court or a Judge of that court may make such orders of the kind mentioned in subsection (3) as that court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and the determination of the appeal.

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- (3) The orders that may be made under subsection (2) are orders staying, or otherwise affecting the operation or implementation of, either or both of the following:
 - (a) the decision of the Panel or a part of the decision;
 - (b) the decision to which the proceeding before the Panel related or a part of the decision.
- (4) The Federal Court of Australia or a Judge of that court may, by order, vary or revoke an order in force under subsection (2) (including an order that has previously been varied under this subsection).
- (5) An order in force under subsection (2):
 - (a) is subject to such conditions as are specified in the order; and
 - (b) has effect until:
 - (i) where a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
 - (ii) where no period is so specified—the giving of a decision on the appeal.

Part 9—Miscellaneous

Division 1—Electronic decision-making

163A What this Division is about

This Division is about AFMA using a computer program to make certain decisions.

163B Electronic decision-making

- (1) AFMA may approve a computer program, which is under AFMA's control, to be used to make a decision under:
 - (a) section 32; or
 - (b) section 32A; or
 - (c) section 46; or
 - (d) section 91; or
 - (e) a plan of management; or
 - (f) another provision of the fisheries legislation that is prescribed under the regulations.
- (2) While the approval is in force, the outcome of the use of the computer program (an *electronic decision*) is taken to be:
 - (a) a decision; and
 - (b) a decision made by AFMA.
- (3) AFMA's approval must be made in writing.
- (4) An approval made under this section is not a legislative instrument.

163C Replacing an electronic decision

- (1) This section applies if AFMA is satisfied that an electronic decision that was made by a computer program was made at a time when the computer program was not functioning correctly.

Section 163D

- (2) A computer program is not functioning correctly if the electronic decision that was made by the computer program is not the same as the decision that AFMA would have made if an employee of AFMA had made the decision.

Example: A computer program may not be functioning correctly because of a computer virus or because of a typographical error that was made when data was entered into the computer.

- (3) AFMA may revoke the electronic decision and replace it with the decision that AFMA would have made if an employee of AFMA had made the decision.
- (4) AFMA may do so:
- (a) on its own initiative; or
 - (b) on the written application of the applicant who had sought the electronic decision.
- (5) If AFMA revokes an electronic decision after AFMA has notified the applicant about the electronic decision, AFMA must, as soon as practicable after revoking the electronic decision, give to the applicant a written notice that states:
- (a) that the electronic decision has been revoked; and
 - (b) the reasons for revoking the electronic decision; and
 - (c) the new decision.

163D Evidence of whether computer is functioning correctly

- (1) In any proceedings, a computer function notice is prima facie evidence of the matters that are stated in the notice.
- (2) A **computer function notice** is a document that:
- (a) is, or is purported to be, signed by the CEO; and
 - (b) states whether or not a specified computer program was functioning correctly:
 - (i) in relation to a specified electronic decision; and
 - (ii) at a specified time or during a specified period.

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- (3) A computer program is functioning correctly if an electronic decision that the computer program makes is the same as the decision that AFMA would have made if an employee of AFMA had made the decision.

163E Return of fishing concession certificate not necessary

- (1) This section applies if a plan of management requires the holder of a fishing concession to return the fishing concession certificate to AFMA.
- (2) The *fishing concession certificate* is the certificate that AFMA issued to the holder of the fishing concession as evidence of the grant of the fishing concession.
- (3) The holder of the fishing concession is no longer required to return the fishing concession certificate to AFMA.

Division 2—Other miscellaneous provisions

163 Delegation by Minister

The Minister may, by signed instrument, delegate to:

- (a) the Commission; or
- (b) the CEO; or
- (ba) an AFMA staff member; or
- (c) an officer of the Department;

any of the Minister's powers and functions under this Act other than powers and functions under sections 18, 20, 74, 74A and 75.

164 Conduct of directors, employees and agents

- (1) Where, in proceedings for an offence against this Act it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate; and
 - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in by a director, employee or agent of a body corporate is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to prevent the conduct.
- (2A) For the purposes of subsection (2), in determining whether a body corporate took reasonable precautions and exercised due diligence to prevent conduct engaged in by a director, employee or agent of the body corporate, the matters to which regard is to be had include:
 - (a) any action the body corporate took to inform the director, employee or agent of the legal obligations of the body

- corporate, director, employee or agent, in relation to the conduct; and
- (b) any action the body corporate took to ensure that those obligations were understood and complied with by the director, employee or agent; and
 - (c) when any such action was taken; and
 - (d) whether there were any other actions that the body corporate could reasonably have taken that may have prevented the conduct.
- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee or agent of the person; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in by an employee or agent of a person other than a body corporate is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the person unless the person establishes that the person took reasonable precautions and exercised due diligence to prevent the conduct.
- (4A) For the purposes of subsection (4), in determining whether a person took reasonable precautions and exercised due diligence to prevent conduct engaged in by an employee or agent of the person, the matters to which regard is to be had include:
- (a) any action the person took to inform the employee or agent of the legal obligations of the person, employee or agent, in relation to the conduct; and
 - (b) any action the person took to ensure that those obligations were understood and complied with by the employee or agent; and
 - (c) when any such action was taken; and

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- (d) whether there were any other actions that the person could reasonably have taken that may have prevented the conduct.
- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to:
- (a) an offence created by the regulations; and
 - (b) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence against this Act or the regulations.
- (10) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

**165 Reconsideration by AFMA and right to review by
Administrative Appeals Tribunal**

- (1) In this section, unless the contrary intention appears:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

relevant decision means a decision of AFMA under subsection 4(2), 4(3), 22(5) or 26(2), section 31 (other than a decision following an auction or tender), paragraph 31B(1)(b), section 31C, subsection 31F(7), section 32 or 33, subsection 34(9), 38(1), (2) or (3), section 39, subsection 40(5) or (8) or section 91.

reviewable decision means a decision of AFMA under subsection (5).

- (1A) The first decision made by AFMA to register persons under subsection 26(2) in connection with the first plan of management determined by AFMA for the fishery known as the Northern Prawn Fishery or for the fishery known as the Southern Bluefin Tuna Fishery is not a relevant decision for the purposes of this section.
- (2) A person affected by a relevant decision who is dissatisfied with the decision may:
- (a) within 21 days after being notified of the decision; or
 - (b) within such further period (if any) as AFMA, upon application made under subsection (3), by written notice to the person allows;
- request AFMA, in writing, to reconsider the decision.
- (3) A person, before the end of the period mentioned in paragraph (2)(a), may apply to AFMA for an extension of time within which to request a reconsideration of the decision.
- (4) The request must set out the reasons for making the request.
- (5) AFMA must, within 45 days after receiving the request, reconsider the relevant decision and may make a decision:
-

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- (a) in substitution for the relevant decision whether in the same terms as the relevant decision or not; or
 - (b) revoking the relevant decision.
- (6) Where, as a result of a reconsideration under subsection (5), AFMA makes a decision in substitution for or revoking the relevant decision, AFMA must, by written notice given to the person who made the request under subsection (2) for the reconsideration:
 - (a) inform the person of the result of the reconsideration; and
 - (b) give the reasons for the decision.
- (7) An application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision.
- (8) An application made by a person to the Administrative Appeals Tribunal for a review of a reviewable decision where the primary decision was under subsection 26(2) must be lodged with that Tribunal within 14 days of giving the notice mentioned in subsection (6).
- (9) Section 37 of the *Administrative Appeals Tribunal Act 1975* applies in respect of an application mentioned in subsection (8) as if references in that section to 28 days were references to 14 days.
- (10) The Administrative Appeals Tribunal must, as soon as practicable after the lodging of documents with that Tribunal under section 37 of the *Administrative Appeals Tribunal Act 1975*, in relation to an application mentioned in subsection (8) convene a directions hearing to determine a timetable for disposing of the matter.
- (11) Where a relevant decision is made and the person who made the relevant decision gives to a person whose interests are affected by the decision written notice of the making of the decision, that notice must include a statement to the effect that a person affected by the decision:
 - (a) may, if the person is dissatisfied with the decision, seek a reconsideration of the decision by AFMA under subsection (2); and

- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with a decision of AFMA upon that reconsideration, make application to the Administrative Appeals Tribunal for review of that decision.
- (12) Where AFMA makes a reviewable decision and gives to a person whose interests are affected by the decision written notice of the making of the decision, that notice must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.
- (13) Any failure to comply with the requirements of subsection (11) or (12) in relation to a decision does not affect the validity of the decision.

166 Evidence

- (1) In any proceedings for an offence against this Act, an averment of the prosecutor, contained in the information or complaint, that:
- (a) the defendant was at a particular place at the time of the alleged offence; or
 - (b) the boat, aircraft or other thing referred to in the information or complaint was at a particular place at the time of the alleged offence; or
 - (c) fishing engaged in by or from a boat, not being a charter boat, in relation to which a fishing concession was in force at the time of the alleged offence was commercial fishing;
- is prima facie evidence of the matter averred.
- (2) AFMA may give a certificate:
- (a) that, at a time or during a period specified in the certificate, a boat specified in the certificate was, or was not, an Australian boat; or
 - (b) that, at a time or during a period specified in the certificate, an area of waters specified in the certificate was part of the AFZ; or

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- (ba) that, at a time or during a period specified in the certificate, an area of waters specified in the certificate:
 - (i) was part of the territorial sea of Australia that was, at the time or during the period, in the AFZ; and
 - (ii) was not part of coastal waters taken to be in the AFZ because of section 76; or
- (c) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a statutory fishing right that was in force in relation to a managed fishery specified in the certificate; or
- (d) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a fishing permit that was in force authorising the use of a boat specified in the certificate for commercial fishing in an area of the AFZ, or a specified fishery, specified in the certificate; or
- (e) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a scientific permit that was in force authorising the use of a boat specified in the certificate for scientific research purposes in an area of the AFZ, or a fishery, specified in the certificate; or
- (f) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a foreign fishing licence that was in force authorising the use of a foreign boat specified in the certificate for commercial fishing in an area of the AFZ, or a fishery, specified in the certificate; or
- (g) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a foreign master fishing licence that was in force authorising the person to be in charge of a foreign fishing boat being used for commercial fishing in an area of the AFZ, or a fishery, specified in the certificate; or
- (h) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a fish receiver permit that was in force authorising the

- person to receive fish from a person engaged in fishing in a fishery specified in the certificate; or
- (i) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a fish receiver permit that was in force specifying premises specified in the certificate as premises at which fish received under the permit by the holder of the permit are to be kept while in the possession of the holder; or
 - (j) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a port permit authorising the bringing of a foreign boat specified in the certificate into a port in Australia, or in an external Territory, specified in the certificate; or
 - (k) that, at a time or during a period specified in the certificate, notice of a temporary order was given in the manner specified in the certificate; or
 - (l) that, at a time or during a period specified in the certificate, a person specified in the certificate was subject to a direction under section 40A or 40B and that a document attached to the certificate is a copy of the direction; or
 - (m) that, at a time or during a period specified in the certificate, AFMA received e-monitoring data specified in the certificate; or
 - (n) that, at a time or during a period specified in the certificate, AFMA received e-monitoring equipment specified in the certificate, on which e-monitoring data was stored; or
 - (o) that, at a time specified in the certificate, AFMA received a statement provided in compliance with a condition of a fishing concession or scientific permit and that a document attached to the certificate is a copy of the statement.
- (3) The Minister may give a certificate:
- (a) that at a particular time specified in the certificate the Minister had notified all the parties to the Treaty that an investigation of an alleged contravention of the kind

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mentioned in paragraph 37(2)(a) was being conducted in relation to a Treaty boat specified in the certificate in respect of which a Treaty licence was in force and that the Minister had not, at or before a particular time specified in the certificate, notified the Administrator that the investigation had been completed; or

- (b) that at a particular time specified in the certificate, the Minister was notified in writing by the Administrator of the suspension, in accordance with the Treaty, of a Treaty licence issued in respect of a Treaty boat specified in the certificate and either:
 - (i) at a particular time specified in the certificate the Minister was notified in writing by the Administrator that the Treaty licence was no longer suspended; or
 - (ii) at a particular time specified in the certificate no such notification had been received by the Minister; or
- (c) that a document attached to the certificate and stating:
 - (i) the date on which a Treaty licence was issued by the Administrator, or if more than one such Treaty licence has been issued by the Administrator, the date on which the most recent Treaty licence was so issued, in respect of the boat specified in the document and the date on which that Treaty licence expires; or
 - (ii) that there has been no Treaty licence issued by the Administrator in respect of the boat specified in the document;is a copy of a letter, fax, telex or cablegram received by an officer or AFMA staff member or the Commonwealth from the Administrator; or
- (d) that a document that:
 - (i) is attached to the certificate; and
 - (ii) states that the person named in the document was, at the time or during the period specified in the document, authorised by or under the law of the Pacific Island party specified in the document to perform the functions and duties of an observer on Treaty boats;

is a copy of a letter, fax, telex or cablegram received by an officer or employee of AFMA or the Commonwealth from an authority of that Pacific Island party.

- (5) The Minister may give a certificate certifying as to any matter relating to the making of decisions by a Joint Authority or relating to instruments executed by a Joint Authority.
- (6) A person giving a certificate under this section that a person was the holder of a statutory fishing right or of a licence or permit granted under this Act may, in the certificate, certify that conditions specified in the certificate were the conditions to which the fishing right, licence or permit, as the case may be, was subject.
- (7) In proceedings for an offence against this Act or the regulations, a certificate given under this section is:
 - (a) in all cases—prima facie evidence of the matters stated in the certificate; and
 - (b) in the case of a certificate of the kind mentioned in paragraph (3)(c) or (d) given in respect of a particular document—prima facie evidence of the matters stated in that document.
- (8) A document purporting to have been signed, issued or given under this Act is, on mere production, admissible in any proceedings as prima facie evidence of the fact that it was duly signed, issued or given.

167 AFMA to compile statistics

- (1) AFMA must cause to be compiled, from logbooks or returns furnished under section 42 or from other sources, statistics in relation to matters mentioned in subsection 42(1B).
- (1A) AFMA may publish or make available, in any way it thinks fit, any of the statistics compiled under subsection (1).
- (2) AFMA, if directed in writing by the Minister to do so, must make available to a person specified by the Minister such statistics mentioned in subsection (1) as are specified by the Minister.

Section 167A

167A Compensation for acquisition of property

- (1) If, apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay reasonable compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may apply to the Federal Court to determine a reasonable amount of compensation.
- (3) The jurisdiction of the Federal Court is exclusive of the jurisdiction of all other courts except that of the High Court.
- (4) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.
- (5) In this section:

acquisition of property and *just terms* have the same meaning as in paragraph 51(xxxi) of the Constitution.

167B AFMA may give information about boats to officers of Customs

- (1) This section applies if AFMA has any information relating to boats that AFMA got by means of a vessel monitoring system (see subsection (4)).
- (2) AFMA may give information of that kind to an officer of Customs if AFMA, having had regard to any advice received from an officer of Customs, considers that giving an officer of Customs the information would help an officer of Customs to perform a function or activity that relates to civil surveillance.
- (3) This section does not, by implication, affect any other power of AFMA to give information.

(4) In this section:

officer of Customs has the meaning given by subsection 4(1) of the *Customs Act 1901*.

vessel monitoring system means a system in which boats are fitted with an electronic device that can give information about the boats' course or position, or other such information.

168 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed in carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made:
- (a) prescribing penalties not exceeding 25 penalty units for offences against the regulations; and
 - (b) providing for the remission or refund of levy under the *Fishing Levy Act 1991* or the *Foreign Fishing Licences Levy Act 1991* or of charge under the *Statutory Fishing Rights Charge Act 1991* or of penalty payable under Part 7 in relation to such levy or charge; and
 - (c) providing for giving effect to, and enforcing the observance of, plans of management; and
 - (d) providing for the replacement of certificates, licences, permits and other instruments granted or executed under this Act or the regulations and prescribing fees for such replacement; and
 - (e) providing for the imposition and recovery of fees in respect of:
 - (i) draft plans of management being made available; and
 - (ii) the making of applications under this Act; and
 - (iii) the lodging and registration of documents; and

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- (iiiia) the giving of a notice to AFMA nominating an Australian boat under paragraph 32(1A)(b) or subsection 32(1B); and
- (iv) the issue of a document mentioned in subsection 53(2); and
- (v) the supplying of signed copies of, or extracts from, entries in the Register or instruments evidencing dealings registered in the Register; and
- (f) providing for the return to a person ascertained in accordance with the regulations or a plan of management of:
 - (i) certificates, licences, permits and other instruments granted or executed under this Act or the regulations; or
 - (ii) certificates and other documents issued to a person under a plan of management; that have been cancelled; and
- (g) prescribing signals and rules of navigation to be observed in the AFZ by masters of boats in respect of which a fishing rights, or any licences or permits, are in force under this Act or under the Treaty; and
- (h) providing for the marking of boats engaged in commercial fishing in the AFZ and of nets, traps and other equipment used for taking fish; and
- (ha) providing for the marking of Australian-flagged boats in relation to which fishing concessions or scientific permits allowing fishing outside the AFZ are in force; and
- (hb) subject to section 8A, providing for the placement of persons as observers on board boats used for commercial fishing; and
 - (i) enabling a person who is alleged to have contravened section 93, 95 or 100 or a determination made for the purposes of section 42 to pay to AFMA, as an alternative to prosecution, a specified penalty, not exceeding the maximum penalty by which a contravention of that provision is otherwise punishable; and
 - (j) providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in the AFZ; and

- (k) regulating the rights of priority as between masters of boats in respect of which a fishing concession is in force under this Act in the AFZ and for prescribing the rules of fishing in the AFZ; and
- (l) facilitating the exercise by officers of their powers under section 84; and
- (m) providing for the inspection of foreign boats the use of which is authorised by a foreign fishing licence or a Treaty licence and of nets, traps and other equipment belonging to such boats and of fish taken with the use of such boats; and
- (n) providing for the reporting of the positions of boats:
 - (i) the use of which is authorised by a fishing concession at times when such boats are in the AFZ; or
 - (ii) in relation to which an approval is in force under regulations made for the purposes of paragraph 101(1)(c); and
- (na) providing for the use of systems for reporting the position of Australian-flagged boats when on the high seas in an area covered by an international fisheries management organisation; and
- (o) providing procedures to be followed to facilitate the recognition of foreign boats the use of which is authorised by a foreign fishing licence; and
- (p) prescribing short methods of reference to areas of the AFZ specified in the regulations and the purposes for which those methods of reference may be used; and
- (q) providing for the furnishing of information relating to persons on board:
 - (i) a boat that is in the AFZ, being a boat the use of which is authorised by a fishing concession; and
 - (ii) an Australian boat engaged in fishing outside the AFZ; and
- (r) providing for the carrying of persons on board boats the use of which is authorised by a fishing concession; and

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- (s) providing for the furnishing of information relating to the use in the AFZ of foreign boats the use of which is authorised by a foreign fishing licence; and
 - (t) providing for the giving by AFMA of certificates as to the giving, or not giving, of approvals under regulations made for the purposes of paragraph 101(1)(c); and
 - (u) providing (in addition to the collection of information in the exercise or performance of its other powers and functions under this Act) for the collection by AFMA of information relating to:
 - (i) possible breaches of the laws of Australia or of a foreign country; or
 - (ii) the control and protection of Australia's borders; or
 - (iii) the administration and management of fisheries or marine environments; or
 - (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments; and
 - (v) providing for the disclosure by AFMA of information, including e-monitoring data and personal information, relating to:
 - (i) possible breaches of the laws of Australia or of a foreign country; or
 - (ii) the control and protection of Australia's borders; or
 - (iii) the administration and management of fisheries or marine environments; or
 - (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments.
- (3) Notwithstanding section 14 of the *Legislation Act 2003*, the regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a plan of management, being a plan of management as in force at a particular time or as in force from time to time.

Schedule 1A—Provisions relating to detention of suspected illegal foreign fishers

Note: See section 105Q.

Part 1—Preliminary

Division 1—Objects of this Schedule

1 Main objects of this Schedule

- (1) This Schedule has 3 main objects.
- (2) The first main object is to provide for the detention (*fisheries detention*) in Australia or a Territory of persons who:
 - (a) are reasonably suspected by an officer of having committed an offence involving the use of a foreign boat; and
 - (b) are not Australian citizens or Australian residents;for a limited period for the purposes of determining whether to charge them with the offence.
- (3) The second main object is to provide for persons in fisheries detention to be searched, screened, given access to facilities for obtaining legal advice, and identified.
- (4) The third main object is to facilitate the transition of persons from fisheries detention to immigration detention under the *Migration Act 1958*:
 - (a) by providing for the things mentioned in subclause (3) to be done in a way corresponding to the way that Act provides for those things to be done to persons in immigration detention; and
 - (b) by authorising the disclosure of personal information about individuals who are or have been in fisheries detention to persons, agencies and organisations responsible for holding the individuals in immigration detention, for the purpose of the immigration detention and welfare of the individuals.

Schedule 1A Provisions relating to detention of suspected illegal foreign fishers

Part 1 Preliminary

Division 1 Objects of this Schedule

Clause 1

Note: The enforcement visa of a person who is neither an Australian citizen nor an Australian resident ceases to have effect under the *Migration Act 1958* when the person ceases to be in fisheries detention, so that Act requires the person to be taken into immigration detention.

Division 2—Definitions

2 Definitions

In this Schedule, unless the contrary intention appears:

authorised officer means an officer, or detention officer, who is authorised under Division 4 for the purposes of the provision in which the expression occurs.

detainee means a person detained under Part 2.

detention means detention under Part 2.

detention officer means a person appointed under clause 3 to be a detention officer.

Division 3—Appointment etc. of detention officers

3 Minister may appoint persons to be detention officers

- (1) The Minister may, by instrument, appoint one or more persons (except persons who are officers) to be detention officers.

Note: Officers have the same powers as detention officers, as well as other powers, so there is no reason for officers to be appointed as detention officers.

- (2) An instrument appointing persons to be detention officers:
- (a) may identify the persons by reference to a class; and
 - (b) may provide for persons to be appointed when they become members of the class at or after a time specified in the instrument.

4 Detention officers subject to directions

A detention officer is, in the exercise of his or her powers, and the performance of his or her duties, under this Schedule, subject to the directions given by the Minister or AFMA.

5 Detention officer etc. not liable to certain actions

- (1) A detention officer, or a person assisting a detention officer in the exercise of powers under this Act or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the exercise or purported exercise of any power conferred by this Act or the regulations.

Note: Section 90 makes similar provision for officers and their assistants.

- (2) However, subsection (1) does not affect a contractual liability of a detention officer or person assisting a detention officer.

Division 4—Authorisation of officers and detention officers

6 AFMA may authorise officers and detention officers

- (1) AFMA may, by instrument, authorise one or more officers and/or detention officers for the purposes of a specified provision of this Schedule, from among officers and/or detention officers who have successfully completed minimum training prescribed by a legislative instrument.
- (2) An instrument authorising officers and/or detention officers:
 - (a) may identify them by reference to a class; and
 - (b) may provide for them to be authorised when they become members of the class at or after a time specified in the instrument.

7 Persons who are authorised officers for purposes of *Migration Act 1958* are taken to be authorised for this Schedule

- (1) A person who:
 - (a) is an officer or detention officer; and
 - (b) is an authorised officer (as defined in the *Migration Act 1958*) for a provision of that Act listed in column 2 of an item of the table;is, while he or she meets the conditions in paragraphs (a) and (b), taken to be authorised under clause 6 for the purposes of the provision of this Schedule listed in column 3 of the item.

Corresponding provisions of the *Migration Act 1958* and this Schedule

Column 1 Item	Column 2 Provision of <i>Migration Act 1958</i>	Column 3 Provision of this Schedule
1	Subsection 252(4)	Subclause 15(3)
2	Paragraph 252(6)(a)	Paragraph 15(5)(a)
3	Subparagraph 252(6)(b)(i)	Subparagraph 15(5)(b)(i)
4	Subsection 252AA(1)	Subclause 16(1)

Schedule 1A Provisions relating to detention of suspected illegal foreign fishers

Part 1 Preliminary

Division 4 Authorisation of officers and detention officers

Clause 7

Corresponding provisions of the *Migration Act 1958* and this Schedule

Column 1 Item	Column 2 Provision of <i>Migration Act 1958</i>	Column 3 Provision of this Schedule
5	Subsection 252A(1)	Subclause 17(1)
6	Subsection 252C(1)	Subclause 19(1)
7	Subsection 252D(2)	Subclause 20(2)
8	Subsection 252G(3)	Subclause 23(3)
9	Section 261AA	Clause 28
10	Subsection 261AE(1)	Subclause 32(1)
11	Subsection 261AE(3)	Subclause 32(3)
12	Section 261AG	Clause 34
13	Section 261AJ	Clause 37
14	Subsection 261AK(1) (except paragraph (a))	Subclause 38(1) (except paragraph (a))
15	Subsection 261AK(3)	Subclause 38(3)

Limits on authorisation

- (2) However, the person is not taken to be authorised to carry out an identification test in relation to which section 5D of the *Migration Act 1958* provides that the person is not an authorised officer (for the purposes of that Act).

Note: This is relevant to items 9 to 15 of the table in subclause (1).

Persons specified by AFMA not authorised

- (3) AFMA may, by instrument, specify that the person is not taken to be authorised:
- (a) for the purposes of the provision of this Schedule; or
 - (b) for the purposes of carrying out under this Schedule identification tests of a type specified under section 5D of the *Migration Act 1958* in relation to the person.

The instrument has effect according to its terms, despite subclause (1).

- (4) An instrument under subclause (3) may specify one or more persons by reference to their being members of a specified class at or after a time specified in the instrument.
- (5) An instrument made under subclause (3) is not a legislative instrument.

Part 2—Detaining suspected illegal foreign fishers

Division 1—Initial detention by an officer

8 Power to detain

- (1) An officer may detain a person in Australia or a Territory for the purposes of determining during the period of detention whether or not to charge the person with an offence against section 99, 100, 100A, 100B, 101, 101A, 101AA, 101B, 105E, 105EA, 105H or 105I or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, if the officer has reasonable grounds to believe that the person:
 - (a) is not an Australian citizen or an Australian resident; and
 - (b) was on a foreign boat when it was used in the commission of such an offence.
- (2) Subclause (1) does not authorise an officer to use more force in detaining a person than is reasonably necessary.
- (3) Subclause (1) has effect, in relation to an offence against section 105E, 105EA, 105H or 105I, subject to any limitations set out in the regulations.

9 Relationship with Part IC of the *Crimes Act 1914*

- (1) Part IC of the *Crimes Act 1914* applies in relation to the detainee while detained under this Part as if:
 - (a) he or she were a protected suspect for a Commonwealth offence for the purposes of that Part; and
 - (b) an officer were an investigating official for the purposes of that Part.
- (2) Subclause (1) does not affect the operation of Division 2 of Part IC of the *Crimes Act 1914* as it applies of its own force in relation to a person who is lawfully arrested.

Division 2—Continued detention by a detention officer

10 Detention officer may detain person already detained by officer

- (1) For the purposes of facilitating an officer determining whether or not to charge a person with an offence against section 99, 100, 100A, 100B, 101, 101A, 101AA, 101B, 105E, 105EA, 105H or 105I or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, a detention officer may detain the person in Australia or a Territory if the detention officer has reasonable grounds to believe that the person:
 - (a) has been detained by an officer under Division 1; and
 - (b) has been presented, while detained by that officer, to a detention officer for detention by a detention officer.
- (2) However, the detention officer may not detain the person if the detention officer has reasonable grounds to believe that the person has ceased to be in detention since the last time the person was detained by an officer under Division 1.
- (3) Subclause (1) does not authorise a detention officer to use more force in detaining a person than is reasonably necessary.

Schedule 1A Provisions relating to detention of suspected illegal foreign fishers

Part 2 Detaining suspected illegal foreign fishers

Division 3 Detention on behalf of an officer or detention officer

Clause 11

Division 3—Detention on behalf of an officer or detention officer

11 Detention on behalf of an officer or detention officer

- (1) A person is taken to be detained by an officer or detention officer under this Part while the person is held, on behalf of the officer or detention officer, in any of the following:
 - (a) a prison or remand centre of the Commonwealth, a State or a Territory;
 - (b) a police station or watch house;
 - (c) a hospital or other place where the person is receiving medical treatment;
 - (d) another place approved by the Minister in writing;
 - (e) a boat.
- (2) This clause has effect even while the officer or detention officer is not present where the person is held on behalf of the officer or detention officer.
- (3) An approval of a place by the Minister is not a legislative instrument.

Division 4—Moving detainees

12 Power to move detainees

- (1) An officer or a detention officer may:
 - (a) take a detainee in Australia to another place in Australia or to a place in an external Territory; and
 - (b) take a detainee in an external Territory to another place in the Territory or to a place in Australia or another Territory.
- (2) Subclause (1) does not authorise an officer or detention officer to use more force than is reasonably necessary to take the detainee to the place.
- (3) In exercising the power under subclause (1), the officer or detention officer must have regard to all matters that he or she considers relevant, including:
 - (a) the administration of justice; and
 - (b) the welfare of the detainee.
- (4) So far as it relates to an officer, subclause (1) has effect, in relation to a person detained in relation to an offence against section 105E, 105EA, 105H or 105I, subject to any limitations set out in the regulations.

Division 5—End of detention

13 End of detention

A detainee must be released from detention:

- (a) as soon as an officer or detention officer knows or reasonably believes that the detainee is an Australian citizen or an Australian resident; or
 - (b) at the time the detainee is brought before a magistrate following a decision to charge the detainee with an offence referred to in subclause 8(1); or
 - (c) at the time a decision is made not to charge the detainee with an offence referred to in that subclause; or
 - (d) at the end of 168 hours after the detention began;
- whichever occurs first.

Division 6—Offence of escaping from detention

14 Escape from detention

- (1) A person commits an offence if:
 - (a) the person is in detention; and
 - (b) the person escapes from that detention.
- (2) The offence is punishable on conviction by imprisonment for up to 2 years.

Part 3—Searching and screening detainees and screening their visitors

Division 1—Searches of detainees

15 Searches of detainees

- (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched.
- (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows:
 - (a) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to help the detainee to escape from detention;
 - (b) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a document or other thing that is, or may be, evidence of:
 - (i) an offence against section 99, 100, 100A, 100B, 101, 101A, 101AA, 101B, 105E, 105EA, 105H or 105I; or
 - (ii) an offence against section 6 of the *Crimes Act 1914* relating to an offence described in subparagraph (i).
- (3) If, in the course of a search under this clause, a weapon or other thing referred to in paragraph (2)(a), or a document or other thing referred to in paragraph (2)(b), is found, an authorised officer:
 - (a) may take possession of the weapon, document or other thing; and
 - (b) may retain the weapon, document or other thing for such time as he or she thinks necessary for the purposes of this Act or the *Migration Act 1958*.

- (4) This clause does not authorise an authorised officer, or another person conducting a search pursuant to subclause (5), to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (5) A search under this clause of a detainee, and the detainee's clothing, must be conducted by:
- (a) an authorised officer of the same sex as the detainee; or
 - (b) in a case where an authorised officer of the same sex as the detainee is not available to conduct the search—any other person who is of the same sex and:
 - (i) is requested by an authorised officer; and
 - (ii) agrees;to conduct the search.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an authorised officer, conducts a search under this clause if the person acts in good faith and does not contravene subclause (7).
- (7) An authorised officer or other person who conducts a search under this clause must not use more force, or subject a detainee to greater indignity, than is reasonably necessary in order to conduct the search.
- (8) To avoid doubt, a search of a detainee may be conducted under this clause irrespective of whether a screening procedure is conducted in relation to the detainee under clause 16 or a strip search of the detainee is conducted under clause 17.

Note: This clause corresponds closely to section 252 of the *Migration Act 1958*.

Division 2—Screening of detainees

16 Power to conduct a screening procedure

- (1) A screening procedure in relation to a detainee, other than a detainee to whom clause 22 applies, may be conducted by an authorised officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
 - (a) to inflict bodily injury; or
 - (b) to help the detainee, or any other detainee, to escape from detention.
- (2) An authorised officer who conducts a screening procedure under this clause must not use greater force, or subject the detainee to greater indignity, than is reasonably necessary in order to conduct the screening procedure.
- (3) This clause does not authorise an authorised officer to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (4) To avoid doubt, a screening procedure may be conducted in relation to a detainee under this clause irrespective of whether a search of the detainee is conducted under clause 15 or 17.
- (5) In this clause:

conducting a screening procedure, in relation to a detainee, means:

 - (a) causing the detainee to walk, or to be moved, through screening equipment; or
 - (b) passing hand-held screening equipment over or around the detainee or around things in the detainee's possession; or

- (c) passing things in the detainee's possession through screening equipment or examining such things by X-ray.

screening equipment means a metal detector or similar device for detecting objects or particular substances.

Note: This clause corresponds closely to section 252AA of the *Migration Act 1958*.

Division 3—Strip searches of detainees

17 Power to conduct a strip search

- (1) A strip search of a detainee, other than a detainee to whom clause 22 applies, may be conducted by an authorised officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
- (a) to inflict bodily injury; or
 - (b) to help the detainee, or any other detainee, to escape from detention.

Note: Clause 18 sets out rules for conducting a strip search under this clause.

- (2) A *strip search* of a detainee means a search of the detainee, of his or her clothing or of a thing in his or her possession. It may include:
- (a) requiring the detainee to remove some or all of his or her clothing; and
 - (b) an examination of that clothing and of the detainee's body (but not of the detainee's body cavities).
- (3) A strip search of a detainee may be conducted by an authorised officer only if:
- (a) an officer or detention officer suspects on reasonable grounds that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause (1); and
 - (b) the officer, or detention officer, referred to in paragraph (a) suspects on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and
 - (c) the strip search is authorised as follows:
 - (i) if the detainee is at least 18—the CEO, the Secretary of the Department, or an SES Band 3 employee in the Department (who is not the officer referred to in

- paragraphs (a) and (b) nor the authorised officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions;
- (ii) if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.
- (4) An officer or detention officer may form a suspicion on reasonable grounds for the purposes of paragraph (3)(a) on the basis of:
- (a) a search conducted under clause 15 (whether by that officer or detention officer or by another officer or detention officer); or
 - (b) a screening procedure conducted under clause 16 (whether by that officer or detention officer or by another officer or detention officer); or
 - (c) any other information that is available to the officer or detention officer.
- (5) An authorisation of a strip search given for the purposes of paragraph (3)(c):
- (a) may be given by telephone, fax or other electronic means; and
 - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of a strip search conducted on the basis of that authorisation.
- (8) The power to authorise a strip search under paragraph (3)(c) cannot be delegated to any other person.
- (9) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

Clause 18

- (10) The magistrate need not accept the power conferred.
- (11) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.
- (12) To avoid doubt, a strip search of a detainee may be conducted under this clause irrespective of whether a search of the detainee is conducted under clause 15 or a screening procedure is conducted in relation to the detainee under clause 16.
- (13) In this clause:

business day means a day that is not a Saturday, Sunday or public holiday in the place where the authorisation is given.

SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 252A of the *Migration Act 1958*.

18 Rules for conducting a strip search

- (1) A strip search of a detainee under clause 17:
 - (a) must not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search; and
 - (b) must be conducted in a private area; and
 - (c) must be conducted by an authorised officer of the same sex as the detainee; and
 - (d) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person who is of the opposite sex to the detainee; and
 - (e) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the strip search; and

- (f) must not be conducted on a detainee who is under 10; and
 - (g) if the detainee is at least 10 but under 18, or is incapable of managing his or her affairs—must be conducted in the presence of:
 - (i) the detainee’s parent or guardian if that person is in detention with the detainee and is readily available at the same place; or
 - (ii) if that is not acceptable to the detainee or subparagraph (i) does not apply—another person (other than an authorised officer) who is capable of representing the detainee’s interests and who, as far as is practicable in the circumstances, is acceptable to the detainee; and
 - (h) subject to subclause (4), if the detainee is at least 18, and is not incapable of managing his or her affairs—must be conducted in the presence of another person (if any) nominated by the detainee, if that other person is readily available at the same place as the detainee, and willing to attend the strip search within a reasonable time; and
 - (i) must not involve a search of the detainee’s body cavities; and
 - (j) must not involve the removal of more items of clothing, or more visual inspection, than the authorised officer conducting the search believes on reasonable grounds to be necessary to determine whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause 17(1); and
 - (k) must not be conducted with greater force than is reasonably necessary to conduct the strip search.
- (2) Paragraphs (1)(d) and (e) do not apply to a parent or guardian, or person present because of subparagraph (1)(g)(ii), if the detainee has no objection to that person being present.
- (3) Paragraphs (1)(d) and (e) do not apply to a person nominated by the detainee under paragraph (1)(h) to attend the strip search.
- (4) Neither:
-

Schedule 1A Provisions relating to detention of suspected illegal foreign fishers

Part 3 Searching and screening detainees and screening their visitors

Division 3 Strip searches of detainees

Clause 18

- (a) a detainee's refusal or failure to nominate a person under paragraph (1)(h) within a reasonable time; nor
 - (b) a detainee's inability to nominate a person under that paragraph who is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time;
- prevents a strip search being conducted.
- (5) A strip search of a detainee may be conducted with the assistance of another person if the authorised officer conducting the strip search considers that to be necessary for the purposes of conducting it. That person must not be of the opposite sex to the detainee unless:
- (a) the person is a medical practitioner; and
 - (b) a medical practitioner of the same sex as the detainee is not available within a reasonable time.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an authorised officer, assists in conducting a strip search if the person acts in good faith and does not contravene this clause.
- (7) A detainee must be provided with adequate clothing if during or as a result of a strip search any of his or her clothing is:
- (a) damaged or destroyed; or
 - (b) retained under clause 19.

Note: This clause corresponds closely to section 252B of the *Migration Act 1958*.

Division 4—Keeping of things found by screening or strip search of detainees

19 Possession and retention of certain things obtained during a screening procedure or strip search

- (1) An authorised officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing:
 - (a) might provide evidence of the commission of an offence against this Act; or
 - (b) is forfeited or forfeitable to the Commonwealth.
- (2) A weapon or other thing described in subclause 16(1) or 17(1) that is found in the course of conducting a screening procedure under clause 16 or a strip search under clause 17 is forfeited to the Commonwealth.
- (3) An authorised officer must not return a thing that is forfeited or forfeitable to the Commonwealth. Instead, the authorised officer must, as soon as practicable, give a thing that is forfeited under subclause (2) to a constable (within the meaning of the *Crimes Act 1914*).

Note: Subdivision C of Division 6 of Part 6 of this Act sets out the procedure for dealing with things seized as being forfeited under section 106A.

- (4) An authorised officer must take reasonable steps to return anything that is not forfeited or forfeitable but is retained under subclause (1) to the person from whom it was taken, or to the owner if that person is not entitled to possess it, if one of the following happens:
 - (a) it is decided that the thing is not to be used in evidence;
 - (b) the period of 60 days after the authorised officer takes possession of the thing ends.

Clause 20

- (5) However, the authorised officer does not have to take those steps if:
- (a) in a paragraph (4)(b) case:
 - (i) proceedings in respect of which the thing might provide evidence have been instituted before the end of the 60 day period and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (ii) the authorised officer may retain the thing because of an order under clause 21; or
 - (b) in any case—the authorised officer is otherwise authorised (by a law, or an order of a court or a tribunal, of the Commonwealth or a State or Territory) to retain, destroy or dispose of the thing.

Note: This clause corresponds closely to section 252C of the *Migration Act 1958*.

20 Authorised officer may apply for a thing to be retained for a further period

- (1) This clause applies if an authorised officer has taken possession of a thing referred to in subclause 19(4) and proceedings in respect of which the thing might provide evidence have not commenced before the end of:
 - (a) 60 days after the authorised officer takes possession of the thing; or
 - (b) a period previously specified in an order of a magistrate under clause 21.
- (2) The authorised officer may apply to a magistrate for an order that the officer may retain the thing for a further period.
- (3) Before making the application, the authorised officer must:
 - (a) take reasonable steps to discover which persons' interests would be affected by the retention of the thing; and
 - (b) if it is practicable to do so, notify each person who the authorised officer believes to be such a person of the proposed application.

Note: This clause corresponds closely to section 252D of the *Migration Act 1958*.

- (4) A notice under paragraph (3)(b) is not a legislative instrument.

21 Magistrate may order that thing be retained

- (1) The magistrate may order that the authorised officer who made an application under clause 20 may retain the thing if the magistrate is satisfied that it is necessary for the authorised officer to do so:
- (a) for the purposes of an investigation as to whether an offence has been committed; or
 - (b) to enable evidence of an offence to be secured for the purposes of a prosecution.
- (2) The order must specify the period for which the authorised officer may retain the thing.
- (3) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (4) The magistrate need not accept the power conferred.
- (5) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

Note: This clause corresponds closely to section 252E of the *Migration Act 1958*.

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Part 3 Searching and screening detainees and screening their visitors

Division 5 Law applying to detainee in State or Territory prison etc.

Clause 22

Division 5—Law applying to detainee in State or Territory prison etc.

22 Detainees held in State or Territory prisons or remand centres

- (1) This clause applies to a detainee if:
 - (a) he or she is held in detention in a prison or remand centre of a State or Territory; and
 - (b) a law of that State or Territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre.
- (2) To the extent that the State or Territory law confers that power, or affects the exercise of that power, it applies to the detainee as though it were a law of the Commonwealth.
- (3) Clauses 16 and 17 do not apply to a detainee to whom this clause applies.

Note: This clause corresponds closely to section 252F of the *Migration Act 1958*.

Division 6—Screening detainees' visitors

23 Powers concerning entry to premises where detainee is detained

- (1) An officer or detention officer may request that a person about to enter premises where a detainee is in detention do one or more of the following:
 - (a) walk through screening equipment;
 - (b) allow an officer or detention officer to pass hand-held screening equipment over or around the person or around things in the person's possession;
 - (c) allow things in the person's possession to pass through screening equipment or to be examined by X-ray.
- (2) **Screening equipment** means a metal detector or similar device for detecting objects or particular substances.
- (3) If an authorised officer suspects on reasonable grounds that a person about to enter premises where a detainee is in detention has in the person's possession a thing that might:
 - (a) endanger the safety of the detainees, staff or other persons on the premises; or
 - (b) disrupt the order or security arrangements on the premises;the authorised officer may request that the person do some or all of the things in subclause (4) for the purpose of finding out whether the person has such a thing. A request may be made whether or not a request is also made to the person under subclause (1).
- (4) An authorised officer may request that the person do one or more of the following:
 - (a) allow the authorised officer to inspect the things in the person's possession;
 - (b) remove some or all of the person's outer clothing such as a coat, jacket or similar item;
 - (c) remove items from the pockets of the person's clothing;

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Division 6 Screening detainees' visitors

Clause 23

- (d) open a thing in the person's possession, or remove the thing's contents, to allow the authorised officer to inspect the thing or its contents;
- (e) leave a thing in the person's possession, or some or all of its contents, in a place specified by the authorised officer if he or she suspects on reasonable grounds that the thing or its contents are capable of concealing something that might:
 - (i) endanger the safety of the detainees, staff or other persons on the premises; or
 - (ii) disrupt the order or security arrangements on the premises.
- (5) A person who leaves a thing (including any of its contents) in a place specified by an authorised officer is entitled to its return when the person leaves the premises.
- (6) However, if possession of the thing, or any of those contents, by the person is unlawful under a Commonwealth, State or Territory law applying to the premises:
 - (a) the thing or the contents must not be returned to the person; and
 - (b) an authorised officer must, as soon as practicable, give the thing or the contents to a constable (within the meaning of the *Crimes Act 1914*).
- (7) A person who is about to enter premises where a detainee is detained may be refused entry if the person does not comply with a request under this clause.

Note: This clause corresponds closely to section 252G of the *Migration Act 1958*.

Part 4—Detainees' rights to facilities for obtaining legal advice etc.

24 Detainee may have access to certain advice, facilities etc.

The person responsible for detention of a detainee must afford to him or her all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her detention.

Note: This clause corresponds to section 256 of the *Migration Act 1958*.

Part 5—Identifying detainees

Division 1—Preliminary

25 Definitions

In this Part, unless the contrary intention appears:

identification test means a test carried out in order to obtain a personal identifier.

incapable person means a person who is incapable of understanding the general nature and effect of, and purposes of, a requirement to provide a personal identifier.

independent person means a person (other than an officer, detention officer or authorised officer) who:

- (a) is capable of representing the interests of a non-citizen who is providing, or is to provide, a personal identifier; and
- (b) as far as practicable, is acceptable to the non-citizen who is providing, or is to provide, the personal identifier; and
- (c) if the non-citizen is a minor—is capable of representing the minor's best interests.

minor means a person who is less than 18 years old.

non-citizen means a person who is not an Australian citizen.

personal identifier has the meaning given by clause 26.

Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 5 of the *Migration Act 1958*.

26 Meaning of *personal identifier*

- (1) In this Part:

personal identifier means any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of a person (including those taken using paper and ink or digital liveness scanning technologies);
 - (b) a measurement of a person's height and weight;
 - (c) a photograph or other image of a person's face and shoulders;
 - (d) an audio or a video recording of a person (other than a video recording under clause 37);
 - (e) an iris scan;
 - (f) a person's signature;
 - (g) any other identifier prescribed by the regulations, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.
- (2) Before the Governor-General makes regulations for the purposes of paragraph (1)(g) prescribing an identifier, the Minister must be satisfied that:
- (a) obtaining the identifier would not involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*; and
 - (b) the identifier is an image of, or a measurement or recording of, an external part of the body; and
 - (c) obtaining the identifier will promote one or more of the purposes referred to in subclause (3).
- (3) The purposes are:
- (a) to assist in the identification of, and to authenticate the identity of, any person who can be required under this Act to provide a personal identifier; and
 - (b) to assist in identifying, in the future, any such person; and
 - (c) to enhance AFMA's ability to identify non-citizens who have a criminal history relating to fisheries; and
 - (d) to combat document and identity fraud in fisheries matters; and
 - (e) to complement anti-people smuggling measures; and

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Part 5 Identifying detainees

Division 1 Preliminary

Clause 27

- (f) to inform the governments of foreign countries of the identity of non-citizens who have been detained under, or charged with offences against, this Act; and
- (g) to facilitate international cooperation to combat fishing activities that involve a breach of the laws of Australia or of a foreign country.

Note: This clause corresponds closely to section 5A of the *Migration Act 1958*.

27 Limiting the types of identification tests that authorised officers may carry out

- (1) AFMA may, in an instrument authorising an officer or detention officer as an authorised officer for the purposes of carrying out identification tests under this Part, specify the types of identification tests that the authorised officer may carry out.
- (2) Such an authorised officer is not an authorised officer in relation to carrying out an identification test that is not of a type so specified.

Note: This clause corresponds closely to section 5D of the *Migration Act 1958*.

Division 2—Identification of detainees

Subdivision A—Provision of personal identifiers

28 Detainees must provide personal identifiers

- (1) A non-citizen in detention must (other than in the prescribed circumstances) provide to an authorised officer one or more personal identifiers.

Note: A person who is an Australian citizen, or is a non-citizen but an Australian resident, may be in detention but must be released as soon as an officer or detention officer knows or reasonably believes the person is an Australian citizen or resident.

- (2) An authorised officer must not require, for the purposes of subclause (1), a detainee to provide a personal identifier other than any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of the detainee (including those taken using paper and ink or digital liveness technologies);
- (b) a measurement of the detainee's height and weight;
- (c) a photograph or other image of the detainee's face and shoulders;
- (d) the detainee's signature;
- (e) any other personal identifier of a type prescribed for the purposes of this paragraph.

Note: Division 3 sets out further restrictions on the personal identifiers that minors and incapable persons can be required to provide.

- (3) The one or more personal identifiers are to be provided by way of one or more identification tests carried out by the authorised officer in accordance with this Division.

Note 1: Subject to certain restrictions, clause 32 allows reasonable force to be used to carry out identification tests under this Division.

Note 2: This clause corresponds closely to section 261AA of the *Migration Act 1958*.

29 Authorised officers must require and carry out identification tests

- (1) The authorised officer must, other than in the circumstances prescribed for the purposes of subclause 28(1):
 - (a) require the non-citizen to provide one or more personal identifiers, of the type or types prescribed, by way of one or more identification tests carried out by the authorised officer; and
 - (b) carry out the one or more identification tests on the non-citizen.
- (2) However:
 - (a) if the types of identification tests that the authorised officer may carry out is specified under clause 27—each identification test must be of a type so specified; and
 - (b) each identification test must be carried out in accordance with Subdivision B; and
 - (c) unless the authorised officer has reasonable grounds to believe that the non-citizen is not a minor or an incapable person—each identification test must be carried out in accordance with the additional requirements of Division 3.

Note: Subclauses (1) and (2) correspond closely to section 261AB of the *Migration Act 1958*.

- (3) If:
 - (a) the authorised officer is authorised because of clause 7 (which effectively treats as authorised officers for the purposes of certain provisions of this Schedule certain persons who are authorised officers for the purposes of certain provisions of the *Migration Act 1958*); and
 - (b) an instrument under section 5D of that Act specifies the types of identification test the authorised officer may carry out;paragraph (2)(a) of this clause has effect as if the specified types (except any specified under subclause 7(3) in relation to the authorised officer) had been specified under clause 27.

30 Information to be provided before carrying out identification tests

- (1) Before carrying out an identification test, the authorised officer must:
 - (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and
 - (b) inform the non-citizen of such other matters as are specified in the regulations.
- (2) For the purposes of subclause (1), the authorised officer *informs* the non-citizen of a matter if the authorised officer informs the non-citizen of the matter, through an interpreter if necessary, in a language (including sign language or braille) in which the non-citizen is able to communicate with reasonable fluency.
- (3) The authorised officer may comply with this clause by giving to the non-citizen, in accordance with the regulations, a form setting out the information specified in the regulations. However, the information must be in a language (including braille) in which the non-citizen is able to communicate with reasonable fluency.

Note: This clause corresponds closely to section 261AC of the *Migration Act 1958*.

- (4) A form mentioned in subclause (3) is not a legislative instrument.

Subdivision B—How identification tests are carried out

31 General rules for carrying out identification tests

An identification test under this Division:

- (a) must be carried out in circumstances affording reasonable privacy to the non-citizen; and
- (b) if the non-citizen so requests and it is practicable to comply with the request—must not be carried out in the presence or

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Division 2 Identification of detainees

Clause 32

view of a person who is of the opposite sex to the non-citizen; and

- (c) must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the identification test or is not required or permitted by another provision of this Act; and
- (d) must not involve the removal of more clothing than is necessary for carrying out the test; and
- (e) must not involve more visual inspection than is necessary for carrying out the test; and
- (f) if the test is one of 2 or more identification tests to be carried out on the non-citizen—must be carried out at the same time as the other identification tests, if it is practicable to do so.

Note: This clause corresponds closely to section 261AD of the *Migration Act 1958*.

32 Use of force in carrying out identification tests

When use of force is permitted

- (1) Subject to subclause (2) and clause 33, an authorised officer, or a person authorised under clause 34 to help the authorised officer, may use reasonable force:
 - (a) to enable the identification test to be carried out; or
 - (b) to prevent the loss, destruction or contamination of any personal identifier or any meaningful identifier derived from the personal identifier.However, this clause does not authorise the use of force against a minor or an incapable person, or if the personal identifier in question is a person's signature.
- (2) The authorised officer or person must not use force unless:
 - (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
 - (b) all reasonable measures to carry out the identification test without the use of force have been exhausted; and

- (c) use of force in carrying out the identification test is authorised under subclause (4).

Applications for authorisation to use force

- (3) An authorised officer may apply to a senior authorising officer (who is not an authorised officer referred to in subclause (1)) for an authorisation to use force in carrying out the identification test.

Authorisation to use force

- (4) The senior authorising officer may authorise the use of force in carrying out the identification test if he or she is reasonably satisfied that:
- (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
 - (b) all reasonable measures to carry out the identification test without the use of force have been exhausted.
- (5) An authorisation under subclause (4):
- (a) may be given by telephone, fax or other electronic means; and
 - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.
- (8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

Definition

- (9) In this clause:

Clause 33

senior authorising officer means an officer, or detention officer, whom AFMA has authorised, or who is included in a class of officers or detention officers whom AFMA has authorised, to perform the functions of a senior authorising officer under this clause.

Note: This clause corresponds closely to section 261AE of the *Migration Act 1958*.

33 Identification tests not to be carried out in cruel, inhuman or degrading manner etc.

For the purposes of this Act, the carrying out of the identification test is not of itself taken:

- (a) to be cruel, inhuman or degrading; or
- (b) to be a failure to treat a person with humanity and with respect for human dignity.

However, nothing in this Act authorises the carrying out of the identification test in a cruel, inhuman or degrading manner, or in a manner that fails to treat a person with humanity and with respect for human dignity.

Note: This clause corresponds closely to section 261AF of the *Migration Act 1958*.

34 Authorised officer may get help to carry out identification tests

An authorised officer may ask another authorised officer or an officer or detention officer to help him or her to carry out the identification test, and the other person may give that help.

Note: This clause corresponds closely to section 261AG of the *Migration Act 1958*.

35 Identification tests to be carried out by authorised officer of same sex as non-citizen

If the non-citizen requests that the identification test be carried out by an authorised officer of the same sex as the non-citizen, the test

must only be carried out by an authorised officer of the same sex as the non-citizen.

Note: This clause corresponds closely to section 261AH of the *Migration Act 1958*.

36 Independent person to be present

The identification test must be carried out in the presence of an independent person if:

- (a) force is used in carrying out the identification test; or
- (b) both of the following apply:
 - (i) the non-citizen requests that an independent person be present while the identification test is being carried out;
 - (ii) an independent person is readily available at the same place as the non-citizen and is willing to attend the test within a reasonable time.

Note: This clause corresponds closely to section 261AI of the *Migration Act 1958*.

37 Recording of identification tests

- (1) An authorised officer may video record the carrying out of the identification test.
- (2) If the carrying out of the identification test is not video recorded, the authorised officer may decide that the identification test must be carried out in the presence of an independent person.

Note: This clause corresponds closely to section 261AJ of the *Migration Act 1958*.

38 Retesting

When retesting is permitted

- (1) If:

- (a) an authorised officer has carried out an identification test (the *earlier test*) on a non-citizen in accordance with this Division (including a test authorised under subclause (4)); and
- (b) either:
 - (i) a personal identifier that is provided as a result of the earlier test being carried out is unusable; or
 - (ii) an authorised officer, officer or detention officer is not satisfied about the integrity of that personal identifier;the authorised officer who carried out the earlier test or another authorised officer may require the non-citizen to provide the personal identifier again, and may carry out the test again in accordance with this Division, if:
 - (c) the requirement is made while the earlier test is being carried out or immediately after it was carried out; or
 - (d) carrying out the test again is authorised under subclause (4).
- (2) If the non-citizen is required under subclause (1) to provide the personal identifier again, the non-citizen is taken, for the purposes of this Division, not to have provided the personal identifier as a result of the earlier test being carried out.

Applications for authorisation to retest

- (3) An authorised officer may apply for an authorisation to carry out the test again. The application is to be made to:
 - (a) if the earlier test was not a test authorised under subclause (4)—a senior authorising officer (who is not an authorised officer, officer or detention officer referred to in subclause (1)); or
 - (b) if the earlier test was a test authorised under subclause (4) by a senior authorising officer—the CEO, the Secretary of the Department or an SES Band 3 employee in the Department (who is not an authorised officer, officer or detention officer referred to in subclause (1)).

Authorisation to retest

- (4) The senior authorising officer, CEO, Secretary or SES Band 3 employee (as the case requires) may authorise the test to be carried out again if:
- (a) he or she is reasonably satisfied that the personal identifier that is provided as a result of the earlier test being carried out is unusable; or
 - (b) he or she is not reasonably satisfied about the integrity of that personal identifier.
- (5) An authorisation under subclause (4):
- (a) may be given by telephone, fax or other electronic means; and
 - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.
- (8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

Use of force

- (9) An authorisation under subclause (4) does not authorise the use of force in carrying out an identification test.

Note: See clause 32 on the use of force in carrying out identification tests.

Effect of refusing to authorise retesting

- (10) If an application for an authorisation to carry out an identification test again on a non-citizen is refused, the non-citizen is taken, for the purposes of this Act, to have complied with any requirement under this Act to provide the personal identifier in question.

Definitions

(11) In this clause:

senior authorising officer means an officer, or detention officer, who:

- (a) has been authorised, or is included in a class of officers or detention officers who have been authorised, by AFMA to perform the functions of a senior authorising officer under this clause; and
- (b) is not the CEO, the Secretary of the Department or an SES Band 3 employee in the Department.

SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 261AK of the *Migration Act 1958*.

Subdivision C—Obligations relating to video recordings of identification tests

39 Definitions

In this Subdivision, unless the contrary intention appears:

permitted provision, of a video recording, has the meaning given by subclause 42(2).

provide, in relation to a video recording, includes provide access to the recording.

related document means a document that contains information, derived from a video recording made under clause 37 or from a copy of such a recording, from which the identity of the individual on whom the identification test in question was carried out is apparent or can reasonably be ascertained.

video recording means a video recording made under clause 37 or a copy of such a recording, and includes a related document.

Note: This clause corresponds closely to section 261AKA of the *Migration Act 1958*.

40 Accessing video recordings

- (1) A person commits an offence if:
 - (a) the person accesses a video recording; and
 - (b) the person is not authorised under clause 41 to access the video recording for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

- (2) This clause does not apply if the access is through the provision of a video recording that is a permitted provision.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 261AKB of the *Migration Act 1958*.

41 Authorising access to video recordings

- (1) AFMA may, in writing, authorise a specified person, or any person included in a specified class of persons, to access:
 - (a) all video recordings; or
 - (b) a specified video recording, or video recordings of a specified kind.
- (2) AFMA must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
 - (a) providing a video recording to another person in accordance with this Subdivision;
 - (b) administering or managing the storage of video recordings;
 - (c) making a video recording available to the person to whom it relates;

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Part 5 Identifying detainees

Division 2 Identification of detainees

Clause 42

- (d) modifying related documents in order to correct errors or ensure compliance with appropriate standards;
 - (e) any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Act;
 - (f) complying with laws of the Commonwealth or the States or Territories;
 - (g) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, AFMA must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
- (a) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
 - (b) prosecuting a person for such an offence;
- if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 261AKC of the *Migration Act 1958*.

42 Providing video recordings

- (1) A person commits an offence if:
- (a) the person's conduct causes a video recording to be provided to another person; and
 - (b) the provision of the recording is not a permitted provision of the recording.

Penalty: Imprisonment for 2 years.

- (2) A ***permitted provision*** of a video recording is a provision of the recording that:
- (a) is for the purpose of administering or managing the storage of video recordings; or

- (b) is for the purpose of making the video recording in question available to the non-citizen to whom it relates; or
 - (c) is for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the video recording in question relates; or
 - (d) is for any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Act; or
 - (e) is for the purpose of an investigation by the Information Commissioner under the *Privacy Act 1988* or the Ombudsman relating to carrying out an identification test; or
 - (f) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Act relating to carrying out an identification test; or
 - (g) takes place with the written consent of the non-citizen to whom the video recording in question relates; or
 - (h) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, a provision of a video recording is not a permitted provision of the recording if:
- (a) it constitutes a disclosure of identifying information relating to a personal identifier of a prescribed type; and
 - (b) it is for the purpose of:
 - (i) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
 - (ii) prosecuting a person for such an offence.

Note: This clause corresponds closely to section 261AKD of the *Migration Act 1958*.

43 Unauthorised modification of video recordings

A person commits an offence if:

- (a) the person causes any unauthorised modification of a video recording; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

44 Unauthorised impairment of video recordings

A person commits an offence if:

- (a) the person causes any unauthorised impairment of:
 - (i) the reliability of a video recording; or
 - (ii) the security of the storage of a video recording; or
 - (iii) the operation of a system by which a video recording is stored; and
- (b) the person intends to cause the impairment; and
- (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

45 Meanings of *unauthorised modification* and *unauthorised impairment* etc.

(1) In this Subdivision:

- (a) modification of a video recording; or
- (b) impairment of the reliability of a video recording; or
- (c) impairment of the security of the storage of a video recording; or
- (d) impairment of the operation of a system by which a video recording is stored;

by a person is unauthorised if the person is not entitled to cause that modification or impairment.

- (2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Subdivision, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subclause (1), if:
 - (a) a person causes any modification or impairment of a kind mentioned in that subclause; and
 - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 261AKG of the *Migration Act 1958*.

46 Destroying video recordings

A person commits an offence if:

- (a) the person is the person who has day-to-day responsibility for the system under which a video recording is stored; and
- (b) the person fails physically to destroy the recording, and all copies of the recording, within 10 years after it was made.

Penalty: Imprisonment for 2 years.

Division 3—Identification of minors and incapable persons

47 Minors

Minors less than 15 years old

- (1) A non-citizen who is less than 15 years old must not be required under this Act to provide a personal identifier other than a personal identifier consisting of:
 - (a) a measurement of the non-citizen's height and weight; or
 - (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

Persons present while identification test is carried out

- (2) If a non-citizen who is a minor provides a personal identifier, in accordance with a requirement under this Act, by way of an identification test carried out by an authorised officer, the test must be carried out in the presence of:
 - (a) a parent or guardian of the minor; or
 - (b) an independent person.
- (3) However, if the Minister administering the *Immigration (Guardianship of Children) Act 1946* is the guardian of the minor, the test must be carried out in the presence of an independent person other than that Minister.

Note: This clause corresponds closely to subsections 261AL(1), (5) and (6) of the *Migration Act 1958*.

48 Incapable persons

Incapable persons

- (1) A non-citizen who is an incapable person must not be required under this Act to provide a personal identifier other than a personal identifier consisting of:
 - (a) a measurement of the non-citizen's height and weight; or

- (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

Persons present while identification test is carried out

- (2) If a non-citizen who is an incapable person provides a personal identifier, in accordance with a requirement under this Act, by way of an identification test carried out by an authorised officer, the test must be carried out in the presence of:
 - (a) a parent or guardian of the incapable person; or
 - (b) an independent person.

Note: This clause corresponds closely to subsections 261AM(1) and (4) of the *Migration Act 1958*.

Division 4—Obligations relating to detainees' identifying information

Subdivision A—Preliminary

49 Definitions

In this Division:

disclose, in relation to identifying information that is a personal identifier provided under clause 28, includes provide unauthorised access to the personal identifier.

Note: Clause 52 deals with authorised access to identifying information.

identifying information means the following:

- (a) any personal identifier provided under clause 28;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;
- (d) any other information, derived from any such personal identifier, from any meaningful identifier derived from any such personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.

permitted disclosure has the meaning given by subclauses 53(2) and (3).

unauthorised impairment has the meaning given by clause 57.

unauthorised modification has the meaning given by clause 57.

Note: This clause corresponds closely to section 336A of the *Migration Act 1958*.

50 Application

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Division.

Note: This clause corresponds closely to section 336B of the *Migration Act 1958*.

Subdivision B—Accessing identifying information

51 Accessing identifying information

- (1) A person commits an offence if:
- (a) the person accesses identifying information; and
 - (b) the person is not authorised under clause 52 to access the identifying information for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

- (1A) This clause does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) This clause does not apply if the access is through a disclosure that is a permitted disclosure.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 336C of the *Migration Act 1958*.

52 Authorising access to identifying information

- (1) AFMA may, in writing, authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation.
- (2) AFMA must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
 - (a) one or more of the purposes set out in subclause 26(3);
 - (b) disclosing identifying information in accordance with this Division;
 - (c) administering or managing the storage of identifying information;
 - (d) making identifying information available to the person to whom it relates;
 - (e) modifying identifying information to enable it to be matched with other identifying information;
 - (f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;
 - (g) the purposes of this Act;
 - (h) complying with laws of the Commonwealth or the States or Territories;
 - (i) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, AFMA must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
 - (a) investigating an offence against a law of the Commonwealth or a State or Territory; or
 - (b) prosecuting a person for such an offence;if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 336D of the *Migration Act 1958*.

Subdivision C—Disclosing identifying information

53 Disclosing identifying information

- (1) A person commits an offence if:
- (a) the person's conduct causes disclosure of identifying information; and
 - (b) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 2 years.

- (1A) This clause does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A **permitted disclosure** is a disclosure that:
- (a) is for the purpose of data-matching in order to:
 - (i) identify, or authenticate the identity of, a person; or
 - (ii) facilitate the processing of persons entering or departing from Australia; or
 - (iii) identify non-citizens who have a criminal history, who are of character concern (as defined in the *Migration Act 1958*) or who are of national security concern; or
 - (iv) combat document and identity fraud in immigration matters; or
 - (v) ascertain whether an applicant for a protection visa had sufficient opportunity to avail himself or herself of protection before arriving in Australia; or
 - (vi) inform the governments of foreign countries of the identity of non-citizens who are, or are to be, removed from Australia; or
 - (b) is for the purpose of administering or managing the storage of identifying information; or

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- (c) is authorised under clause 54 and is for the purpose, or one or more of the purposes, for which the disclosure is authorised; or
- or
- (d) is for the purpose of making the identifying information in question available to the person to whom it relates; or
- (da) is to an agency of the Commonwealth or of a State or Territory in order to verify that a person is an Australian citizen or holds a visa of a particular class; or
- (e) takes place under an arrangement entered into with an agency of the Commonwealth, or with a State or Territory or an agency of a State or Territory, for the exchange of identifying information; or
- (ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth or of a State or Territory; or
- (eb) is required by or under a law of the Commonwealth or of a State or Territory; or
- (f) is for the purpose of a proceeding, before a court or tribunal, relating to the person to whom the identifying information in question relates; or
- (g) is for the purpose of an investigation by the Information Commissioner or the Ombudsman relating to action taken by the Department; or
- (h) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Act relating to:
 - (i) carrying out an identification test; or
 - (ii) requiring the provision of a personal identifier; or
- (ha) is a disclosure of an audio or a video recording for the purposes of:
 - (i) this Act or the regulations; and
 - (ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or
- (i) takes place with the written consent of the person to whom the identifying information in question relates; or
- (j) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the

purposes of the immigration detention or removal of the person).

- (3) However, a disclosure is not a permitted disclosure if:
- (a) it is a disclosure of identifying information relating to a personal identifier of a prescribed type; and
 - (b) it is for the purpose of:
 - (i) investigating an offence against a law of the Commonwealth or a State or Territory; or
 - (ii) prosecuting a person for such an offence.

Note: This clause corresponds closely to section 336E of the *Migration Act 1958*.

54 Authorising disclosure of identifying information to foreign countries etc.

- (1) AFMA may, in writing, authorise a specified officer or detention officer, any officer or detention officer included in a specified class of officers or detention officers, or an Agency (as defined in the *Public Service Act 1999*) prescribed by the regulations, to disclose identifying information of the kind specified in the authorisation to one or more of the following:
- (a) one or more specified foreign countries;
 - (b) one or more specified bodies each of which is:
 - (i) a police force or police service of a foreign country; or
 - (ii) a law enforcement body of a foreign country; or
 - (iii) a border control body of a foreign country;
 - (c) one or more specified international organisations, or specified organisations of foreign countries, that are responsible for fisheries matters;
 - (d) one or more prescribed bodies of a foreign country, of the Commonwealth or of a State or Territory;
 - (e) one or more prescribed international organisations.
- (2) AFMA must specify in the authorisation, as the purpose or purposes for which disclosure is authorised, one or more of the purposes set out in subclause 26(3).

Clause 55

Note: This clause corresponds closely to subsections 336F(1) and (2) of the *Migration Act 1958*.

Subdivision D—Modifying and impairing identifying information

55 Unauthorised modification of identifying information

A person commits an offence if:

- (a) the person causes any unauthorised modification of identifying information; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

56 Unauthorised impairment of identifying information

A person commits an offence if:

- (a) the person causes any unauthorised impairment of:
 - (i) the reliability of identifying information; or
 - (ii) the security of the storage of identifying information; or
 - (iii) the operation of a system by which identifying information is stored; and
- (b) the person intends to cause the impairment; and
- (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

57 Meanings of *unauthorised modification* and *unauthorised impairment* etc.

(1) In this Division:

- (a) modification of identifying information; or
- (b) impairment of the reliability of identifying information; or
- (c) impairment of the security of the storage of identifying information; or

- (d) impairment of the operation of a system by which identifying information is stored;
by a person is unauthorised if the person is not entitled to cause that modification or impairment.
- (2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Division, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subclause (1), if:
- (a) a person causes any modification or impairment of a kind mentioned in that subclause; and
 - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;
- the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 336J of the *Migration Act 1958*.

Subdivision E—Retaining identifying information

58 Identifying information may be indefinitely retained

Identifying information may be indefinitely retained.

Note: This clause corresponds closely to paragraph 336L(1)(a) of the *Migration Act 1958*, because under this Schedule identifying information will always be about someone who is or has been in detention.

Part 6—Disclosure of detainees' personal information

59 Disclosure of detainees' personal information

- (1) For the purposes described in subclause (2), an agency or organisation that is or has been responsible for the detention of an individual may disclose personal information about the individual to an agency, or organisation, that is or will be responsible for:
- (a) taking the individual into immigration detention; or
 - (b) keeping the individual in immigration detention; or
 - (c) causing the individual to be kept in immigration detention; or
 - (d) the removal of the individual.

- (2) The purposes are:
- (a) the immigration detention of the individual; and
 - (b) the removal of the individual; and
 - (c) the welfare of the individual while in immigration detention or being removed.

- (3) In this clause:

agency has the same meaning as in the *Privacy Act 1988*.

immigration detention has the same meaning as in the *Migration Act 1958*.

organisation has the same meaning as in the *Privacy Act 1988*.

personal information has the same meaning as in the *Privacy Act 1988*.

removal has the same meaning as in the *Migration Act 1958*.

Schedule 1—Treaty on fisheries between the Governments of certain Pacific Island States and the United States of America

Section 4

The Governments of the Pacific Island States party to this Treaty and the Government of the United States of America:

ACKNOWLEDGING that in accordance with international law, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones or fisheries zones;

RECOGNISING the strong dependence of the Pacific Island parties on fisheries resources and the importance of the continued abundance of those resources;

BEARING IN MIND that some species of fish are found within and beyond the jurisdiction of any of the parties and range throughout a broad region; and

DESIRING to maximise benefits flowing from the development of the fisheries resources within the exclusive economic zones or fisheries zones of the Pacific Island parties;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 In this Treaty:

- (a) “Administrator” means that person or organisation designated by the Pacific Island parties to act as such on their behalf pursuant to this Treaty and notified to the Government of the United States;

- (b) “final judgment” means a judgment from which no appeal proceedings have been initiated within sixty days;
 - (c) “fishing” means:
 - (i) searching for, catching, taking or harvesting fish;
 - (ii) attempting to search for, catch, take or harvest fish;
 - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
 - (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
 - (v) any operations at sea directly in support of, or in preparation for any activity described in this paragraph; or
 - (vi) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;
 - (d) “fishing vessel of the United States” or “vessel” means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for commercial fishing, which is documented under the laws of the United States;
 - (e) “Licensing Area” means all waters in the Treaty Area except for:
 - (i) waters subject to the jurisdiction of the United States in accordance with international law; and
 - (ii) waters closed to fishing by fishing vessels of the United States in accordance with Annex I;
 - (f) “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;
 - (g) “Pacific Island party” means a Pacific Island State party to this Treaty and “Pacific Island parties” means all such States from time to time;
 - (h) “Pacific Island State” means a party to the South Pacific Forum Fisheries Agency Convention, 1979;
 - (i) “party” means a State party to this Treaty, and “parties” means all such States, from time to time;
 - (j) “this Treaty” means this Treaty, its Annexes and Schedules; and
 - (k) “Treaty Area” means all waters north of 60 degrees South latitude and east of 90 degrees East longitude, subject to the fisheries jurisdiction of Pacific Island parties, and all other waters within rhumb lines connecting the following geographic co-ordinates, designated for the
-

purposes of this Treaty, except for waters subject to the jurisdiction in accordance with international law of a State which is not a party to this Treaty:

2°35'39''S	141°00'00''E
1°01'35''N	140°48'35''E
1°01'35''N	129°30'00''E
10°00'00''N	129°30'00''E
14°00'00''N	140°00'00''E
14°00'00''N	142°00'00''E
12°30'00''N	142°00'00''E
12°30'00''N	158°00'00''E
15°00'00''N	158°00'00''E
15°00'00''N	165°00'00''E
18°00'00''N	165°00'00''E
18°00'00''N	174°00'00''E
12°00'00''N	174°00'00''E
12°00'00''N	176°00'00''E
5°00'00''N	176°00'00''E
1°00'00''N	180°00'00''
1°00'00''N	164°00'00''W
8°00'00''N	164°00'00''W
8°00'00''N	158°00'00''W
0°00'00''	150°00'00''W
6°00'00''S	150°00'00''W
6°00'00''S	146°00'00''W
12°00'00''S	146°00'00''W
26°00'00''S	157°00'00''W
26°00'00''S	174°00'00''W
40°00'00''S	174°00'00''W
40°00'00''S	171°00'00''W
46°00'00''S	171°00'00''W
55°00'00''S	180°00'00''
59°00'00''S	160°00'00''E

59°00'00''S

152°00'00''E

and north along the 152 degrees of East longitude until intersecting the Australian 200 nautical mile limit.

1.2 Nothing in this Treaty shall be deemed to affect the applicability of any provision of a Pacific Island party's law which is not identified or otherwise described in this Treaty.

ARTICLE 2

BROADER CO-OPERATION

2.1 The Government of the United States shall, as appropriate, co-operate with the Pacific Island parties through the provision of technical and economic support to assist the Pacific Island parties to achieve the objective of maximizing benefits from the development of their fisheries resources.

2.2 The Government of the United States shall, as appropriate, promote the maximization of benefits generated for the Pacific Island parties from the operations of fishing vessels of the United States licensed pursuant to this Treaty, including:

- (a) the use of canning, transshipment, slipping and repair facilities located in the Pacific Island parties;
- (b) the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island parties; and
- (c) the employment of nationals of the Pacific Island parties on board licensed fishing vessels of the United States.

ARTICLE 3

ACCESS TO THE TREATY AREA

3.1 Fishing vessels of the United States shall be permitted to engage in fishing in the Licensing Area in accordance with the terms and conditions referred to in Annex I and licences issued in accordance with the procedures set out in Annex II.

3.2 It shall be a condition of any licence issued pursuant to this Treaty that the vessel in respect of which the licence is issued is operated in accordance with the requirements of Annex I. No fishing vessel of the United States shall be

used for fishing in the Licensing Area without a licence issued in accordance with Annex II or in waters closed to fishing pursuant to Annex I, except in accordance with paragraph 3 of this Article, or unless the vessel is used for fishing albacore tuna by the trolling method in high seas areas of the Treaty Area.

3.3 A Pacific Island party may permit fishing vessels of the United States to engage in fishing in waters under the jurisdiction of that party which are:

- (a) within the Treaty Area but outside the Licensing Area; or
- (b) except for purse seine vessels, within the Licensing Area but otherwise than in accordance with the terms and conditions referred to in Annex I,

in accordance with such terms and conditions as may be agreed from time to time with the owners of the said vessels or their representatives. In such a case, if the Pacific Island party gives notice to the Government of the United States of such arrangements, and if the Government of the United States concurs, the procedures of Articles 4 and 5.6 shall be applicable to such arrangements.

ARTICLE 4

FLAG STATE RESPONSIBILITY

4.1 The Government of the United States shall enforce the provisions of this Treaty and licences issued thereunder. The Government of the United States shall take the necessary steps to ensure that nationals and fishing vessels of the United States refrain from fishing in the Licensing Area and in waters closed to fishing pursuant to Annex I, except as authorised in accordance with Article 3.

4.2 The Government of the United States shall, at the request of the Government of a Pacific Island party, take all reasonable measures to assist that party in the investigation of an alleged breach of this Treaty by a fishing vessel of the United States and promptly communicate all the requested information to that party.

4.3 The Government of the United States shall ensure that:

- (a) each fishing vessel of the United States licensed pursuant to this Treaty is fully insured against all risks and liabilities;
- (b) all measures are taken to facilitate:
 - (i) any claim arising out of the activities of a fishing vessel of the United States, including a claim for the total market

- value of any fish taken from the Licensing Area without authorisation pursuant to this Treaty, and the prompt settlement of that claim;
- (ii) the service of legal process by or on behalf of a national or the Government of a Pacific Island party in any action arising out of the activities of a fishing vessel of the United States;
 - (iii) the prompt and full adjudication in the United States of any claim made pursuant to this Treaty;
 - (iv) the prompt and full satisfaction of any final judgment or other final determination made pursuant to this Treaty; and
 - (v) the provision of a reasonable level of financial assurances, if, after consultation with the Government of the United States, all Pacific Island parties agree that the collection of any civil or criminal judgment or judgments or determination or determinations made pursuant to this Treaty has become a serious enforcement problem;
- (c) an amount equivalent to the total value of any forfeiture, fine, penalty or other amount collected by the Government of the United States incurred as a result of any actions, judicial or otherwise, taken pursuant to this Article is paid to the Administrator as soon as possible following the date that the amount is collected.

4.4 The Government of the United States shall, at the request of the Government of a Pacific Island party, fully investigate any alleged infringement of this Treaty involving a vessel of the United States, and report as soon as practicable and in any case within two months to that Government on that investigation and on any action taken or proposed to be taken by the Government of the United States in relation to the alleged infringement.

4.5 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States:

- (a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area, except in accordance with paragraph 2 of Article 3; or
- (b) was involved in any incident in which an authorised officer or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the

performance of his or her duties as authorised pursuant to this Treaty;
or

that there was probable cause to believe that a fishing vessel of the United States:

- (c) was used for fishing in waters closed to fishing pursuant to Annex I, except as authorised in accordance with paragraph 3 of Article 3;
- (d) was used for fishing in any Limited Area as described in Annex I, except as authorised in accordance with that Annex I;
- (e) was used for fishing by any method other than the purse seine method, except in accordance with paragraph 2 of Article 3;
- (f) was used for directed fishing for Southern Bluefin Tuna or for fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch;
- (g) used an aircraft for fishing which was not identified on a form provided pursuant to Schedule 1 of Annex II in relation to that vessel;
or
- (h) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed;

and that such vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned leaves the Licensing Area and waters closed to fishing pursuant to Annex I immediately and does not return except for the purpose of submitting to the jurisdiction of the party, or after action has been taken by the Government of the United States to the satisfaction of that party.

4.6 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States has been involved in a probable infringement of this Treaty, including an infringement of an applicable national law as identified in Schedule 1 of Annex I, other than an infringement of the kind described in paragraph 5 of this Article, and that the vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned:

- (a) submits to the jurisdiction of that party; or
- (b) is penalised by the Government of the United States at such level as may be provided for like violations in United States law relating to

foreign fishing vessels licensed to fish in the exclusive economic zone of the United States but not to exceed the sum of US\$250,000.

4.7 Financial assurances provided pursuant to this Treaty may be drawn against by any Pacific Island party to satisfy any civil or criminal judgment or other determination in favour of a national or the Government of a Pacific Island party.

4.8 Prior to instituting any legal proceedings pursuant to this Article concerning an alleged infringement of this Treaty in waters within the jurisdiction, for any purpose, as recognised by international law, of a Pacific Island party, the Government of the United States shall notify the Government of that Pacific Island party that such proceedings shall be instituted. Such notice shall include a statement of the facts believed to show an infringement of this Treaty and the nature of the proposed proceedings, including the proposed charges and the proposed penalties to be sought. The Government of the United States shall not institute such proceedings if the Government of that Pacific Island party objects within 30 days of the effective date of such notice.

4.9 The Government of the United States shall ensure that an agent is appointed and maintained in accordance with the requirements of subparagraphs (a) and (b) of this paragraph, with authority to receive and respond to any legal process issued by a Pacific Island party in respect of an operator of any fishing vessel of the United States (identified in the form set out in Schedule 1 of Annex II) and shall notify the Administrator of the name and address of such agent, who:

- (a) shall be located in Port Moresby for the purpose of receiving and responding to any legal process issued in accordance with this Article; and
- (b) shall, within 21 days of notification that legal process has been issued in accordance with this Article, travel to any Pacific Island party, at no expense to that party, for the purpose of receiving and responding to that process.

ARTICLE 5

COMPLIANCE POWERS

5.1 It is recognised that the respective Pacific Island parties may enforce the provisions of this Treaty and licences issued thereunder, including arrangements

made pursuant to Article 3.3 and licences issued thereunder, in waters under their respective jurisdictions.

5.2 The Governments of the Pacific Island parties shall promptly notify the Government of the United States of any arrest of a fishing vessel of the United States or any of its crew and of any charges filed or proceedings instituted following the arrest, in accordance with this Article.

5.3 Fishing vessels of the United States and their crews arrested for breach of this Treaty shall be promptly released upon the posting of a reasonable bond or other security. Penalties applied in accordance with this Treaty for fishing violations shall not be unreasonable in relation to the offence and shall not include imprisonment or corporal punishment.

5.4 The Government of the United States shall not apply sanctions of any kind including deductions, however effected, from any amounts which might otherwise have been paid to any Pacific Island party, and restrictions on trade with any Pacific Island party, as a result of any enforcement measure taken by a Pacific Island party in accordance with this Article.

5.5 The Governments of the parties shall adopt and inform the other parties of such provisions in their national laws as may be necessary to give effect to this Treaty.

5.6 Where legal proceedings have been instituted by the Government of the United States pursuant to Article 4, no Pacific Island party shall proceed with any legal action in respect of the same alleged infringement as long as such proceedings are maintained. Where penalties are levied or proceedings are otherwise concluded by the Government of the United States pursuant to Article 4, the Pacific Island party which has received notice of such final determination shall withdraw any legal charges or proceedings in respect of the same alleged infringement.

5.7 During any period in which a party is investigating any infringement of this Treaty involving a fishing vessel of the United States, being an infringement which is alleged to have taken place in waters within the jurisdiction, for any purpose, as recognised by international law, of a Pacific Island party, and if that Pacific Island party so notifies the other parties, any licence issued in respect of that vessel shall, for the purposes of Article 3, be deemed not to authorise fishing in the waters of that Pacific Island party.

5.8 If full payment of any amount due as a result of a final judgment or other final determination deriving from an occurrence in waters within the jurisdiction, for any purpose, of a Pacific Island party, is not made to that party within sixty (60) days, the licence for the vessel involved shall be suspended at the request of that party and that vessel shall not be authorised to fish in the Licensing Area until that amount is paid to that party.

ARTICLE 6

CONSULTATIONS AND DISPUTE SETTLEMENT

6.1 At the request of any party, consultations shall be held with any other party within sixty (60) days of the date of receipt of the request. All other parties shall be notified of the request for consultations and any party shall be permitted to participate in such consultations.

6.2 Any dispute between the Government of the United States and the Government of one or more Pacific Island parties in relation to or arising out of this Treaty may be submitted by any such party to an arbitral tribunal for settlement by arbitration no earlier than one hundred and twenty (120) days following a request for consultations under Article 6.1. Unless the parties to the dispute agree otherwise, the Arbitration Rules of the United Nations Commission on International Trade Law as at present in force, shall be used.

6.3 The Government or Governments of the Pacific Island party or parties to the dispute shall appoint one arbitrator and the Government of the United States shall appoint one arbitrator. The third arbitrator, who shall act as presiding arbitrator of the tribunal, shall be appointed by agreement of the parties to the dispute. In the event of a failure to appoint any arbitrator within the time period provided in the Rules, the arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration at The Hague.

6.4 Unless the parties to the dispute agree otherwise, the place of arbitration shall be Port Moresby. The tribunal may hold meetings at such other place or places within the territory of a Pacific Island party or elsewhere within the Pacific Islands region as it may determine. An award or other decision shall be final and binding on the parties to the arbitration, and, unless the parties agree otherwise, shall be made public. The parties shall promptly carry out any award or other decision of the tribunal.

6.5 The fees and expenses of the tribunal shall be paid half by the Government or Governments of the Pacific Island party or parties to the arbitration and half by the Government of the United States, unless the parties to the arbitration agree otherwise.

ARTICLE 7

REVIEW OF THE TREATY

7. The parties shall meet once each year for the purpose of reviewing the operation of this Treaty.

ARTICLE 8

AMENDMENT OF THE TREATY

8. The following procedures shall apply to the adoption and entry into force of any amendment to this Treaty.

- (a) Any party may propose amendments to this Treaty.
- (b) A proposed amendment shall be notified to the depositary not less than forty five (45) days before the meeting at which the proposed amendment will be considered.
- (c) The depositary shall promptly notify all parties of such proposal.
- (d) The parties shall consider proposed amendments to this Treaty at the annual meeting described in Article 7, or at any other time that may be agreed by all parties.
- (e) Any amendment to this Treaty shall be adopted by the approval of all the parties, and shall enter into force upon receipt by the depositary of instruments of ratification, acceptance or approval by the parties.
- (f) The depositary shall promptly notify all parties of the entry into force of the amendment.

ARTICLE 9

AMENDMENT OF ANNEXES

9. The following procedures may apply to the adoption and entry into force of any amendment to an Annex of this Treaty, at the request of the party proposing the amendment, in lieu of the procedure set out in Article 8, unless otherwise provided in the Annex.

- (a) Any party may propose amendment to an Annex of this Treaty at any time by notifying such proposal to the depositary, which shall promptly notify all parties of the proposed amendment.
- (b) A party approving a proposed amendment to an Annex shall notify its acceptance to the depositary, which shall promptly notify all the parties of each acceptance. Upon receipt by the depositary of notices of acceptance from all parties, such amendment shall be incorporated in the appropriate Annex and shall have effect from that date, or from such other date as may be specified in such amendment. The depositary shall promptly notify all parties of the adoption of the amendment and its effective date.

ARTICLE 10

NOTIFICATION

10.1 The Administrator and each party shall notify the depositary of their current addresses for the receipt of notices given pursuant to this Treaty, and the depositary shall notify the Administrator and each of the parties of such addresses or any changes thereof. Unless otherwise specified in this Treaty, any notice given in accordance with this Treaty shall be in writing and may be served by hand or sent by telex or, where either method cannot readily be effected, by registered airmail to the address of the party or the Administrator as currently listed with the depositary.

10.2 Delivery by hand shall be effective when made. Delivery by telex shall be deemed to be effective on the business day following the day when the “answer back” appears on the sender’s telex machine. Delivery by registered airmail shall be deemed to be effective twenty-one (21) days after posting.

ARTICLE 11

DEPOSITARY

11. The depositary for this Treaty shall be the Government of Papua New Guinea.

ARTICLE 12

FINAL CLAUSES

12.1 This Treaty shall be open for signature by the Governments of all the Pacific Island States and the Government of the United States of America.

12.2 This Treaty is subject to ratification by the States referred to in paragraph 1 of this Article. The instruments of ratification shall be deposited with the depositary.

12.3 This Treaty shall remain open for accession by States referred to in paragraph 1 of this Article. The instruments of accession shall be deposited with the depositary.

12.4 This Treaty shall enter into force upon receipt by the depositary of instruments of ratification by the Government of the United States and by the Governments of ten Pacific Island States which shall include the Federated States of Micronesia, the Republic of Kiribati and Papua New Guinea.

12.5 This Treaty shall enter into force for any State ratifying or acceding after the entry into force of this Treaty on the thirtieth day after the date on which its instrument of ratification or accession is received by the depositary.

12.6 This Treaty shall cease to have effect at the expiry of one year following the receipt by the depositary of an instrument signifying withdrawal or denunciation by the United States, any of the Pacific Island States named in Article 12.4, or such number of Pacific Island States as would leave fewer than ten such States as parties.

12.7 This Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party, except that where this Treaty would cease to have effect under the last preceding paragraph as the result of the receipt of the said instrument, it shall cease to have effect for that party in the manner provided in the last preceding paragraph.

12.8 Any licence in force pursuant to this Treaty shall not cease to have effect as a result of this Treaty ceasing to have effect either generally or for any party,

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and Articles 1, 3, 4 and 5 shall be regarded as continuing in force between the United States and the Pacific Island State party in respect of such licence until such licence expires in accordance with its terms.

12.9 No reservations may be made to this Treaty.

12.10 Paragraph 9 of this Article does not preclude a State, when signing, ratifying or acceding to this Treaty, from making declarations or statements, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of this Treaty in their application to that State.

DONE at Port Moresby on the second day of April, 1987.

REPRESENTATIVES OF THE GOVERNMENTS OF:

John Kerin
AUSTRALIA

Edward Wolfe
John Negroponte
UNITED STATES OF AMERICA

Pupuke Ropati
COOK ISLANDS

Andon Amaraich
FEDERATED STATES OF MICRONESIA

Robin Yarrow
FIJI

Teewe Arobati
REPUBLIC OF KIRIBATI

Charles Dominick
REPUBLIC OF THE MARSHALL ISLANDS

Hammer De Roburt
REPUBLIC OF NAURU

Gerald McGhie
NEW ZEALAND

NIUE
REPUBLIC OF PALAU

Edward Diro
PAPUA NEW GUINEA

Sir Peter Kenilorea
SOLOMON ISLANDS

KINGDOM OF TONGA

Lale Seluka
TUVALU

REPUBLIC OF VANUATU

Fuimaono Mimio
WESTERN SAMOA

ANNEX I
PART 1
INTRODUCTORY

1. In this Annex:
 - (a) “applicable national law” means any provision of a law, however described, of a Pacific Island party which governs the fishing activities of foreign fishing vessels, being a law identified in Schedule 1, and which is not inconsistent with the requirements of this Treaty and shall be taken to exclude any provision which imposes a requirement which is also imposed by this Treaty;
 - (b) “Closed Area” means an area of a Pacific Island party as described in Schedule 2;
 - (c) “Limited Area” means an area described in Schedule 3; and
 - (d) “the vessel” means the vessel in respect of which a licence is issued.
2. Schedule 1 may be amended from time to time by the inclusion by any Pacific Island party of any applicable national law and, for the purposes of this Treaty, except as provided in this paragraph, the amendment shall take effect from the date that the amended Schedule has been notified to the Government of the United States. For the purposes of any obligation on the United States pursuant to paragraphs 4 and 5 of Article 4, the amendment shall take effect sixty (60) days from the date that the amended Schedule has been notified to the Government of the United States. The Government of the Pacific Island party shall use its best endeavours to provide advance notice to the Government of the United States of the amendment.
3. Nothing in this Annex and its Schedules, nor acts or activities taking place thereunder, shall constitute recognition of the claims or the positions of any of the parties concerning the legal status and extent of waters and zones claimed by any party. In the claimed waters and zones, the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law.

PART 2

COMPLIANCE WITH APPLICABLE NATIONAL LAWS

4. The operator of the vessel shall comply with each of the applicable national laws, and shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

PART 3

PROHIBITIONS

5. The vessel shall not be used for directed fishing for Southern Bluefin Tuna, or for fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch.

6. The vessel shall not be used for fishing by any method, except the purse seine method.

7. The vessel shall not be used for fishing in any Closed Area.

8. Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, no aircraft may be used in association with the fishing activities of the vessel unless it is identified in item 6 or 7 of Schedule 1 of Annex II.

9. The vessel shall not be used for fishing in any Limited Area except in accordance with the requirements set out in Schedule 3, which are applicable to that Limited Area.

PART 4

REPORTING

10. Information relating to the position of and catch on board the vessel, as described in Part 1 of Schedule 4, shall be provided by telex to the Administrator at the following times:

- (a) before departure from port for the purpose of beginning a fishing trip in the Licensing Area;
- (b) each Wednesday while within the Licensing Area or a Closed Area;
and

- (c) before entry into port for the purpose of unloading fish from any trip involving fishing in the Licensing Area.

11. Information relating to the position of and catch on board the vessel, as described in Part 2 of Schedule 4, shall be provided to each Pacific Island party in the manner notified to the Government of the United States by that party as follows:

- (a) at the time of entry into and of departure from waters which are, for any purpose, subject to the jurisdiction of the Pacific Island party;
- (b) at least 24 hours prior to the estimated time of entry into any port of that party; and
- (c) as otherwise set out in Part 3 of Schedule 4.

12. At the end of each day that the vessel is in the Licensing Area, an entry or entries for that day shall be completed on the catch report form as set out in Schedule 5, in accordance with the requirements of that form, and such forms shall be posted by registered airmail to the Administrator within fourteen (14) days following the date of the next entry into a port for the purpose of unloading its fish catch.

13. Immediately following the unloading of any fish from the vessel, a report shall be completed in the form set out in Schedule 6 and shall be posted by registered airmail to the Administrator within fourteen (14) days following the date of the completion of that unloading operation, or, in the case of unloading by transshipment, within fourteen (14) days following unloading of that transshipment at the processing site.

PART 5

ENFORCEMENT

14. The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorised and identified officer of a Pacific Island party, including to stop, to move to a specified location, and to facilitate safe boarding and inspection of the vessel, gear, equipment, records, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorised officer of a Pacific Island party and shall not assault, obstruct, resist, delay, refuse boarding to,

intimidate or interfere with an authorised officer in the performance of his or her duties.

15. The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the surveillance and enforcement authorities of the parties.

16. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, in the following manner:

- (a) amidships on both sides immediately below the gunwale, and on a horizontal plane on the superstructure, in letters and figures 20 centimetres apart, with each letter and figure being at least one metre high and 50 centimetres wide and with each line at least 12.5 centimetres wide;
- (b) if a helicopter is being carried, on the body of the helicopter in a place clearly visible from sea level, in letters and figures five centimetres apart, with each letter and figure being at least 25 centimetres high, 10 centimetres wide and with each line being at least 2.5 centimetres wide; and
- (c) on any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, in letters and figures clearly legible to the naked eye;

and at all times while the vessel is within the Licensing Area or a Closed Area, all parts of these markings shall be clear, distinct and uncovered.

17. The licence shall be carried on board the vessel and produced at the request of an authorised enforcement official of any of the parties. Prior to receipt of the licence, the correct citation of the licence number shall satisfy this requirement.

PART 6

OBSERVERS

18. The operator and each member of the crew of the vessel shall allow and assist any person identified as an observer by the Pacific Island parties to:

- (a) board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island parties to the Government of the United States;

- (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties; have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area; without interfering unduly with the lawful operation of the vessel;
- (c) disembark at the point and time notified by the Pacific Island parties to the Government of the United States; and
- (d) carry out his or her duties safely;

and no operator or crew member of the vessel shall assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.

19. The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island parties, with food, accommodation and medical facilities of such reasonable standard as may be acceptable to the Pacific Island party whose representative is serving as the observer.

20. Any operator of the vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any person authorised for this purpose by the Pacific Island parties to have full access to any place where such fish is unloaded, to remove samples and to gather any other information relating to fisheries in the Licensing Area.

21. An observer programme shall be conducted in accordance with this Treaty and provisions that may be agreed from time to time.

PART 7

MISCELLANEOUS REQUIREMENTS

22. At all times while the vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in such a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations; the helicopter, if any, shall be tied down; and launches shall be secured.

23. The vessel shall be operated in such a way that the activities of traditional and locally based fishermen and fishing vessels are not disrupted or in any other way adversely affected.

24. Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of this Treaty shall be true, complete and correct. Any change in circumstances which has the effect of rendering any such information false, incomplete or misleading shall be notified to the Administrator immediately.

SCHEDULE 1

APPLICABLE NATIONAL LAWS

The following laws and any regulations or other instruments having the force of law which have been implemented pursuant to those laws, as amended at the time this Treaty enters into force, shall be considered as applicable national laws for the purposes of this Treaty.

Australia

Antarctic Marine Living Resources Conservation Act, 1981
Continental Shelf (Living Natural Resources) Act, 1968
Continental Shelf (Living Natural Resources) Regulations
Fisheries Act, 1952
Fisheries Regulations
Torres Strait Fisheries Act, 1984
Whale Protection Act, 1980

Cook Islands

Cook Islands Commercial Fishing Regulations, 1951
Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1979
Fisheries Protection Act, 1976
Fishing Ordinance, 1950
Territorial Sea and Exclusive Economic Zone Act, 1977

Federated States of Micronesia

Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2-28, 2-31, 3-9, 3-10, 3-34, and 3-80

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Fiji

Fisheries Act, 1942

Fisheries Ordinance (Cap 135)

Fisheries Regulations (Cap 135)

Marine Spaces Act, 1978

Marine Spaces (Foreign Fishing Vessels) Regulations, 1979

Kiribati

Fisheries Ordinance, 1979

Fisheries (Amendment) Act, 1984

Marine Zones (Declaration) Act, 1983

Marshall Islands

Marine Resources Jurisdiction Act, 1978

Marine Zones (Declaration) Act, 1984

Nauru

Interpretation Act, 1971

Interpretation Act, 1975

Marine Resources Act, 1978

New Zealand

Antarctic Marine Living Resources Act, 1981

Continental Shelf Act, 1964

Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1978

Fisheries Act, 1983

Marine Mammals Protection Act, 1978

Territorial Sea and Exclusive Economic Zone Act, 1977

Tokelau (Territorial Sea and Exclusive Economic Zone Act), 1977

Niue

Territorial Sea and Exclusive Economic Zone Act, 1978

Palau

Palau National Code, Title 27

Papua New Guinea

Fisheries Act (Cap 214)

Fisheries Regulations (Cap 214)
Fisheries (Torres Strait Protected Zone) Act, 1984
Tuna Resources Management (National Seas) Act (Cap 224)
Whaling Act (Cap 225)

Solomon Islands

Delimitation of Marine Waters Act, 1978
Fisheries Act, 1972
Fisheries Limits Act, 1977
Fisheries Regulations, 1972
Fisheries (Foreign Fishing Vessels) Regulations, 1981

Tonga

Fisheries Protection Act, 1973
Fisheries Regulation Act, 1923
Whaling Industry (Amendment) Act, 1979

Tuvalu

Fisheries Act (Cap 45)
Foreign Fishing Vessel Regulations, 1982
Fisheries (Foreign Fishing Vessel) (Amendment) Regulations, 1984
Marine Zones (Declaration) Act, 1983

Vanuatu

Fisheries Act, 1982
Fisheries Regulations, 1983
Maritime Zones Act, 1981

Western Samoa

Exclusive Economic Zone Act, 1977
Fisheries Protection Act, 1972
Territorial Sea Act, 1971

SCHEDULE 2

CLOSED AREAS

Australia. All waters within the seaward boundary of the Australian Fishing Zone (AFZ) west of a line connecting the point of intersection of the outer limit of the AFZ by the parallel of latitude 25°30' South with the point of intersection

of the meridian of longitude 151° East of the outer limit of the AFZ and all waters south of the parallel of latitude 25°30' South.

Cook Islands. Territorial Sea.

Federated States of Micronesia. Three nautical mile territorial sea and nine nautical mile exclusive fishery zone and on all named banks and reefs as depicted on the following charts:

- | | |
|-----------------|---|
| DMAHTC NO 81019 | (2nd. ed., Mar. 1945; revised 7/17/72. corrected through NM 3/78 of June 21, 1978). |
| DMAHTC NO 81023 | (3rd. ed., Aug. 7, 1976). |
| DMAHTC NO 81002 | (4th. ed., Jan. 26, 1980; corrected through NM 4/80). |

Fiji. Internal waters, archipelagic waters and territorial seas of Fiji and Rotuma and its Dependencies.

Kiribati. Within archipelagic waters as established in accordance with Marine Zones Declaration Act 1983; within 12 nautical miles drawn from the baselines from which the territorial sea is measured; within 2 nautical miles of any anchored fish aggregating device for which notification of its location shall be given by geographical coordinates.

Marshall Islands. 12 nautical mile territorial sea and area within two nautical miles of any anchored fish aggregating device for which notification of its location shall be given by geographical coordinates.

Nauru. The territorial waters as defined by Nauru Interpretation Act, 1971, Section 2.

New Zealand. Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39° South latitude; all waters to east of New Zealand main islands south of 40° South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Faka'ofu; and coordinates as follows:

- Atafu: 8°35'10''S, 172°29'30''W
Nukunonu: 9°06'25''S, 171°52'10''W
 9°11'30''S, 171°47'00''W
Faka'ofu: 9°22'30''S, 171°16'30''W

Niue. Territorial sea and within 3 nautical miles of Beveridge Reef, Antiope Reef and Haran Reef as depicted by appropriate symbols on NZ 225F (chart

showing the territorial sea and exclusive economic zone of Niue pursuant to the Niue Territorial Sea and Exclusive Economic Zone Act of 1978).

Palau. Within 12 nautical miles of all island baselines in the Palau Islands; within a 50 nautical mile arc measured from the entrance to Malakal Harbour (7°16'44" N, 134°28'18" E) and extending from where the arc intersects the territorial sea limit to the northeast of Babelthuap Island to the 134° East meridian of longitude, southwest of Angaur Island then due north along the 134° East meridian of longitude to the intersection with the territorial sea limit.

Papua New Guinea. In addition to its territorial sea and internal waters, within the area bounded by the following parallels and meridians—from latitude 0°30' South to latitude 3°30' South, and from longitude 149° East to longitude 153° East.

Solomon Islands. All waters within the fishery limits of the Solomon Islands (including internal waters, territorial sea and archipelagic waters) except that part of the fishery limits east and north of the following lines: commencing at a point 161° East, 4°20' South, then extending due south along 161° to a point 6°30' South, then by a line extending due east to a point 165° East, then by a line due south to a point 8° South, then by a line due east to a point 169°55' East.

Tonga. All waters with depths of not more than 1,000 metres, within the area bounded by the fifteenth and twenty third and one half degrees of south latitudes and the one hundred and seventy third and the one hundred and seventy seventh degrees of west longitudes; also within a radius of twelve nautical miles from the islands of Teleki Tonga and Teleki Tokelau.

Tuvalu. Territorial sea and waters within two nautical miles of all named banks, i.e. Macaw, Kosciusko, Rose, Bayonnaise and Hera, in Tuvalu EEZ, as depicted on the chart entitled "Tuvalu Fishery Limits" prepared by the United Kingdom Hydrographic Department, Taunton, January 11, 1981.

Vanuatu. Archipelagic waters and the territorial sea, and internal waters.

Western Samoa. Territorial sea; reefs, banks and areas bounded/enclosed by the following parallels and meridians to the extent such areas are within Western Samoa fisheries jurisdiction:

1. From latitude 12°58' South to latitude 13°11.5' South and longitude 174° 5.5' West to longitude 174° 26' West.
2. From latitude 12° 12' South to latitude 12° 38.5' South and longitude 173° 47' West to longitude 174° 25' West.

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3. From latitude 13° 7' South to latitude 13° 19' South and longitude 172° 59' West to longitude 173° 38.5' West.
4. From latitude 14° 51' South to latitude 15° 3.4' South and longitude 172° 10.7' West to longitude 172° 19.1' West.
5. From latitude 14° 20.5' South to latitude 14° 28' South and longitude 171° 8' West to longitude 171° 17' West.

and within 2 nautical miles of any anchored fish aggregating device within the EEZ for which notification of its location shall be given by geographical coordinates.

Only the Closed Areas, as described above, of Pacific Island States which are parties to this Treaty shall be applicable under the terms of this Treaty.

SCHEDULE 3

LIMITED AREAS

Solomon Islands

1. The Solomon Islands Limited Area is all of the Licensing Area within the fishery limits of Solomon Islands as described in the Fishery Limits Act 1977 of Solomon Islands.
2. "Fishing day" means any day or part of a day of the week in which a vessel is used for fishing in the Solomon Islands Limited Area.
3. There shall be no fishing in the Solomon Islands Limited Area after the expiry of the five hundredth fishing day from the earliest date on which any Licensing Period takes effect in any given year.

SCHEDULE 4

REPORTING DETAILS

PART 1

LICENSING AREA REPORTS TO THE ADMINISTRATOR

- (a) Port departure and entry into port for unloading
 - (1) report type (LBEG for port departure to begin fishing and LFIN for port entry for unloading)
-

-
- (2) date
 - (3) call sign
 - (4) port name
 - (5) catch on board by species (in short tons)
- as: LBEG (or LFIN)/ddmmyy/CALL SIGN/PORT/SJ xxx YF yyy OTH
zzz

- (b) Weekly reports
 - (1) report type (WEEK)
 - (2) date
 - (3) call sign
 - (4) position (to one minute of arc)
 - (5) catch on board by species
- as: WEEK/ddmmyy/CALL SIGN/LA 1111/LO 11111/SJ xxx YF yyy
OTH zzz

PART 2

REPORTS TO NATIONAL AUTHORITIES

- (a) Zone entry and exit
 - (1) report type (ZENT for entry and ZEXT for exit)
 - (2) date
 - (3) call sign
 - (4) position (to one minute of arc)
 - (5) catch on board by species
- as: ZENT (or ZEXT)/ddmmyy/CALL SIGN/TIME/LA 1111/LO 11111/SJ
xxx YF yyy OTH zzz
- (b) Port entry reports
 - (1) report type (PENT)
 - (2) date
 - (3) call sign
 - (4) estimated time of entry into port (GMT)
 - (5) port name
- as: PENT/ddmmyy/CALL SIGN/TIME/PORT NAME

PART 3

OTHER NATIONAL REPORTING REQUIREMENTS

1. Australia
 - (a) Report of position each two days while within the Australian Fishing Zone;
 - (b) 24 hours notice of intention to enter the Australian Fishing Zone; and
 - (c) Report of catch by species every six days while within the Australian Fishing Zone.

 2. Fiji
 - (a) While in Fiji fisheries waters, daily position reporting of the name, call sign, and country of registration of the craft, and its position at that specified time; and
 - (b) While in Fiji fisheries waters, weekly report of catch by species.

 3. Kiribati

While in the Kiribati exclusive economic zone, report on entry into or exit from Closed Areas.

 4. New Zealand
 - (a) While in the New Zealand exclusive economic zone, notification of daily noon positions, to be received no later than noon on the following day;
 - (b) Notice of catch on board the vessel at the time of entry into the New Zealand exclusive economic zone;
 - (c) A weekly report of catch taken in the New Zealand exclusive economic zone to cover the period 0001 hours on a Monday to 2400 hours on the following Sunday and to be received by noon on the following Tuesday; and
 - (d) 24 hours notice of intention to enter the New Zealand exclusive economic zone.

 5. Solomon Islands

Report on:

 - (a) Expected vessel position, date and time of entry at least 24 hours before entry into the Solomon Islands Fishery Limits;
-

- (b) Entry to or exit from Solomon Islands Limited Area together with the catch on board by weight and volume; and
- (c) A weekly report of catch taken and fishing days in the Solomon Islands exclusive economic zone to cover the period 0001 hours on a Monday to 2400 hours on the following Sunday and to be received by noon on the following Tuesday.

6. Tonga

While in the Tonga exclusive economic zone, daily position report by radio or telex.

7. Tuvalu

- (a) Report not less than 24 hours before entry into the Tuvalu fishery limits on:
 - (i) the name, call sign and country of registration of the vessel;
 - (ii) the licence number;
 - (iii) position on entry; and
 - (iv) catch by species.

**SCHEDULE 5
PURSE SEINE VESSEL CATCH REPORT FORM**

VESSEL NAME _____	LICENSE/PERMIT NUMBER _____	NAME	YYMMDD
COUNTRY OF REGISTRATION _____	NAME OF CAPTAIN _____	DEPARTURE FROM PORT	DATE
REGISTRATION NUMBER _____	LICENSE/PERMIT _____	ARRIVAL AT PORT	DATE
GROSS REGISTERED TONNAGE _____	HOLDER'S SIGNATURE _____	NUMBER OF CREW _____	
NAMES(S) OF FISH CARRIER(S) _____	YEAR _____ MONTH _____		
FOR GROUP PURSE-SEINER _____			

DAY	NOON OR SET POSITION				SCHOOL TYPE	TIME SET	SKIPJACK		YELLOWFIN		OTHER SPECIES			COMMENTS	DISCARDS			Numerical expression of school type, comments, and reason for discard	
	LAT		LONG				CATCH Short Tons	AV. SIZE (lb)	CATCH Short Tons	AV. SIZE (lb)	SPECIES NAME	CATCH Short Tons	AV. SIZE (lb)		TUNA Short Tons	OTHERS (lb)	REASON FOR DISCARD		
	DDMM	N S	DDMM	E W															
TOTAL																			

Numerical expression of school type, comments, and reason for discard

SCHOOL TYPE

- 1 Log
- 2 Surface
- 3 Whale
- 4 Porpoise
- 5 Raft
- 6 Other

COMMENTS

- 1 A full day in transit between fishing grounds or to or from fishing grounds.
- 2 A full day not fishing due to breakdown.
- 3 A full day not fishing due to bad weather.
- 4 A full day searching for fish but no sets made.
- 5 Part of day searching for fish but no sets made.
- 6 Set unsuccessful for any reason, e.g. fish dive, roll up.

REASON FOR DISCARD

- 1 Undesirable species
- 2 Fish too small
- 3 Vessel completely loaded
- 4 Other reason—please specify

SCHEDULE 6

PURSE SEINE UNLOADING LOGSHEET

Vessel Name Radio Call Sign or
 Regional Register No.

(1) Port
 or, If at sea, position: Lat Long

(2) Dates
 (a) At unloading point
 Arrival Departure

(b) At unloading
 Commencement Completion

(3) Partial or complete unloading

(4) Unloading to

(5) (a) Carrier Vessel Name
 and Radio call sign or regional Register No.
 or
 (b) Name and address of company accepting fish

.....

(6) Destination of fish

.....

(7) Quantity unloaded

	Yellowfin	Skipjack	Bigeye	Marlin	Other	Unit of Measurement
Accepted
Rejected

Signatures

.....
 Vessel Master

.....
 Receiving Agent

ANNEX II

1. For the purposes of this Annex:
 - (a) “Licensing Period” means the period of validity of licences issued in accordance with this Treaty.
2. The Government of the United States shall make application for a licence in respect of any fishing vessel of the United States intended by the operator to be used for purse seine fishing in the Licensing Area at any time in the Licensing Period by providing to the Administrator a complete application form as set out in Schedule 1.
3. Licences issued pursuant to this Treaty shall not take effect until the Administrator has received payment, free of any charges whatsoever, of the amounts set out in Part 1 of Schedule 2 for that Licensing Period in the manner described in that Schedule. Other financial commitments shall be provided during the Licensing Period pursuant to Part 2 of Schedule 2.
4. Subject to paragraph 5, a licence may be denied:
 - (a) where the application is not in accordance with the requirements of paragraph 2;
 - (b) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Administrator;
 - (c) where the vessel in respect of which application for a licence has been made does not have good standing on the Regional Register of Foreign Fishing Vessels, maintained by the South Pacific Forum Fisheries Agency, provided that:
 - (i) good standing is withdrawn only as a result of:
 - (A) the commission of a serious offence against fisheries laws or regulations of a Pacific Island State and the operator has not fully complied with any civil or criminal judgment rendered with respect to such an offence;
 - (B) evidence existing that gives reasonable cause to believe that the operator has committed a serious offence against the fisheries laws or regulations of any Pacific Island State and that it has not been possible to bring the vessel operator to trial; or

- (C) the vessel operator has failed to comply with information requirements for registration as notified by the Administrator to the Government of the United States;
- (ii) the Pacific Island party requesting withdrawal of good standing has first consulted the Government of the United States and has made all reasonable efforts to resolve the dispute in question before utilizing the procedures for withdrawal of good standing;
- (iii) in the event of a request for withdrawal of good standing from the Regional Register of Foreign Fishing Vessels of a vessel licensed pursuant to this Treaty, the Pacific Island parties agree to take into consideration that vessel's compliance with the terms of this Treaty in determining whether to approve such a request; and
- (iv) following a withdrawal of good standing the Pacific Island party involved promptly advises the Government of the United States in writing of the reason for the withdrawal and the requirements which must be fulfilled to reinstate good standing;
- (d) where there has been a failure to satisfy a final judgment or other final determination for a breach of this Treaty by the owner, charterer or master of the vessel in respect of which application for a licence has been made, until such time as the final judgment or other final determination is satisfied, and subsequent change in ownership of a vessel shall not affect the application of this provision; or
- (e) where an operator has committed, or the vessel has been used for:
 - (i) a violation of this Treaty, providing that the Pacific Island parties, following consultation with the Government of the United States, determine that the violation is of a serious nature; or
 - (ii) any violation of this Treaty on more than one occasion, providing that the Pacific Island parties, following consultation with the Government of the United States, determine that such multiple violations constitute a serious disregard of this Treaty.

Schedule 1 Treaty on fisheries between the Governments of certain Pacific Island States and the United States of America

5. A maximum number of licences may be issued for any Licensing Period as set out in Schedule 2, and, upon request by the Government of the United States, the Pacific Island parties may agree to vary such number.

6. On receipt of an application for a licence in accordance with this Annex, the Administrator shall take the necessary steps to ensure that:

- (a) a licence in the form set out in Schedule 3 in respect of the vessel identified in the application; or
- (b) a statement setting out the reasons that a licence in respect of the vessel identified in the application is denied together with a refund of the amount or amounts provided with the application;

is promptly provided to the Government of the United States.

SCHEDULE 1

TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN
PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED
STATES OF AMERICA

APPLICATION FORM

Application is hereby made for a licence authorising the use of the vessel named
in this application for fishing in the Licensing Area.

1. FULL NAME OF VESSEL:
2. RADIO CALL SIGN OF VESSEL:
3. REGIONAL REGISTER NUMBER OF VESSEL:
4. FULL NAME AND ADDRESS OF EACH PERSON WHO IS AN
OPERATOR OF THE VESSEL, AND STATE WHETHER OWNER,
CHARTERER, MASTER OR OTHER. IF OTHER, SPECIFY
DETAILS:
.....
.....
5. FULL NAME AND ADDRESS OF INSURER FOR PURPOSES OF
ARTICLE 4.3 (a) OF THE TREATY:
6. REGISTRATION NUMBER AND MAKE OF HELICOPTER, IF
ANY, TO BE CARRIED ON VESSEL:
7. REGISTRATION NUMBER AND MAKE OF ANY AIRCRAFT TO
BE USED IN ASSOCIATION WITH FISHING ACTIVITIES AND
NAME AND ADDRESS OF OPERATOR:
8. STATE WHETHER OWNER OR CHARTERER IS THE SUBJECT
OF PROCEEDINGS UNDER THE BANKRUPTCY LAWS OF THE
UNITED STATES:
9. STATE WHETHER OPERATOR OR VESSEL HAS BEEN
INVOLVED IN A VIOLATION OF THIS TREATY. IF YES,
SPECIFY DETAILS:

.....
Date of application

.....
Director of the Southwest Region
National Marine Fisheries
Service National Oceanic and
Atmospheric Administration

SCHEDULE 2

PAYMENTS

The following amounts are payable annually for a period of five (5) years pursuant to paragraph 3 of Annex II.

PART 1

1. The amounts payable as set forth in this paragraph.
 - (a) Annual industry payments shall be made as follows:
 - (i) for the first annual Licensing Period, a lump sum of US\$1.75 million for 35 vessels, with the next five licences to be made available for the same pro-rata payment as the first 35 licences, and an additional 10 licences to be made available at US\$60,000 per vessel;
 - (ii) for subsequent annual Licensing Periods, 40 vessel licences calculated on the same basis as the first 40 vessel licences in sub-paragraph (i) and indexed to the price of fish as set forth below, with 10 additional licences to be made available at US\$60,000 per vessel and indexed to the price of fish as set forth below.
 - (b) The indexation shall be applied as follows:
 - (i) DEFINITIONS
 - A. Base Vessel Payment: The Base Vessel Payment is US\$50,000 for the first 40 vessels to be licensed and US\$60,000 for vessels to be licensed in excess of 40 vessels.
 - B. Adjusted Individual Vessel Payment: The Adjusted Individual Vessel Payment is the individual vessel payment of each annual Licensing Period after the first annual Licensing Period. The Adjusted Individual Vessel Payment will always apply to the Licensing Period immediately following its calculation.

- C. Landed Price: The Landed Price is the published standard price per ton (American Tuna Sales Association) for fish delivered to American Samoa prevailing at the time a United States purse seine vessel arrives in port for the purpose of offloading its catch.
 - D. Average Landed Price: The Average Landed Price is calculated by averaging the established landed price categories for yellowfin and skipjack tuna in American Samoa. The landed price categories to be used are: over 7.5 pounds, 4 to 7.5 pounds and 3 to 4 pounds for skipjack; over 20 pounds, 7.5 to 20 pounds and 4 to 7.5 pounds for yellowfin.
 - E. Base Price: The Base Price is the Average Landed Price for the three months prior to the Treaty entering into force.
 - F. Estimated Landed Value: The Estimated Landed Value is the Average Landed Price in effect at the time of a vessel's landing weighted by the yellowfin/skipjack mix ratio to be calculated from information on Schedule 6 for that vessel.
 - G. Average Estimated Landed Value: The Average Estimated Landed Value is the Estimated Landed Value for all landings by United States purse seine vessels in American Samoa in the four quarters preceding the final quarter of the applicable Licensing Period divided by the total number of those landings for the same period.
- (ii) **CALCULATION AND APPLICATION OF INDEXING FACTOR**
- A. To obtain the indexing factor by which the Adjusted Individual Vessel Payment shall be calculated, divide the Average Estimated Landed Value for the preceding four quarters by the Base Price.
 - B. To obtain the Adjusted Individual Vessel Payment, multiply the Base Vessel Payment by the indexing factor obtained in Paragraph (ii) A.

C. In no case shall the Adjusted Individual Vessel Payment be less than the Base Vessel Payment.

(iii) NOTIFICATIONS

The established prices and any changes shall be supplied to the Administrator by the Government of the United States within ten (10) days of their publication. The Administrator shall notify the Government of the United States sixty (60) days before the start of each Licensing Period of the Adjusted Individual Vessel Payment along with the computation used to arrive at the Adjusted Individual Vessel Payment. The Adjusted Individual Vessel Payment shall become final thirty (30) days after receipt by the Government of the United States, unless the Government of the United States advises the Administrator otherwise, in which case consultations shall be held.

(iv) CONSULTATIONS

If the established price categories are revised, or if there is a change in the tuna industry structure which makes the price calculations as set forth above inappropriate, the Administrator may consult with representatives of the Government of the United States as necessary to revise the formula.

(c) There shall be no pro-ration of the Base Vessel Payment or the Adjusted Individual Vessel Payment. There shall be no refunds of the Base Vessel Payment or the Adjusted Individual Vessel Payment following licence issuance pursuant to Annex II.

2. Sums payable pursuant to the related Agreement between the South Pacific Forum Fisheries Agency and the Government of the United States.

PART 2

3. Technical assistance, including provision of assistance by technicians, by the United States tuna industry valued at US\$250,000 annually in response to requests co-ordinated through the Administrator.

SCHEDULE 3

TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN
PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED
STATES OF AMERICA

LICENCE FORM

The vessel described in this licence is hereby authorised to engage in fishing in the Licensing Area for the period described in this licence, in accordance with the terms and conditions referred to in Annex I.

Full name of vessel:

Radio call sign of vessel:

Regional register number of vessel:

Helicopter or other aircraft which may be used in association with the fishing activities of the vessel:

Period of validity:

The period of validity of this licence shall be no longer than one year:

From, 19

To, 19

.....
For and on behalf of the Pacific
Island parties

Date of issue:

Licence number:

Warning: It is an offence against the laws of many nations, including the United States of America, to violate the requirements of Annex I. Penalties may include substantial fines and vessel forfeiture.

Schedule 2—Fish Stocks Agreement

Note: See subsection 4(1) (definition of *Fish Stocks Agreement*).

AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF
THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF
10 DECEMBER 1982 RELATING TO THE CONSERVATION AND
MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY
MIGRATORY FISH STOCKS

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982,

Determined to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

Resolved to improve cooperation between States to that end,

Calling for more effective enforcement by flag States, port States and coastal States of the conservation and management measures adopted for such stocks,

Seeking to address in particular the problems identified in chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are overutilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fisheries,

Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations,

Recognizing the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

Affirming that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Use of terms and scope

1. For the purposes of this Agreement:

(a) “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) “conservation and management measures” means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;

(c) “fish” includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and

(d) “arrangement” means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures

in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

2. (a) “States Parties” means States which have consented to be bound by this Agreement and for which the Agreement is in force.

(b) This Agreement applies mutatis mutandis:

(i) to any entity referred to in article 305, paragraph 1(c), (d) and (e), of the Convention and

(ii) subject to article 47, to any entity referred to as an “international organization” in Annex IX, article 1, of the Convention

which becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.

3. This Agreement applies mutatis mutandis to other fishing entities whose vessels fish on the high seas.

Article 2

Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Article 3

Application

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply mutatis mutandis the general principles enumerated in article 5.

3. States shall give due consideration to the respective capacities of developing States to apply articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies mutatis mutandis in respect of areas under national jurisdiction.

Article 4

Relationship between this Agreement and the Convention

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

PART II

CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 5

General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with article 6;

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;

(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, *inter alia*, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;

(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6

Application of the precautionary approach

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall:

(a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;

(b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

(c) take into account, *inter alia*, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

(d) develop data collection and research programs to assess the impact of fishing on non-target and associated or dependent species and their

environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3(b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, *inter alia*, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 7

Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the

Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the

stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III

MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 8

Cooperation for conservation and management

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or

arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

Article 9

Subregional and regional fisheries management organizations and arrangements

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, inter alia, on:

(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

Article 10

Functions of subregional and regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

(b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;

(c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;

- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- (f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;
- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;
- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
- (m) give due publicity to the conservation and management measures established by the organization or arrangement.

Article 11

New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for

new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;
- (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and
- (f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

Article 12

Transparency in activities of subregional and regional fisheries management organizations and arrangements

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.
2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have

timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

Article 13

Strengthening of existing organizations
and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 14

Collection and provision of information
and cooperation in scientific research

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:

(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and

(c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:

(a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 15

Enclosed and semi-enclosed seas

In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

Article 16

Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and

management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.

PART IV

NON-MEMBERS AND NON-PARTICIPANTS

Article 17

Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

PART V

DUTIES OF THE FLAG STATE

Article 18

Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.
2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.
3. Measures to be taken by a State in respect of vessels flying its flag shall include:

- (a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;
- (b) establishment of regulations:
 - (i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;
 - (ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;
 - (iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and
 - (iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
- (c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding release of such information;
- (d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;
- (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;
- (f) requirements for verifying the catch of target and non-target species through such means as observer programs, inspection schemes,

unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, *inter alia*:

- (i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;
- (ii) the implementation of national observer programs and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and
- (iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI

COMPLIANCE AND ENFORCEMENT

Article 19

Compliance and enforcement
by the flag State

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

Article 20

International cooperation
in enforcement

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.
2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.
3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.
4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.
5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

Article 21

Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against

non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, States shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

(a) fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or

(b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this article, a serious violation means:

(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3(a);

(b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;

(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(e) using prohibited fishing gear;

(f) falsifying or concealing the markings, identity or registration of a fishing vessel;

(g) concealing, tampering with or disposing of evidence relating to an investigation;

(h) multiple violations which together constitute a serious disregard of conservation and management measures; or

(i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies *mutatis mutandis* to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

Article 22

Basic procedures for boarding and
inspection pursuant to article 21

1. The inspecting State shall ensure that its duly authorized inspectors:
 - (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;
 - (b) initiate notice to the flag State at the time of the boarding and inspection;
 - (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
 - (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
 - (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
 - (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.
2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.
3. The flag State shall ensure that vessel masters:
 - (a) accept and facilitate prompt and safe boarding by the inspectors;
 - (b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;

(c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;

(d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;

(e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and

(f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Article 23

Measures taken by a port State

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of

subregional, regional or global conservation and management measures on the high seas.

4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

PART VII

REQUIREMENTS OF DEVELOPING STATES

Article 24

Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

Article 25

Forms of cooperation with
developing States

1. States shall cooperate, either directly or through subregional, regional or global organizations:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and

(c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

3. Such assistance shall, inter alia, be directed specifically towards:

(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Article 26

Special assistance in the implementation
of this Agreement

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.
2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII

PEACEFUL SETTLEMENT OF DISPUTES

Article 27

Obligation to settle disputes
by peaceful means

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 28

Prevention of disputes

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

Article 29

Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Article 30

Procedures for the settlement
of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.
2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.
3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.
4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well

as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

Article 31

Provisional measures

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.

3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Article 32

Limitations on applicability of procedures
for the settlement of disputes

Article 297, paragraph 3, of the Convention applies also to this Agreement.

PART IX

NON-PARTIES TO THIS AGREEMENT

Article 33

Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.
2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X

GOOD FAITH AND ABUSE OF RIGHTS

Article 34

Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

PART XI

RESPONSIBILITY AND LIABILITY

Article 35

Responsibility and liability

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

PART XII

REVIEW CONFERENCE

Article 36

Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART XIII

FINAL PROVISIONS

Article 37

Signature

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.

Article 38

Ratification

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39

Accession

This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40

Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.
2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41

Provisional application

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.
2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

Article 42

Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 43

Declarations and statements

Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44

Relation to other agreements

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

Article 45

Amendment

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a Party to this Agreement as so amended; and

(b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

Article 46

Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 47

Participation in international organizations

1. In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply mutatis mutandis to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

- (a) article 2, first sentence; and
- (b) article 3, paragraph 1.

2. In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

- (i) that it has competence over all the matters governed by this Agreement;
- (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and
- (iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the

agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 48

Annexes

1. The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.
2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

Article 49

Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 50

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

Schedule 2 Fish Stocks Agreement

OPENED FOR SIGNATURE at New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

ANNEX I**STANDARD REQUIREMENTS FOR THE
COLLECTION AND SHARING OF DATA****Article 1****General principles**

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.

2. Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programs, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

Article 2

Principles of data collection,
compilation and exchange

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

(a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;

(b) States should ensure that fishery data are verified through an appropriate system;

(c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;

(d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;

(e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement; and

(f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyse the data separately or jointly, as appropriate.

Article 3

Basic fishery data

1. States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

(a) time series of catch and effort statistics by fishery and fleet;

(b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];

(c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

(d) effort statistics appropriate to each fishing method; and

(e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:

(a) composition of the catch according to length, weight and sex;

(b) other biological information supporting stock assessments such as information on age, growth, recruitment, distribution and stock identity; and

(c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

Article 4

Vessel data and information

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

- (a) vessel identification, flag and port of registry;
- (b) vessel type;
- (c) vessel specifications (e.g., material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and
- (d) fishing gear description (e.g., types, gear specifications and quantity).

2. The flag State will collect the following information:

- (a) navigation and position fixing aids;
- (b) communication equipment and international radio call sign; and
- (c) crew size.

Article 5

Reporting

A State shall ensure that vessels flying its flag send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organization or arrangement, logbook data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, facsimile or satellite transmission or by other means.

Article 6Data verification

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

- (a) position verification through vessel monitoring systems;
- (b) scientific observer programs to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
- (c) vessel trip, landing and transshipment reports; and
- (d) port sampling.

Article 7Data exchange

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.

ANNEX II

GUIDELINES FOR THE APPLICATION OF PRECAUTIONARY
REFERENCE POINTS IN CONSERVATION AND MANAGEMENT
OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY
FISH STOCKS

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.
2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.
3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.
4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.
5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.
6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points

may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.

Schedule 3—Compliance Agreement

Note: See subsection 4(1) (definition of *Compliance Agreement*).

**AGREEMENT TO PROMOTE COMPLIANCE
WITH INTERNATIONAL CONSERVATION AND MANAGEMENT
MEASURES BY FISHING VESSELS ON THE HIGH SEAS**

PREAMBLE

The Parties to this Agreement,

Recognizing that all States have the right for their nationals to engage in fishing on the high seas, subject to the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea,

Further recognizing that, under international law as reflected in the United Nations Convention on the Law of the Sea, all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas,

Acknowledging the right and interest of all States to develop their fishing sectors in accordance with their national policies, and the need to promote cooperation with developing countries to enhance their capabilities to fulfil their obligations under this Agreement,

Recalling that Agenda 21, adopted by the United Nations Conference on Environment and Development, calls upon States to take effective action, consistent with international law, to deter reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas,

Further recalling that the Declaration of Cancun, adopted by the International Conference on Responsible Fishing, also calls on States to take action in this respect,

Bearing in mind that under Agenda 21, States commit themselves to the conservation and sustainable use of marine living resources on the high seas,

Calling upon States which do not participate in global, regional or subregional fisheries organizations or arrangements to join or, as appropriate, to enter into understandings with such organizations or with parties to such organizations or arrangements with a view to achieving compliance with international conservation and management measures,

Conscious of the duties of every State to exercise effectively its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in the transshipment of fish,

Mindful that the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources, and the failure of flag States to fulfil their responsibilities with respect to fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures,

Realizing that the objective of this Agreement can be achieved through specifying flag States' responsibility in respect of fishing vessels entitled to fly their flags and operating on the high seas, including the authorization by the flag State of such operations, as well as through strengthened international cooperation and increased transparency through the exchange of information on high seas fishing,

Noting that this Agreement will form an integral part of the International Code of Conduct for Responsible Fishing called for in the Declaration of Cancun,

Desiring to conclude an international agreement within the framework of the Food and Agriculture Organization of the United Nations, hereinafter referred to as FAO, under Article XIV of the FAO Constitution,

Have agreed as follows:

Article I

DEFINITIONS

For the purposes of this Agreement:

- (a) “fishing vessel” means any vessel used or intended for use for the purposes of the commercial exploitation of living marine resources, including mother ships and any other vessels directly engaged in such fishing operations;
- (b) “international conservation and management measures” means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea. Such measures may be adopted either by global, regional or subregional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements;
- (c) “length” means
 - (i) for any fishing vessel built after 18 July 1982, 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;
 - (ii) for any fishing vessel built before 18 July 1982, registered length as entered on the national register or other record of vessels;

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- (d) “record of fishing vessels” means a record of fishing vessels in which are recorded pertinent details of the fishing vessel. It may constitute a separate record for fishing vessels or form part of a general record of vessels;
 - (e) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;
 - (f) “vessels entitled to fly its flag” and “vessels entitled to fly the flag of a State”, includes vessels entitled to fly the flag of a member State of a regional economic integration organization.

Article II

APPLICATION

1. Subject to the following paragraphs of this Article, this Agreement shall apply to all fishing vessels that are used or intended for fishing on the high seas.

2. A Party may exempt fishing vessels of less than 24 metres in length entitled to fly its flag from the application of this Agreement unless the Party determines that such an exemption would undermine the object and purpose of this Agreement, provided that such exemptions:

- (a) shall not be granted in respect of fishing vessels operating in fishing regions referred to in paragraph 3 below, other than fishing vessels that are entitled to fly the flag of a coastal State of that fishing region; and
- (b) shall not apply to the obligations undertaken by a Party under paragraph 1 of Article III, or paragraph 7 of Article VI of this Agreement.

3. Without prejudice to the provisions of paragraph 2 above, in any fishing region where bordering coastal States have not yet declared exclusive economic zones, or equivalent zones of national jurisdiction over fisheries, such coastal States as are Parties to this Agreement may agree, either directly or through

appropriate regional fisheries organizations, to establish a minimum length of fishing vessels below which this Agreement shall not apply in respect of fishing vessels flying the flag of any such coastal State and operating exclusively in such fishing region.

Article III

FLAG STATE RESPONSIBILITY

1. (a) Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.
 - (b) In the event that a Party has, pursuant to paragraph 2 of Article II, granted an exemption for fishing vessels of less than 24 metres in length entitled to fly its flag from the application of other provisions of this Agreement, such Party shall nevertheless take effective measures in respect of any such fishing vessel that undermines the effectiveness of international conservation and management measures. These measures shall be such as to ensure that the fishing vessel ceases to engage in activities that undermine the effectiveness of the international conservation and management measures.
2. In particular, no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization.
 3. No Party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.
 4. Where a fishing vessel that has been authorized to be used for fishing on the high seas by a Party ceases to be entitled to fly the flag of that Party, the authorization to fish on the high seas shall be deemed to have been cancelled.

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5. (a) No Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that
- (i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and
 - (ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years.
- (b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a Party to this Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn.
- (c) The provisions of subparagraphs (a) and (b) shall not apply where the ownership of the fishing vessel has subsequently changed, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the fishing vessel.
- (d) Notwithstanding the provisions of subparagraphs (a) and (b) above, a Party may authorize a fishing vessel, to which those subparagraphs would otherwise apply, to be used for fishing on the high seas, where the Party concerned, after having taken into account all relevant facts, including the circumstances in which the fishing authorization has been withdrawn by the other Party or State, has determined that to grant an authorization to use the vessel for fishing on the high seas would not undermine the object and purpose of this Agreement.
6. Each party shall ensure that all fishing vessels entitled to fly its flag that it has entered in the record maintained under Article IV are marked in such a way that they can be readily identified in accordance with generally accepted
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standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

7. Each Party shall ensure that each fishing vessel entitled to fly its flag shall provide it with such information on its operations as may be necessary to enable the Party to fulfil its obligations under this Agreement, including in particular information pertaining to the area of its fishing operations and to its catches and landings.

8. Each Party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of this Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas.

Article IV

RECORDS OF FISHING VESSELS

Each Party shall, for the purposes of this Agreement, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures as may be necessary to ensure that all such fishing vessels are entered in that record.

Article V

INTERNATIONAL COOPERATION

1. The Parties shall cooperate as appropriate in the implementation of this Agreement, and shall, in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures, so as to fulfil its obligations under Article III.

2. When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the

fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.

3. The Parties shall, when and as appropriate, enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Agreement.

Article VI

EXCHANGE OF INFORMATION

1. Each Party shall make readily available to FAO the following information with respect to each fishing vessel entered in the record required to be maintained under Article IV:

- (a) name of fishing vessel, registration number, previous names (if known), and port of registry;
- (b) previous flag (if any);
- (c) International Radio Call Sign (if any);
- (d) name and address of owner or owners;
- (e) where and when built;
- (f) type of vessel;
- (g) length.

2. Each Party shall, to the extent practicable, make available to FAO the following additional information with respect to each fishing vessel entered in the record required to be maintained under Article IV:

Schedule 3 Compliance Agreement

- (a) name and address of operator (manager) or operators (managers) (if any);
- (b) type of fishing method or methods;
- (c) moulded depth;
- (d) beam;
- (e) gross register tonnage;
- (f) power of main engine or engines.

3. Each Party shall promptly notify to FAO any modifications to the information listed in paragraphs 1 and 2 of this Article.

4. FAO shall circulate periodically the information provided under paragraphs 1, 2, and 3 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information on request individually to any global, regional or subregional fisheries organization.

5. Each Party shall also promptly inform FAO of-

- (a) any additions to the record;
- (b) any deletions from the record by reason of-
 - (i) the voluntary relinquishment or non-renewal of the fishing authorization by the fishing vessel owner or operator;
 - (ii) the withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 8 of Article III;
 - (iii) the fact that the fishing vessel concerned is no longer entitled to fly its flag;

-
- (iv) the scrapping, decommissioning or loss of the fishing vessel concerned; or
 - (v) any other reason.

6. Where information is given to FAO under paragraph 5 (b) above, the Party concerned shall specify which of the reasons listed in that paragraph is applicable.

7. Each Party shall inform FAO of

- (a) any exemption it has granted under paragraph 2 of Article II, the number and type of fishing vessel involved and the geographical areas in which such fishing vessels operate; and
- (b) any agreement reached under paragraph 3 of Article II.

8. (a) Each Party shall report promptly to FAO all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities. Reports on measures imposed by a Party may be subject to such limitations as may be required by national legislation with respect to confidentiality, including, in particular, confidentiality regarding measures that are not yet final.

- (b) Each Party, where it has reasonable grounds to believe that a fishing vessel not entitled to fly its flag has engaged in any activity that undermines the effectiveness of international conservation and management measures, shall draw this to the attention of the flag State concerned and may, as appropriate, draw it to the attention of FAO. It shall provide the flag State with full supporting evidence and may provide FAO with a summary of such evidence. FAO shall not circulate such information until such time as the flag State has had an opportunity to comment on the allegation and evidence submitted, or to object as the case may be.

9. Each Party shall inform FAO of any cases where the Party, pursuant to paragraph 5 (d) of Article III, has granted an authorization notwithstanding the provisions of paragraph 5 (a) or 5 (b) of Article III. The information shall include pertinent data permitting the identification of the fishing vessel and the owner or operator and, as appropriate, any other information relevant to the Party's decision.

10. FAO shall circulate promptly the information provided under paragraphs 5, 6, 7, 8 and 9 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information promptly on request individually to any global, regional or subregional fisheries organization.

11. The Parties shall exchange information relating to the implementation of this Agreement, including through FAO and other appropriate global, regional and subregional fisheries organizations.

Article VII

COOPERATION WITH DEVELOPING COUNTRIES

The Parties shall cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties that are developing countries in order to assist them in fulfilling their obligations under this Agreement.

Article VIII

NON-PARTIES

1. The Parties shall encourage any State not party to this Agreement to accept this Agreement and shall encourage any non-Party to adopt laws and regulations consistent with the provisions of this Agreement.

2. The Parties shall cooperate in a manner consistent with this Agreement and with international law to the end that fishing vessels entitled to fly the flags of non-Parties do not engage in activities that undermine the effectiveness of international conservation and management measures.

3. The Parties shall exchange information amongst themselves, either directly or through FAO, with respect to activities of fishing vessels flying the flags of non-Parties that undermine the effectiveness of international conservation and management measures.

Article IX

SETTLEMENT OF DISPUTES

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.

2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

3. Any dispute of this character not so resolved shall, with the consent of all Parties to the dispute, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea upon entry into force of the 1982 United Nations Convention on the Law of the Sea or to arbitration. In the case of failure to reach agreement on referral to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration, the Parties shall continue to consult and cooperate with a view to reaching settlement of the dispute in accordance with the rules of international law relating to the conservation of living marine resources.

Article X

ACCEPTANCE

1. This Agreement shall be open to acceptance by any Member or Associate Member of FAO, and to any non-member State that is a member of the United Nations, or of any of the specialized agencies of the United Nations or of the International Atomic Energy Agency.

2. Acceptance of this Agreement shall be effected by the deposit of an instrument of acceptance with the Director-General of FAO, hereinafter referred to as the Director-General.

3. The Director-General shall inform all Parties, all Members and Associate Members of FAO and the Secretary-General of the United Nations of all instruments of acceptance received.

4. When a regional economic integration organization becomes a Party to this Agreement, such regional economic integration organization shall, in accordance with the provisions of Article II.7 of the FAO Constitution, as appropriate, notify such modifications or clarifications to its declaration of competence submitted under Article II.5 of the FAO Constitution as may be necessary in light of its acceptance of this Agreement. Any Party to this Agreement may, at any time, request a regional economic integration organization that is a Party to this Agreement to provide information as to which, as between the regional economic integration organization and its Member States, is responsible for the implementation of any particular matter covered by this Agreement. The regional economic integration organization shall provide this information within a reasonable time.

Article XI

ENTRY INTO FORCE

1. This Agreement shall enter into force as from the date of receipt by the Director-General of the twenty-fifth instrument of acceptance.

2. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

Article XII

RESERVATIONS

Acceptance of this Agreement may be made subject to reservations which shall become effective only upon unanimous acceptance by all Parties to this Agreement. The Director-General shall notify forthwith all Parties of any reservation. Parties not having replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such

acceptance, the State or regional economic integration organization making the reservation shall not become a Party to this Agreement.

Article XIII

AMENDMENTS

1. Any proposal by a Party for the amendment of this Agreement shall be communicated to the Director-General.
2. Any proposed amendment of this Agreement received by the Director-General from a Party shall be presented to a regular or special session of the Conference for approval and, if the amendment involves important technical changes or imposes additional obligations on the Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Conference.
3. Notice of any proposed amendment of this Agreement shall be transmitted to the Parties by the Director-General not later than the time when the agenda of the session of the Conference at which the matter is to be considered is dispatched.
4. Any such proposed amendment of this Agreement shall require the approval of the Conference and shall come into force as from the thirtieth day after acceptance by two-thirds of the Parties. Amendments involving new obligations for Parties, however, shall come into force in respect of each Party only on acceptance by it and as from the thirtieth day after such acceptance. Any amendment shall be deemed to involve new obligations for Parties unless the Conference, in approving the amendment, decides otherwise by consensus.
5. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General, who shall inform all Parties of the receipt of acceptance and the entry into force of amendments.
6. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

Article XIV

WITHDRAWAL

Any Party may withdraw from this Agreement at any time after the expiry of two years from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Director-General who shall immediately inform all the Parties and the Members and Associate Members of FAO of such withdrawal. Withdrawal shall become effective at the end of the calendar year following that in which the notice of withdrawal has been received by the Director-General.

Article XV

DUTIES OF THE DEPOSITARY

The Director-General shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to each Member and Associate Member of FAO and to such non-member States as may become party to this Agreement;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform each Member and Associate Member of FAO and any non-member States as may become Party to this Agreement of:
 - (i) instruments of acceptance deposited in accordance with Article X;
 - (ii) the date of entry into force of this Agreement in accordance with Article XI;
 - (iii) proposals for and the entry into force of amendments to this Agreement in accordance with Article XIII;
 - (iv) withdrawals from this Agreement pursuant to Article XIV.

Article XVI

AUTHENTIC TEXTS

The Arabic, Chinese, English, French, and Spanish texts of this Agreement are equally authentic.

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Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fisheries Management Act 1991	162, 1991	10 Nov 1991	ss. 1 and 2: Royal Assent Part 5 (ss. 58–82): 3 Feb 1995 (a) Remainder: 3 Feb 1992 (see <i>Gazette</i> 1992, No. GN1)	
Primary Industries and Energy Legislation Amendment Act 1993	94, 1993	16 Dec 1993	Parts 11 and 12 (ss. 47–65): 1 Jan 1994 s. 69(1)(b): 1 July 1989 Remainder: Royal Assent	—
Maritime Legislation Amendment Act 1994	20, 1994	15 Feb 1994	1 Aug 1994 (see <i>Gazette</i> 1994, No. S289)	—
Primary Industries and Energy Legislation Amendment Act (No. 2) 1994	129, 1994	21 Oct 1994	s. 3: Royal Assent (b)	—
Evidence (Transitional Provisions and Consequential Amendments) Act 1995	3, 1995	23 Feb 1995	s. 27: 18 Apr 1995 (c)	s 14
Primary Industries and Energy Legislation Amendment Act (No. 2) 1996	59, 1996	20 Nov 1996	Schedule 4: Royal Assent (d)	—
Fisheries Legislation Amendment Act 1997	120, 1997	7 July 1997	7 July 1997	Sch 2 (item 29)
Fisheries Legislation Amendment Act (No. 1) 1998	75, 1998	30 June 1998	Schedule 1: 28 July 1998 (e)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fisheries Legislation Amendment Act (No. 1) 1999	143, 1999	3 Nov 1999	Schedule 1: 16 Dec 1999 (<i>see Gazette</i> 1999, No. S623) Schedule 2: 11 Dec 2001 (<i>see Gazette</i> 2001, No. S485) Remainder: Royal Assent	Sch 1 (items 16, 25, 27) and Sch. 2 (items 23, 36)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 489, 490): 5 Dec 1999 (<i>see Gazette</i> 1999, No. S584) (<i>f</i>)	—
Border Protection Legislation Amendment Act 1999	160, 1999	8 Dec 1999	Schedule 3 (items 1–8, 14): 16 Dec 1999 (<i>see Gazette</i> 1999, No. S624) (<i>g</i>) Schedule 3 (items 9–13): (<i>g</i>)	—
Fisheries Legislation Amendment Act (No. 1) 2000	50, 2000	3 May 2000	Schedules 1 and 2: 1 Aug 2000 (<i>see Gazette</i> 2000, No. S415) Remainder: Royal Assent	Sch 2 (item 17)
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 206–209, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (items 199, 200): 15 July 2001 (<i>see Gazette</i> 2001, No. S285) (<i>h</i>)	s 4–14

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001	115, 2001	18 Sept 2001	16 Oct 2001	s 4
Measures to Combat Serious and Organised Crime Act 2001	136, 2001	1 Oct 2001	Schedule 4 (item 70): 29 Oct 2001 (<i>i</i>)	—
Border Security Legislation Amendment Act 2002	64, 2002	5 July 2002	Schedule 8: 5 Jan 2003	—
Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Act 2004	28, 2004	1 Apr 2004	Schedule 1: 6 Aug 2004 (<i>see Gazette</i> 2004, No. S321) Remainder: Royal Assent	—
Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Act 2004	29, 2004	2 Apr 2004	Schedules 1 and 2: 20 Aug 2004 (<i>see Gazette</i> 2004, No. S343) Remainder: Royal Assent	Sch 2 (item 8)
as amended by Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 2 (items 17, 18): 20 Aug 2004 (s 2(1) item 36)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fisheries Legislation Amendment (International Obligations and Other Matters) Act 2005	99, 2005	6 July 2005	Sch 1 (items 3, 4, 6–23, 34–36, 42–47): 7 July 2005 (s 2(1) items 2, 4, 6, 8) Sch 1 (item 5): repealed before commencing (s 2(1) item 3) Sch 1 (items 24–33, 37–41, 48–58): never commenced (s 2(1) items 5, 7, 9)	Sch 1 (item 41)
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 1 (item 21): 1 Aug 2000 (s 2(1) item 11) Sch 1 (item 22): 24 May 2001 (s 2(1) item 12) Sch 1 (items 23, 24): 3 Feb 1992 (s 2(1) items 13, 14) Sch 1 (item 25): 20 Aug 2004 (s 2(1) item 15)	—
Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Act 2005	103, 2005	23 Aug 2005	Schedule 1 (items 1, 42, 43): 24 Aug 2005 Schedule 1 (items 3–14, 21–26): 30 Nov 2005 (see F2005L03632)	Sch 1 (item 14)
Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006	8, 2006	23 Mar 2006	23 Mar 2006	Sch 2 (item 22)
Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006	61, 2006	22 June 2006	Schedules 1 and 2: 23 June 2006 Remainder: Royal Assent	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Migration Legislation Amendment (Information and Other Measures) Act 2007	63, 2007	15 Apr 2007	Schedule 1 (items 16–30, 60, 61): 1 May 2007 (<i>see</i> F2007L01135)	Sch 1 (items 60, 61)
Fisheries Legislation Amendment Act 2007	104, 2007	28 June 2007	Schedule 2: 26 July 2007	—
as amended by				
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 2 (item 21): 26 July 2007 (s 2(1) item 56)	—
Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008	36, 2008	24 June 2008	Schedule 1 (items 83–117, 135–156): 1 July 2008 Schedule 2 (items 1–12) and Schedule 4 (items 1–6): 22 July 2008 Schedule 3 (items 1–66): 24 June 2009	Sch 1 (items 135–156)
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Schedule 2 (item 34): 23 May 2009	—
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Schedule 1 (items 1–18): 30 Jan 2012 (<i>see</i> F2011L02397)	Sch 1 (item 18) Sch 1 (item 17) (rep by 96, 2010, Sch 3 [item 17])
as amended by				
Personal Property Securities (Corporations and Other Amendments) Act 2010	96, 2010	6 July 2010	Schedule 3 (item 17): (<i>see</i> 96, 2010 below)	—
Fisheries Legislation Amendment Act 2010	39, 2010	13 Apr 2010	Schedule 1: 11 May 2010	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 5 (items 35, 36) and Sch 7: 1 Nov 2010 (s 2(1) item 7)	Sch 7
Personal Property Securities (Corporations and Other Amendments) Act 2010	96, 2010	6 July 2010	Sch 3 (items 2, 17): 30 Jan 2012 (s 2(1) items 9, 14)	—
Fisheries Legislation Amendment Act (No. 2) 2010	137, 2010	7 Dec 2010	Schedule 3 (items 1–14): 4 Jan 2011 Schedule 3 (items 15–20): 7 Jan 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 619–627) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
Maritime Powers (Consequential Amendments) Act 2013	16, 2013	27 Mar 2013	Schedule 3: 27 Mar 2014 (<i>see</i> s 2(1))	—
Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2013	17, 2013	27 Mar 2013	Schedule 3: 24 Apr 2013 Schedule 6 (items 52–56): 28 Mar 2013	Sch 3 (item 13)
Fisheries Legislation Amendment Act (No. 1) 2013	27, 2013	28 Mar 2013	Schedule 1 (items 1–9, 12–15), Schedule 2, Schedule 3 and Schedule 4 (items 1–10): 25 Apr 2013 Schedule 4 (items 11, 12): 29 Mar 2013	Sch 2 (item 6), Sch 3 (item 2) and Sch 4 (item 12)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 1 (items 50, 51) and Schedule 3 (item 12): Royal Assent	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 4 (items 85–87): 24 June 2014	Sch 4 (item 87)
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (items 139, 140, 348 and 349): 5 Mar 2016 (s 2(1) item 2)	Sch 3 (items 348, 349)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 70–79), Sch 6 (items 77–81) and Sch 9: 1 July 2015 (s 2(1) items 2 and 7)	Sch 6 (item 81) and Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 161): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (items 22, 23) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3: 16 June 2015 (s 2(1) item 3)	Sch 3 and Sch 4
as amended by				
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (item 9): 20 Sept 2017 (s 2(1) item 4)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 230): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 174, 175, 389): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (item 45): 21 Oct 2016 (s 2(1) item 1)	—
Fisheries Legislation Amendment (Representation) Act 2017	123, 2017	6 Nov 2017	Sch 1 (items 11, 12): 7 Nov 2017 (s 2(1) item 1)	—
Territories Legislation Amendment Act 2020	154, 2020	17 Dec 2020	Sch 1 (items 89, 93–96, 99): 18 Dec 2020 (s 2(1) item 2)	Sch 1 (items 93–96, 99)

(a) Subsection 2(2) of the *Fisheries Management Act 1991* provides as follows:

(2) Part 5 commences upon the repeal or the ceasing to have effect (as the case may be) of Part IVA of the *Fisheries Act 1952*.

NOTE: Subsection 7(3) of the *Fisheries Legislation (Consequential Provisions) Act 1991*, as amended by section 24 of the *Primary Industries and Energy Legislation Amendment Act 1993*, provides as follows:

(3) Part IVA of the *Fisheries Act 1952* unless sooner repealed, ceases to have effect at the end of the period of 3 years beginning on the day on which this section commences.

Section 7 of the *Fisheries Legislation (Consequential Provisions) Act 1991* commenced on 3 February 1992 (see *Gazette* 1992, No. GN1).

(b) The *Fisheries Management Act 1991* was amended by section 3 only of the *Primary Industries and Energy Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:

Endnote 3—Legislation history

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Fisheries Management Act 1991* was amended by section 27 only of the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsection 2(13) of which provides as follows:
- (13) Section 27 of this Act and the Schedule to this Act commence:
- (a) on the day on which sections 153 and 155 of the *Evidence Act 1995* commence; or
- (b) if those sections commence on different days—the first day on which both of those sections are in force.
- Sections 153 and 155 of the *Evidence Act 1995* commenced on 18 April 1995.
- (d) The *Fisheries Management Act 1991* was amended by Schedule 4 only of the *Primary Industries and Energy Legislation Amendment Act (No. 2) 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Fisheries Management Act 1991* was amended by Schedule 1 only of the *Fisheries Legislation Amendment Act (No. 1) 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences 28 days after the day on which it receives the Royal Assent.
- (f) The *Fisheries Management Act 1991* was amended by Schedule 1 (items 489 and 490) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (g) The *Fisheries Management Act 1991* was amended by Schedule 3 only of the *Border Protection Legislation Amendment Act 1999*, subsections 2(4), (5) and (6) of which provide as follows:
- Parts 1 and 3 of Schedule 3*
- (4) Parts 1 and 3 of Schedule 3 commence at the same time as the item in Schedule 2 that inserts section 189A into the *Customs Act 1901*.
- Division 2 of Part 2 of Schedule 3*
- (5) Division 2 of Part 2 of Schedule 3 commences immediately after the commencement of Schedule 2 to the *Fisheries Legislation Amendment Act (No. 1) 1999*.

Endnotes

Endnote 3—Legislation history

Remaining provisions of this Act

(6) Subject to subsections (7) and (8), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

Schedule 2 of the *Fisheries Legislation Amendment Act (No. 1) 1999* commenced on 11 December 2001 (see *Gazette* 2001, No. S485).

(h) The *Fisheries Management Act 1991* was amended by Schedule 3 (items 199 and 200) only of the *Corporations (Repeals, Consequential and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

(i) The *Fisheries Management Act 1991* was amended by Schedule 4 (item 70) only of the *Measures to Combat Serious and Organised Crime Act 2001*, subsection 2(5) of which provides as follows:

(5) The remainder of this Act commences on the 28th day after the day on which it receives the Royal Assent.

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s. 3	am. No. 120, 1997; No. 143, 1999; No. 29, 2004; No. 8, 2006; No 123, 2017
s. 3A.....	ad. No. 8, 2006
s. 4	am. No. 20, 1994; No. 120, 1997; Nos. 143 and 160, 1999; No. 137, 2000; No. 29, 2004; No. 99, 2005; No. 8, 2006; No. 104, 2007; No. 36, 2008; No. 131, 2009; Nos. 39, 96 and 137, 2010; No. 46, 2011; Nos. 27 and 103, 2013
s. 6	am. No. 59, 2015
s. 6A.....	ad. No. 115, 2001
s. 7	am. No. 143, 1999; No. 29, 2004; No. 36, 2008
Note to s. 7(1).....	ad. No. 143, 1999 rep. No. 36, 2008
s. 8	am. No. 143, 1999; No. 29, 2004
s. 8A.....	ad. No. 50, 2000
s. 9	am. No. 137, 2000
s. 9A.....	ad. No. 94, 1993
s. 10	am. No. 143, 1999; No. 29, 2004; No. 99, 2005
Part 2	
s. 13	am. No. 120, 1997; No. 115, 2001
s. 14	am. No. 50, 2000
s. 15	am. No. 120, 1997; No. 50, 2000; No. 115, 2001
s. 15A.....	ad. No. 75, 1998 am. No. 115, 2001; No. 29, 2004
s. 15B.....	ad. No. 75, 1998
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s. 16A.....	ad. No. 143, 1999 am. No. 36, 2008
s. 16B.....	ad. No. 29, 2004
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s. 17	am. No. 94, 1993; No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 99, 2005; No. 36, 2008; No. 137, 2010
s. 17A.....	ad. No. 120, 1997 am. No. 50, 2000
s. 19	am. No. 3, 1995; No. 137, 2010
s. 20	am. No. 137, 2010
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s. 21	am. No. 94, 1993
s. 22	am. No. 94, 1993; Nos. 28 and 29, 2004; No. 39, 2010; No. 17, 2013
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s. 31F	ad. No. 120, 1997 am. No. 55, 2001; No. 131, 2009

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s. 31J.....	ad. No. 120, 1997 am. No. 131, 2009
s. 31K.....	ad No 120, 1997
s. 31L.....	ad No 120, 1997
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s. 38	am. No. 99, 2005; No. 36, 2008
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s. 39	am. No. 143, 1999; No. 29, 2004; No. 36, 2008
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s. 42	am No 143, 1999; No 29, 2004; No 10, 2015
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s. 46	am. No. 120, 1997; No. 55, 2001; No. 131, 2009; No. 39, 2010
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s. 48	am. No. 131, 2009; No. 103, 2013
s. 49	am. No. 120, 1997 rep. No. 39, 2010
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s. 56	am. No. 36, 2008
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	am No 4, 2016; No 61, 2016
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s. 87	am. No. 36, 2008; No. 137, 2010 rep No 16, 2013
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s. 106HA.....	ad. No. 104, 2007
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s. 165	am. No. 94, 1993; No. 120, 1997; No. 99, 2005; No. 39, 2010
s. 166	am. No. 120, 1997; No. 100, 2005; No. 61, 2006; No. 36, 2008; No. 27, 2013; No. 31, 2014
s. 167	am. No. 29, 2004; No. 100, 2005
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s. 168	am. No. 129, 1994; No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 29, 2004; No. 99, 2005; No. 104, 2007; No. 36, 2008; Nos. 16, 27 and 103, 2013; No. 126, 2015
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Fisheries Management Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 21 March 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Richard Colbeck
Assistant Minister for Agriculture and Water Resources
Parliamentary Secretary to the Minister for Agriculture and Water Resources

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Part 1—Preliminary

1 Name

This instrument is the *Fisheries Management Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2019.	1 October 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Fisheries Management Act 1991*.

4 Simplified outline of this instrument

This instrument affects the operation and administration of the Act in various ways.

The application of the Act extends to areas outside the AFZ that are specified in Part 2 of this instrument and Schedule 1 to this instrument.

There are short ways of referring to certain areas in the AFZ for managing fishing in those areas (see Part 3 and Schedule 2).

To conserve the marine environment, there is a limit on the length of boats that may be used for fishing in the AFZ (see Part 4).

Special procedures must be followed in making fishing rights available by tender (see Part 5).

Section 5

Under the Act, AFMA may cancel a fishing concession if payments relating to the fishing concession have not been made within a period set by Part 6 of this instrument.

Fishing concessions are subject to conditions, including those set out in Part 7 (and Schedules 3 to 5) which deal with such things as nominating boats for fishing concessions, catch limits and protecting the marine environment.

Holders of fish receiver permits must keep records and give information to AFMA in accordance with Part 8.

Masters and owners of boats must ensure information such as identification codes allocated by AFMA, and names and radio call signs of foreign boats, are clearly displayed on the boats. Certain information must also be given to AFMA.

Under the Act, AFMA may direct that fishing not occur in part of a fishery. It is an offence for the master of a boat to navigate the boat in certain ways in an area subject to such a direction (see Division 3 of Part 9).

There are rules about the keeping and disposing of fishing equipment an officer finds in the AFZ if the owner of the equipment is unknown (see Division 4 of Part 9).

There are rules about identifying and disclosing identifying information about persons detained because they are reasonably suspected of having committed an offence using a foreign boat and who are not Australian citizens or Australian residents (see Part 10).

Part 11 provides for administrative matters, including:

- (a) information that must be included in certain registers; and
- (b) collection and disclosure by AFMA of information relevant to law enforcement, border protection, fisheries or the marine environment; and
- (c) the operation of the Statutory Fishing Rights Allocation Review Panel; and
- (d) the placement of caveats on the transfer of certain fishing concessions; and
- (e) fees; and
- (f) infringement notices providing for payment to AFMA as an alternative to prosecution for contravention of sections 93, 95 and 100 of the Act.

Part 12 sets out transitional provisions.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) AFMA;
- (b) AFZ;

- (c) Australian boat and Australian-flagged boat;
- (d) boat;
- (e) coastal waters;
- (f) fish;
- (g) fishery, fishing, fishing concession, fishing permit and fishing right;
- (h) high seas;
- (i) officer.

(1) In this instrument:

Act means the *Fisheries Management Act 1991*.

Antarctic Convergence has the same meaning as in the Convention on the Conservation of Antarctic Marine Living Resources, as in force at the time when this instrument commences (see in particular paragraph 4 of Article 1 of the Convention).

Note: The Convention on the Conservation of Antarctic Marine Living Resources is in the Australian Treaty Series 1982 No. 9 ([1982] ATS 9) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

approved vessel monitoring system means a vessel monitoring system in a class approved under section 9.

boat statutory fishing right means a statutory fishing right to use a boat in a managed fishery granted under any of the following:

- (a) the *Eastern Tuna and Billfish Fishery Management Plan 2010*;
- (b) the *Northern Prawn Fishery Management Plan 1995*;
- (c) the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*;
- (d) the *Western Tuna and Billfish Fishery Management Plan 2005*.

closed zone: see subsection 85(1).

concession holder means the holder of a licence, permit, or right, that is a fishing concession.

Coral Sea Fishery means the fishery of that name referred to in item 1 of the table in section 18.

crustacean means fish of the subphylum Crustacea.

declared fishery means a fishery in respect of which a declaration under subsection 91(1) of the Act is in force.

designated quota statutory fishing right means a quota statutory fishing right granted under any of the following:

- (a) the *Bass Strait Central Zone Scallop Fishery Management Plan 2002*;
- (b) the *Heard Island and McDonald Islands Fishery Management Plan 2002*;
- (c) the *Macquarie Island Toothfish Fishery Management Plan 2006*;
- (d) the *Small Pelagic Fishery Management Plan 2009*;
- (e) the *Southern Bluefin Tuna Fishery Management Plan 1995*.

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Eastern Skipjack Fishery means the fishery of that name referred to in item 2 of the table in section 18.

eligible person means a person who is registered as an eligible person for a grant of a fishing right under section 26 of the Act.

finfish means fish of the class Osteichthyes.

gear statutory fishing right means a statutory fishing right to use particular fishing equipment in a managed fishery granted under either of the following:

- (a) the *Northern Prawn Fishery Management Plan 1995*;
- (b) the *Southern Squid Jig Fishery Management Plan 2005*.

giant crab means fish of the species *Pseudocarcinus gigas*.

Heard Island and McDonald Islands Fishery means the area of the fishery under the *Heard Island and McDonald Islands Fishery Management Plan 2002*.

interaction means physical contact that:

- (a) occurs between an organism and one or more of the following:
 - (i) an individual other than an observer;
 - (ii) a nominated boat;
 - (iii) any object on board, or attached to, a nominated boat, other than equipment that is being used by an observer;
 - (iv) a nominated boat's equipment; and
- (b) is of a kind that could cause the organism to be distressed.

IUU vessel list means an Illegal, Unreported and Unregulated vessel list established by a governing commission for an international fisheries management organisation, as in force from time to time.

Macquarie Island Toothfish Fishery means the fishery area under the *Macquarie Island Toothfish Fishery Management Plan 2006*.

mollusc means fish of the phylum Mollusca.

nominated boat, in relation to a fishing concession, means a boat that is specified in, or nominated for the purposes of, the fishing concession in accordance with section 32 of the Act and section 33 of this instrument.

Norfolk Island Inshore Fishery means the fishery of that name referred to in item 3 of the table in section 18.

Norfolk Island Offshore Demersal Finfish Fishery means the fishery of that name referred to in item 4 of the table in section 18.

Northern Bluefin Tuna means fish of the species *Thunnus thynnus* and includes the subspecies *Thunnus orientalis*.

Northern Prawn Fishery target species means:

- (a) prawns; or
- (b) molluscs of the subclass Coleoidea (commonly known as squid) or of the family Pectinidae (commonly known as scallops).

northern waters means the area described in clause 1 of Schedule 3.

North West Slope Trawl Fishery means the fishery of that name referred to in item 5 of the table in section 18.

observer means a person approved by AFMA to carry out the functions of an observer.

operating, in relation to an approved vessel monitoring system, means sending a signal that:

- (a) is in a format that has been approved by AFMA; and
- (b) identifies accurately the location of the boat to which the vessel monitoring system is fitted.

outer envelope: see paragraph 23(b).

possess, in relation to fish on a nominated boat, includes control.

prawn means a crustacean of:

- (a) the family Aristeidae, Penaeidae or Solenoceridae (all commonly known as prawns); or
- (b) the family Nephropidae (commonly known as scampi); or
- (c) the family Scyllaridae (commonly known as bugs); or
- (d) the infraorder Caridea (commonly known as shrimp or carid prawns).

prawn fishery waters means the area described in Part 1 of Schedule 5.

precedence list has the same meaning as in Division 4 of Part 3 of the Act (see subsection 28(2) of the Act).

processed form: a Southern Bluefin Tuna is in processed form if it is in processed form A or processed form B.

processed form A: a Southern Bluefin Tuna is in ***processed form A*** if it has been gilled and gutted so that:

- (a) the gill plates are removed; and
- (b) the tail is wholly removed (see subsection (2)).

processed form B: a Southern Bluefin Tuna is in ***processed form B*** if it has been gilled and gutted so that:

- (a) the gill plates are not removed; and
- (b) the tail is not wholly removed (see subsection (2)).

protected community means a listed threatened ecological community within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*.

protected organism means an organism that is:

- (a) part of a protected community; or
- (b) a protected species.

protected species means:

Section 5

- (a) a listed threatened species within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* (other than a conservation dependent species within the meaning of that Act); or
- (b) a listed marine species within the meaning of that Act; or
- (c) a listed migratory species within the meaning of that Act; or
- (d) a whale.

provision subject to an infringement notice means section 93, 95 or 100 of the Act.

Queensland waters means waters that are within:

- (a) the coastal waters of Queensland; or
- (b) those parts of the AFZ that are within the scheduled area for Queensland under Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

quota statutory fishing right means a right described in paragraph 21(1)(a) or (b) of the Act.

registration envelope: see paragraph 23(a).

reserve price, in relation to a tender process, means the minimum bid amount that will be accepted as a tender.

reserve price envelope: see section 26.

scheduled species, in relation to a fishing permit, means a species for which quota units are specified in an attachment to the permit.

shark means fish of the class Chondrichthyes.

South Australian waters means the area described in clause 2 of Schedule 4.

Southern Bluefin Tuna means fish of the species *Thunnus maccoyii* (Castelnau, 1872).

Southern Bluefin Tuna Fishery has the same meaning as SBT Fishery area has in the *Southern Bluefin Tuna Fishery Management Plan 1995*.

South Tasman Rise Fishery means the fishery of that name referred to in item 6 of the table in section 18.

Tasmanian waters means the area described in clause 3 of Schedule 4.

tender means a tender for the grant of a fishing right.

tender envelope: see paragraph 23(b).

tender manager, in relation to a tender process, means:

- (a) if AFMA appoints an independent tender manager in relation to a tender process—that independent tender manager; or
- (b) otherwise—AFMA.

trawling includes board trawling, midwater or pelagic trawling and Danish seining.

trip means:

- (a) for the Heard Island and McDonald Islands Fishery—a voyage in a boat to or from any port inside or outside Australia for the purpose of exercising a right under a fishing concession; or
- (b) for the Macquarie Island Toothfish Fishery—a voyage in a boat to or from any port inside or outside Australia for the purpose of exercising a right under a fishing concession; or
- (c) for the high seas—a voyage in a boat to or from any port inside or outside Australia for the purpose of exercising a right under a fishing concession; or
- (d) in any other case—a voyage in a boat to Australia or from Australia for the purpose of exercising a right under a fishing concession.

tuna means:

- (a) fish of the family Scombridae (commonly known as tuna and tuna-like fish), other than fish of the genera *Scomberomorus*, *Scomber*, *Acanthocybium*, *Grammatorcynus* and *Rastrelliger* (commonly known as mackerel); or
- (b) fish of the family Istiophoridae or Xiphiidae (commonly known as billfish); or
- (c) fish of the family Bramidae (commonly known as pomfrets or Ray's bream).

unforeseen emergency includes the following:

- (a) a threat to the safety of human life;
- (b) a threat to the safety of a boat and property on board a boat;
- (c) the giving of assistance to a person, boat or aircraft in danger or distress;
- (d) a serious danger to navigation on or near a boat's course;
- (e) a failure, malfunction or defect that caused, or is likely to cause, serious damage to a boat, or that interfered with, or is likely to interfere with, the normal control of a boat.

vessel monitoring system has the meaning given by subsection 167B(4) of the Act.

Victorian waters means the area described in clause 1 of Schedule 4.

Western Deepwater Trawl Fishery means the fishery of that name referred to in item 7 of the table in section 18.

Western Skipjack Fishery means the fishery of that name referred to in item 8 of the table in section 18.

WGS84: see subsection 6(2).

- (2) For the purposes of the definitions of **processed form A** and **processed form B** in subsection (1), the tail of a Southern Bluefin Tuna is wholly removed if it is removed by cutting through the backbone near the base of the tail.

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6 Geographic coordinates

- (1) Except as otherwise indicated, geographic coordinates in this instrument are expressed in terms of the Geocentric Datum of Australia 1994 (commonly known as GDA94).

Note: The Geocentric Datum of Australia 1994 was published in Gazette No. GN35 of 6 September 1995.

- (2) In this instrument, a reference to WGS84 is a reference to the World Geodetic System 1984.

- (3) In this instrument, GDA94 and WGS84 are taken to be equivalent.

Note: See *US National Imagery and Mapping Agency, Technical Report—NIMA TR8350.2 Third Edition (including amendments to 23 June 2004)—Department of Defense World Geodetic System 1984—Its Definition and Relationships with Local Geodetic Systems*, in particular Chapters 2.2.1 and 7.

7 Conversion of weight for Southern Bluefin Tuna in the Southern Bluefin Tuna Fishery

- (1) For the purposes of giving effect to any provision of the Act or this instrument that requires the weight of Southern Bluefin Tuna taken from the Southern Bluefin Tuna Fishery to be calculated in processed form, the weight is to be calculated in accordance with subsection (2) or (3).

- (2) If the tuna is in processed form A, the weight is the amount, expressed in kilograms, calculated using the formula:

$$1.176 \times \text{Processed weight}$$

where:

processed weight is the weight, measured in kilograms, of the tuna.

- (3) If the tuna is in processed form B, the weight is the amount, expressed in kilograms, calculated using the formula:

$$\left(1.12 \times \text{Processed weight} \right) + N$$

where:

N is the number of tuna in the batch being weighed.

processed weight is the weight, measured in kilograms, of the batch of tuna.

8 Determining length of boat

For the purposes of this instrument, the length of a boat is the overall length of the boat determined in accordance with section 10 of the *Shipping Registration Act 1981*.

9 Approved vessel monitoring systems

- (1) AFMA may approve one or more classes of vessel monitoring systems for the purposes of this instrument.
- (2) AFMA may vary or revoke an approval under this section.
- (3) AFMA must ensure that information about an approval, or the variation or revocation of an approval, is published on AFMA's website.

Part 2—Application of Act to areas outside the AFZ

10 Simplified outline of this Part

The Act extends to 6 areas outside the AFZ:

- (a) waters off the Australian Antarctic Territory; and
- (b) waters of most of the southern hemisphere outside the exclusive economic zone of any country (in relation to persons who are fishing for Southern Bluefin Tuna or Northern Bluefin Tuna, or in relation to boats being used for fishing for Southern Bluefin Tuna or Northern Bluefin Tuna); and
- (c) waters over the South Tasman Rise (south of Tasmania); and
- (d) waters that are subject to the Convention on the Conservation of Antarctic Marine Living Resources; and
- (e) waters that are subject to the Southern Indian Ocean Fisheries Agreement; and
- (f) waters that are subject to the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean.

In these areas, the Act applies to:

- (a) Australian citizens; and
- (b) corporations that are incorporated in Australia or carry out activities mainly in Australia; and
- (c) Australian boats and Australian-flagged boats that are not Australian boats; and
- (d) persons aboard such boats.

11 Antarctic waters

For the purposes of subsection 8(1) of the Act, the Act applies, in respect of all waters within 200 nautical miles seaward of the baseline by reference to which the territorial limits of the Australian Antarctic Territory are defined under international law, to:

- (a) Australian citizens; and
- (b) bodies corporate that are incorporated in Australia or carry on activities mainly in Australia; and
- (c) Australian boats and Australian-flagged boats that are not Australian boats; and
- (d) persons on board boats to which paragraph (c) applies.

12 High seas fishing zone

- (1) For the purposes of subsection 8(1) of the Act, the Act applies, in respect of the area of waters described in Part 1 of Schedule 1 to this instrument (the *high seas fishing zone*), to:
 - (a) Australian citizens; and
 - (b) bodies corporate that are incorporated in Australia or carry on activities mainly in Australia; and
 - (c) Australian boats and Australian-flagged boats that are not Australian boats; and
 - (d) persons on board boats to which paragraph (c) applies.
- (2) However, the Act does not apply in relation to the high seas fishing zone to:
 - (a) persons who are not fishing for Southern Bluefin Tuna or Northern Bluefin Tuna; or
 - (b) boats that are not being used for fishing Southern Bluefin Tuna or Northern Bluefin Tuna.

13 South Tasman Rise

For the purposes of subsection 8(1) of the Act, the Act applies, in respect of the area of waters described in Part 2 of Schedule 1 to this instrument, to:

- (a) Australian citizens; and
- (b) bodies corporate that are incorporated in Australia or carry on activities mainly in Australia; and
- (c) Australian boats and Australian-flagged boats that are not Australian boats; and
- (d) persons on board boats to which paragraph (c) applies.

14 Convention on the Conservation of Antarctic Marine Living Resources

- (1) For the purposes of subsection 8(1) of the Act, the Act applies, in respect of the area of waters covered by the Convention on the Conservation of Antarctic Marine Living Resources, as in force at the time when this instrument commences, to:
 - (a) Australian citizens; and
 - (b) bodies corporate that are incorporated in Australia or carry on activities mainly in Australia; and
 - (c) Australian boats and Australian-flagged boats that are not Australian boats; and
 - (d) persons on board boats to which paragraph (c) applies.

Note: The Convention on the Conservation of Antarctic Marine Living Resources is in the Australian Treaty Series 1982 No. 9 ([1982] ATS 9) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (2) Subsection (1) only applies to areas outside the AFZ (see subsection 8(1) of the Act).

Note: To find out where the outer limits of the AFZ are, see the definition of *Australian fishing zone* in subsection 4(1) of the Act.

Section 15

15 Southern Indian Ocean Fisheries Agreement

For the purposes of subsection 8(1) of the Act, the Act applies, in respect of the area of waters covered by the Southern Indian Ocean Fisheries Agreement, as in force at the time when this instrument commences, to:

- (a) Australian citizens; and
- (b) bodies corporate that are incorporated in Australia or carry on activities mainly in Australia; and
- (c) Australian boats and Australian-flagged boats that are not Australian boats; and
- (d) persons on board boats to which paragraph (c) applies.

Note: The Southern Indian Ocean Fisheries Agreement is in the Australian Treaty Series 2012 No. 21 ([2012] ATS 21) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

16 Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean

For the purposes of subsection 8(1) of the Act, the Act applies, in respect of the area of waters covered by the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, as in force at the time when this instrument commences, to:

- (a) Australian citizens; and
- (b) bodies corporate that are incorporated in Australia or carry on activities mainly in Australia; and
- (c) Australian boats and Australian-flagged boats that are not Australian boats; and
- (d) persons on board boats to which paragraph (c) applies.

Note: The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean is in the Australian Treaty Series 2012 No. 28 ([2012] ATS 28) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Part 3—References to areas of the AFZ

17 Simplified outline of this Part

For the purposes of managing fishing, some areas of the AFZ may be referred to briefly as follows:

- (a) Coral Sea Fishery;
- (b) Eastern Skipjack Fishery;
- (c) Norfolk Island Inshore Fishery;
- (d) Norfolk Island Offshore Demersal Finfish Fishery;
- (e) North West Slope Trawl Fishery;
- (f) South Tasman Rise Fishery;
- (g) Western Deepwater Trawl Fishery;
- (h) Western Skipjack Fishery.

Those areas are described in detail in Schedule 2.

18 Referring to areas of waters within the AFZ

- (1) For the purposes of paragraph 168(2)(p) of the Act, an area mentioned in an item of the following table may be referred to by the name mentioned in that item for the purposes of managing fishing activities in the AFZ.

Specified areas of waters within the AFZ

Item	Name	Area
1	Coral Sea Fishery	The area specified in Part 1 of Schedule 2
2	Eastern Skipjack Fishery	The areas specified in Part 2 of Schedule 2
3	Norfolk Island Inshore Fishery	The area specified in Part 3 of Schedule 2
4	Norfolk Island Offshore Demersal Finfish Fishery	The area specified in Part 4 of Schedule 2
5	North West Slope Trawl Fishery	The area specified in Part 5 of Schedule 2
6	South Tasman Rise Fishery	The area specified in Part 6 of Schedule 2
7	Western Deepwater Trawl Fishery	The area specified in Part 7 of Schedule 2
8	Western Skipjack Fishery	The areas specified in Part 8 of Schedule 2

- (2) However, the areas mentioned in items 2 and 8 of the table in subsection (1) are prescribed only for the purposes of managing commercial fishing for skipjack tuna by purse-seining.

Part 4—Regulation of boats to conserve the marine environment

19 Simplified outline of this Part

To conserve the marine environment, boats that are more than 130 metres long must not be used in the AFZ.

20 Regulation of boats to conserve the marine environment

- (1) This section is made for the purposes of section 14 of the Act.
- (2) A person commits an offence of strict liability if:
 - (a) the person uses a boat to engage in fishing in the AFZ; and
 - (b) the boat is more than 130 metres in length (see section 8 of this instrument).

Penalty: 25 penalty units.

Part 5—Tenders

Division 1—Preliminary

21 Simplified outline of this Part

AFMA may manage a process to select persons to be granted fishing rights by tender itself, or may appoint an independent manager to manage the process on AFMA's behalf. AFMA may also appoint a probity auditor to oversee the process.

There are rules about how tenders are to be made, dealt with and ranked for the purposes of selecting the persons.

22 Administration of the tender process

If a grant of fishing rights is to be made by tender:

- (a) AFMA may manage the tender process itself or may appoint an independent tender manager to manage the process on AFMA's behalf; and
- (b) AFMA may appoint a probity auditor to oversee the tender process.

Division 2—Applications and tender process

23 Applications under subsection 26(1) of the Act

If a person has applied under subsection 26(1) of the Act for registration as an eligible person for a grant of a fishing right:

- (a) the application must be enclosed in a sealed, opaque envelope on which is written the word 'registration' (the *registration envelope*); and
- (b) the registration envelope and the envelope referred to in paragraph 27(3)(b) of the Act (the *tender envelope*) must be submitted together enclosed in a sealed, opaque envelope (the *outer envelope*).

Note: Subsection 27(2) of the Act requires an application for registration as an eligible person to be accompanied by a tender. Subsection 27(3) of the Act sets out requirements for the tender.

24 Opening outer envelopes

- (1) As soon as practicable after the closing date for tenders, the tender manager is to open each outer envelope.
- (2) The tender manager must ensure, if AFMA has appointed a probity auditor for the tender process, that the auditor and the tender manager are present at the opening of the outer envelopes.
- (3) The following procedure must then be carried out:
 - (a) for each outer envelope, the tender manager is to open the registration envelope inside it and record:
 - (i) the name of the person who submitted the enclosed registration application; and
 - (ii) whether a tender envelope was submitted with the application; and
 - (iii) whether any other conditions of the tender in relation to the contents of, or markings on, the outer envelope have been complied with;
 - (b) the tender manager must not open any tender envelope, but is to nominate a place where the tender envelopes will be kept until they are opened under section 27;
 - (c) the tender manager is to keep the original registration applications or, if the tender manager is not AFMA, give the applications to AFMA;
 - (d) AFMA:
 - (i) is to assess the registration applications under section 26 of the Act to determine each applicant's eligibility for the grant of fishing rights in accordance with the conditions for registration in the Act and the plan of management for the fishery concerned; and
 - (ii) if the tender manager is not AFMA—is then to give the tender manager a list of the eligible persons.

Division 3—Recording and ranking of tenders

25 Application procedures if fishery divided into sectors

If:

- (a) the fishery in which fishing rights are to be allocated is divided into sectors by a plan of management for the fishery; and
- (b) fishing rights in 2 or more sectors of the fishery are to be allocated by one tender process;

the tender manager is to carry out the ranking procedure set out in this Division for each of those sectors.

26 Procedures for reserve price

If AFMA sets a reserve price, AFMA must, before the closing time for tenders, place a written statement of the reserve price in a sealed envelope (the *reserve price envelope*) and, if AFMA is not the tender manager, give the envelope to the tender manager.

27 Tenders—recording and ranking

The procedure for recording and ranking tenders is as follows:

- (a) the tender manager is to open the tender envelope for each eligible person;
- (b) the tender manager is to record, for each eligible person:
 - (i) the person's name; and
 - (ii) the amount bid by the person per fishing right; and
 - (iii) whether the person's bid is invalid and, if it is, the reason why it is invalid (see section 28 for how invalid bids are dealt with); and
 - (iv) any other information required by the conditions of tender;
- (c) the tender manager is to rank the tenders, except invalid bids, submitted by eligible persons according to the amount bid per fishing right;
- (d) if 2 or more tenderers bid the same amount per fishing right, they are to be ranked equally;
- (e) if AFMA has set a reserve price, the tender manager is then to open the reserve price envelope and record, for each tender, whether the amount bid is less than, equal to or higher than the reserve price (see section 28 for how bids less than the reserve price are dealt with);
- (f) if the conditions of tender set a minimum number of fishing rights that a tenderer may acquire, the tender manager is then to record, for each tender, whether the minimum number that the tenderer will accept is equal to or more than the minimum number set by the conditions;
- (g) if the conditions of tender set a maximum number of fishing rights that a tenderer may acquire, the tender manager is then to record, for each tender, whether the maximum number that the tenderer is prepared to acquire is equal to or less than the maximum number set by the conditions;
- (h) subject to section 28, the tender manager is to prepare a precedence list setting out for each eligible person who tendered:

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- (i) the person's name and contact details; and
 - (ii) the amount bid per fishing right; and
 - (iii) if the conditions of tender allow a tenderer to specify the maximum number of fishing rights that the tenderer is prepared to acquire, or the minimum number of fishing rights that the tenderer will accept, at the amount bid—those maximum and minimum numbers;
- (i) if the conditions of tender allow a tenderer to acquire less than all of the available fishing rights—the precedence list must also set out the matters provided for in section 29;
 - (j) if the tender manager is not AFMA, the tender manager is then to give AFMA a report incorporating the precedence list.

28 Certain persons not to be placed on precedence list

- (1) If:
 - (a) an eligible person has tendered; and
 - (b) either the bid is less than the reserve price or is invalid;then the person is not to be recorded on the precedence list.

Note: A grant of a fishing right is made to persons on the precedence list only (see section 29 of the Act).

- (2) For a person who, under subsection (1), is not recorded on the precedence list, the tender manager must record:
 - (a) the person's name; and
 - (b) the reason why the person is not recorded on the precedence list.
- (3) The fact that a person is not placed on the precedence list does not affect the person's registration as an eligible person.

29 Procedures if tenderer can acquire less than all available rights

- (1) For the purposes of paragraph 27(i), the precedence list must also set out the number of fishing rights to which each tenderer is entitled, determined as set out in subsections (3), (4), (5), (6) and (7) of this section.
- (2) Subsection (1) applies whether or not the conditions of tender also allow a tenderer to specify, at the amount tendered per fishing right:
 - (a) the maximum number of fishing rights that the tenderer is prepared to acquire; or
 - (b) the minimum number of fishing rights that the tenderer will accept.
- (3) For each tender, if a person ranked above another tenderer has tendered for less than all the available fishing rights, the next-highest-ranked tenderer is entitled to the lesser of:
 - (a) the remaining number of fishing rights; and
 - (b) the number of fishing rights that the other tenderer has tendered for.
- (4) If:
 - (a) a tenderer nominates a minimum number of fishing rights that the tenderer will accept for an amount bid; and

- (b) that number is greater than the number of fishing rights remaining after deducting the entitlements of all higher-ranked tenderers from the total number of fishing rights offered;
the tenderer is not entitled to those fishing rights, even if the amount bid per fishing right is higher than that of the next-highest-ranked tenderer.
- (5) If a tenderer does not nominate a minimum number of fishing rights that the tenderer will accept for an amount bid, the tenderer is taken to have nominated, as the minimum number at that amount:
 - (a) one fishing right; or
 - (b) if AFMA has set a minimum number of fishing rights that a person may accept—that number.
- (6) If 2 or more tenderers are equally ranked, their respective entitlements to fishing rights are to be proportional to the maximum number of fishing rights that each is prepared to accept at the amount bid.
- (7) However, a tender is to be disregarded if the granting of entitlements in accordance with subsection (6) would lead to the tenderer being granted less than any minimum number of fishing rights that:
 - (a) the tenderer would accept; or
 - (b) the conditions of tender specify as the minimum that a tenderer may acquire.

Part 6—Prescribed period for payment

30 Simplified outline of this Part

Under the Act, AFMA may cancel a fishing concession if the concession holder has not, within a period prescribed by the regulations:

- (a) paid money relating to the concession; or
- (b) made a satisfactory arrangement relating to the money.

This Part prescribes the period.

31 Prescribed period for payment

For the purposes of paragraph 39(1)(c) of the Act, the prescribed period is 21 days.

Part 7—Standard conditions for fishing concessions

Division 1—Preliminary

32 Simplified outline of this Part

Section 42B of the Act lets regulations prescribe conditions that apply to fishing concessions. This Part prescribes a number of conditions about:

- (a) nominating boats for fishing concessions; and
- (b) vessel monitoring systems and observers; and
- (c) disposing of fish taken in declared fisheries only to holders of fish receiver permits; and
- (d) catch limits for specified areas; and
- (e) processing fish; and
- (f) protecting the marine environment and reporting certain interactions with protected organisms.

Division 2—Nominated boats

33 Nominated boat must be used on trip

- (1) For the purposes of section 42B of the Act, this section prescribes conditions that apply to a fishing concession that is:
 - (a) a fishing permit; or
 - (b) any of the following:
 - (i) a boat statutory fishing right;
 - (ii) a gear statutory fishing right;
 - (iii) a designated quota statutory fishing right.
- (2) A boat must not be used on a trip for the purpose of exercising a right under a fishing permit unless:
 - (a) the boat is specified in the permit; or
 - (b) the boat is nominated for the purposes of the permit under subsection 32(1A) or (1B) of the Act and the requirements of subsection (4) of this section are satisfied in relation to the nomination.
- (3) A boat must not be used on a trip for the purpose of exercising a right under a statutory fishing right mentioned in paragraph (1)(b) unless the boat is nominated for the statutory fishing right and the requirements of subsection (4) are satisfied in relation to the nomination.

Note: It is not necessary to nominate a boat for a quota statutory fishing right granted under any of the following:

- (a) the *Eastern Tuna and Billfish Fishery Management Plan 2010*;
 - (b) the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*;
 - (c) the *Western Tuna and Billfish Fishery Management Plan 2005*.
- (4) The requirements of this subsection are satisfied in relation to the nomination of a boat for the fishing concession if:
 - (a) the nomination is made by the concession holder by written notice given to AFMA; and
 - (b) the owner of the boat has consented to its nomination; and
 - (c) the boat is not nominated by another person for another fishing concession; and
 - (d) for a fishing concession that is not a designated quota statutory fishing right—another boat is not nominated for the fishing concession; and
 - (e) the boat has an approved vessel monitoring system that is capable of operating at all times; and
 - (f) the boat is able to carry safely an observer, the observer's safety equipment and the observer's monitoring equipment for the duration of a trip; and
 - (g) the boat meets any requirements of the Act (including this or any other instrument under the Act) that apply to the boat; and
 - (h) in the case of a boat that is to replace a boat that has been previously nominated—the fishing concession has not been suspended under section 38 of the Act.

- (5) It is a condition of the fishing concession that a boat nominated under this section must not be used unless the boat is on the register applicable to the fishing concession.

Division 3—Vessels on IUU vessel list

34 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to fishing concessions.

35 Concession holders not to use vessels on IUU vessel list

The holder of a fishing concession must not use a boat for fishing under the fishing concession if the boat is on an IUU vessel list.

Division 4—Vessel monitoring systems

36 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to fishing concessions.

37 Concession holder to ensure that vessel monitoring system is fitted and operating

- (1) The holder of a fishing concession must ensure that each nominated boat is fitted with an approved vessel monitoring system.
- (2) The holder of a fishing concession must take all reasonable steps to ensure that the approved vessel monitoring system on a nominated boat is operating at all times.
- (3) If the approved vessel monitoring system stops operating, the holder of the fishing concession must ensure that AFMA is informed as soon as practicable after the holder of the concession becomes aware that the vessel monitoring system has stopped operating.

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Division 5—Observers on nominated Australian boats

38 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to a fishing concession if the nominated boat for the fishing concession is an Australian boat.

39 Requirement to carry observer

- (1) An observer must be carried on board the nominated boat for a fishing concession for a particular trip if AFMA has decided that a person should be placed on the boat as an observer for that trip in order to assist AFMA to pursue its objectives or in the performance of its functions by doing one or more of the following:
 - (a) monitoring compliance with Australia's international obligations;
 - (b) collecting data or samples;
 - (c) monitoring the taking of fish that the holder of the concession is authorised to take under the Act or this instrument;
 - (d) monitoring the taking of any fish or protected organism taken as bycatch, or any impact that the activities under the concession may have on any fish or protected organism.
- (2) AFMA may give notice of a decision under subsection (1):
 - (a) orally; or
 - (b) in writing; or
 - (c) by email addressed to the holder of the fishing concession at the holder's email address registered under the Act.

40 Concession holder to ensure provision for observer and equipment

- (1) If an observer is to be carried on a nominated boat for a particular trip, the holder of the fishing concession must ensure that:
 - (a) the observer; and
 - (b) the observer's safety equipment; and
 - (c) the observer's monitoring equipment;are on board the boat when the boat commences the trip.
- (2) The holder of the fishing concession must ensure that an observer is provided with adequate food and accommodation while the observer is on board the boat during a trip.
- (3) The holder of the fishing concession must ensure that an observer is carried safely on the boat.

41 Concession holder to ensure observer is able to perform functions

- (1) If an observer is on board a nominated boat during a trip, the holder of the fishing concession must ensure that the observer:

- (a) is given assistance by the holder of the concession, the master of the boat and crew members of the boat; and
 - (b) is given access to all parts of the boat;
- to the extent reasonably necessary to enable the observer to do anything that applies under subsection 39(1).
- (2) The holder of the fishing concession must not interfere with, or obstruct, the observer in the course of collecting data or samples.
 - (3) The holder of the fishing concession must ensure that:
 - (a) the master of the boat; and
 - (b) crew members of the boat;do not interfere with, or obstruct, the observer in the course of collecting data or samples.

Division 6—Disposal of fish taken in declared fisheries

42 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to fishing concessions for a declared fishery.

43 Fish to be disposed of to fish receiver permit holder

- (1) The holder of a fishing concession for a declared fishery must ensure that fish taken and retained under the concession are disposed of only to a holder of a fish receiver permit.
- (2) This section does not apply in relation to fish taken under an aquarium sector permit granted by AFMA for the Coral Sea Fishery.

Division 7—Catch limits in northern waters**44 Conditions**

- (1) For the purposes of section 42B of the Act, this section prescribes conditions that apply to the following fishing concessions:
 - (a) a foreign fishing licence that authorises the use of a boat for taking tuna in northern waters;
 - (b) a fishing permit that authorises the use of a boat for taking tuna in northern waters;
 - (c) a fishing right that includes the right to take tuna in northern waters.
- (2) The concession holder must not possess on the nominated boat more than 2 fish of one or more species mentioned in clause 2 of Schedule 3.
- (3) The concession holder must not possess on the nominated boat more than 10 fish of one or more species mentioned in clause 3 of Schedule 3.
- (4) The concession holder must not possess on the nominated boat more than 20 fish of one or more species mentioned in clause 4 of Schedule 3.

Division 8—Catch limits for Victorian waters

45 Interpretation

- (1) For the purposes of this Division, the weight of a fish is taken to be the weight of the whole fish before it has undergone any preparation.
- (2) For the purposes of this Division, if a concession holder lands fish at a place on or within the coastline of Victoria, the concession holder is to be treated as having taken the fish in Victorian waters.

46 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to the following fishing concessions:

- (a) a foreign fishing licence that authorises the use of a boat for fishing in Victorian waters;
- (b) a fishing permit that authorises the use of a boat for taking fish in Victorian waters;
- (c) a fishing right that includes the right to take fish in Victorian waters.

47 Crustaceans

- (1) The concession holder must not take the following fish from Victorian waters:
 - (a) school prawns (*Metapenaeus macleayi*);
 - (b) eastern king prawns (*Melicertus plebejus*).

Note 1: The Commonwealth has made an arrangement with Victoria under Part 5 of the Act. On account of that arrangement, as it exists on the commencement of this instrument, rock lobster (family Palinuridae) may not be taken under a concession granted under the Act.

Note 2: The concession holder may take any other species of crustaceans from Victorian waters.

- (2) The concession holder must not possess on the nominated boat:
 - (a) more than 50 kilograms of crustaceans not of a species mentioned in Part 2 of Schedule 4; or
 - (b) within the amount of crustaceans referred to in paragraph (a):
 - (i) more than 5 giant crabs; or
 - (ii) more than 10 kilograms of inshore (or bay) bugs (family Scyllaridae).

Note: The species mentioned in Part 2 of Schedule 4 are target species, and are subject to specific management arrangements under Part 3 of the Act.

48 Molluscs

The concession holder must not possess on the nominated boat more than 50 kilograms of specimen shells or shellfish (class Gastropoda).

Note 1: The Commonwealth has made an arrangement with Victoria under Part 5 of the Act. On account of that arrangement, as it exists on the commencement of this instrument,

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abalone (any species of family Haliotidae) may not be taken under a concession granted under the Act.

Note 2: A concession holder may take any other species of molluscs from Victorian waters.

49 Finfish

- (1) The concession holder must not take finfish of a species mentioned in clause 7 of Schedule 4 from Victorian waters.

Note: The concession holder may take finfish of any other species from Victorian waters.

- (2) The concession holder must not possess on the nominated boat:
- (a) more than 200 kilograms of finfish of one or more species mentioned in clause 8 of Schedule 4; or
 - (b) within the amount of finfish referred to in paragraph (a):
 - (i) more than 10 yellowtail kingfish (*Seriola lalandi*); or
 - (ii) more than 20 kilograms of striped trumpeter (*Latris lineata*); or
 - (iii) more than 50 kilograms of snapper (*Chrysophrys auratus*).
- (3) This section does not apply to fish taken by trawling.

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Division 9—Catch limits for South Australian waters

50 Interpretation

- (1) For the purposes of this Division, the weight of a fish is taken to be the weight of the whole fish before it has undergone any preparation.
- (2) For the purposes of this Division, if a concession holder lands fish at a place on or within the coastline of South Australia, the concession holder is to be treated as having taken the fish in South Australian waters.

51 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to the following fishing concessions:

- (a) a foreign fishing licence that authorises the use of a boat for fishing in South Australian waters;
- (b) a fishing permit that authorises the use of a boat for taking fish in South Australian waters;
- (c) a fishing right that includes the right to take fish in South Australian waters.

52 Crustaceans

- (1) The concession holder:
 - (a) must not take prawns of any species, other than a species mentioned in Part 2 of Schedule 4, from South Australian waters; and
 - (b) must not take more than 5 giant crabs from South Australian waters per trip.

Note 1: The Commonwealth has made an arrangement with South Australia under Part 5 of the Act. On account of that arrangement, as it exists on the commencement of this instrument, rock lobster (species of family Palinuridae) may not be taken under a concession granted under the Act.

Note 2: The concession holder may take any other species of crustaceans from South Australian waters.

- (2) The concession holder must not possess on the nominated boat more than 200 kilograms of bay bugs (family Scyllaridae).
- (3) The concession holder must not possess on the nominated boat more than 50 kilograms of crustaceans of one or more species not mentioned in Part 2 of Schedule 4.

Note: The species mentioned in Part 2 of Schedule 4 are target species, and are subject to specific management arrangements under Part 3 of the Act.

53 Molluscs

- (1) The concession holder must not possess on the nominated boat:

- (a) more than 500 kilograms of mollusc that are not of a species mentioned in Part 3 of Schedule 4; or
- (b) within the amount of molluscs referred to in paragraph (a)—more than 50 kilograms of specimen shells or shellfish (class Gastropoda).

Note 1: The Commonwealth has made an arrangement with South Australia under Part 5 of the Act. On account of that arrangement, as it exists on the commencement of this instrument, abalone (species of family Haliotidae) may not be taken under a concession granted under the Act.

Note 2: A concession holder may take any other species of molluscs from South Australian waters.

- (2) The concession holder must not take scallops (species of family Pectinidae) from South Australian waters.

Note: A concession holder may take any other species of molluscs from South Australian waters.

54 Finfish

- (1) The concession holder must not take finfish of a species mentioned in clause 9 of Schedule 4 from South Australian waters.

Note: The concession holder may take any other species of finfish from South Australian waters.

- (2) The holder must not take more than 200 kilograms of finfish of one or more species mentioned in clauses 10, 11 and 12 of Schedule 4 from South Australian waters per trip by trawling.
- (3) The holder must not take more than 200 kilograms of finfish of one or more species mentioned in clauses 10, 11, 12 and 13 of Schedule 4 from South Australian waters per trip by a method other than trawling.
- (4) The holder must not take from South Australian waters more than:
 - (a) 20 kilograms of finfish of one or more species mentioned in clause 10 of Schedule 4 per trip; or
 - (b) 50 kilograms of finfish of one or more species mentioned in clause 11 of Schedule 4 per trip; or
 - (c) 10 yellowtail kingfish (*Seriola lalandi*) per trip; or
 - (d) 100 kilograms of mullocky (*Argyrosomus japonicus*) per trip.

Division 10—Catch limits for Tasmanian waters

55 Interpretation

- (1) For the purposes of this Division, the weight of a fish is taken to be the weight of the whole fish before it has undergone any preparation.
- (2) For the purposes of this Division, if a concession holder lands fish at a place on or within the coastline of Tasmania, the concession holder is to be treated as having taken the fish in Tasmanian waters.

56 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to the following fishing concessions:

- (a) a foreign fishing licence that authorises the use of a boat for fishing in Tasmanian waters;
- (b) a fishing permit that authorises the use of a boat for taking fish in Tasmanian waters;
- (c) a fishing right that includes the right to take fish in Tasmanian waters.

57 Crustaceans

- (1) The concession holder must not take prawns of any species, other than a species mentioned in clause 4 of Schedule 4, from Tasmanian waters.

Note 1: The Commonwealth has made an arrangement with Tasmania under Part 5 of the Act. On account of that arrangement, as it exists on the commencement of this instrument, rock lobster (species of family Palinuridae) may not be taken under a concession granted under the Act.

Note 2: The concession holder may take any other species of crustaceans from Tasmanian waters.

- (2) The concession holder must not possess on the nominated boat:
 - (a) more than 50 kilograms of crustaceans of a species not mentioned in Part 2 of Schedule 4; or
 - (b) within the amount of crustaceans referred to in paragraph (a)—more than 5 giant crabs.

Note: The species mentioned in Part 2 of Schedule 4 are target species, and are subject to specific management arrangements under Part 3 of the Act.

58 Molluscs

- (1) The concession holder must not take limpets or keyhole limpets (superfamilies Fissurellacea, Patellacea and Siphonariacea) from Tasmanian waters.

Note 1: The Commonwealth has made an arrangement with Tasmania under Part 5 of the Act. On account of that arrangement, as it exists on the commencement of this instrument, abalone (species of family Haliotidae) may not be taken under a concession granted under the Act.

Note 2: A concession holder may take any other species of molluscs from Tasmanian waters.

- (2) The concession holder must not possess on the nominated boat:
 - (a) more than 500 kilograms of molluscs not of a species mentioned in Part 3 of Schedule 4; or
 - (b) within the amount of molluscs referred to in paragraph (a)—more than 50 kilograms of specimen shells or shellfish (class Gastropoda).

Note: The species mentioned in Part 3 of Schedule 4 are target species, and are subject to specific management arrangements under Part 3 of the Act.

59 Finfish

- (1) The concession holder must not take finfish of a species mentioned in clause 14 of Schedule 4 from Tasmanian waters.
- (2) The concession holder must not possess on the nominated boat more than 20 kilograms of bastard trumpeter (*Latridopsis forsteri*).
- (3) The concession holder must not possess on the nominated boat more than 50 kilograms of blue groper (*Achoerodus gouldii*).
- (4) The concession holder must not possess on the nominated boat:
 - (a) more than 250 kilograms of finfish of one or more species that are mentioned in clause 15 of Schedule 4; or
 - (b) within the amount of finfish referred to in paragraph (a), more than 150 kilograms of striped trumpeter (*Latris lineata*).

60 Other species

The concession holder must not take any fish of a species mentioned in clause 16 of Schedule 4 from Tasmanian waters.

Division 11—Catch limits for prawn fishery waters

61 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to the following fishing concessions:

- (a) a foreign fishing licence that authorises the use of a boat for fishing for any Northern Prawn Fishery target species in prawn fishery waters;
- (b) a fishing permit that authorises the use of a boat for taking any Northern Prawn Fishery target species in prawn fishery waters;
- (c) a fishing right that includes the right to take any Northern Prawn Fishery target species in prawn fishery waters.

62 Crustaceans

The concession holder must not possess on the nominated boat:

- (a) more than 6 tropical rock lobsters (*Panulirus ornatus*); or
- (b) more than 10 mud crabs of genus *Scylla*.

63 Molluscs

The concession holder must not take a mollusc of a species mentioned in clause 2 of Schedule 5 from prawn fishery waters.

64 Finfish

- (1) The concession holder must not take tuna, except longtail tuna (*Thunnus tonggol*), from prawn fishery waters.
- (2) The concession holder must not take finfish of a species mentioned in clause 3 of Schedule 5 from prawn fishery waters.
- (3) The concession holder must not take longtail tuna (*Thunnus tonggol*) from prawn fishery waters that are Queensland waters.
- (4) The concession holder must not possess on the nominated boat more than 10 finfish of one or more species mentioned in clause 4 of Schedule 5.
- (5) For finfish of one or more species that are mentioned in clause 5 of Schedule 5:
 - (a) if a trip ends in March, April, May or June, the concession holder must not possess on the nominated boat more than 500 kilograms of such finfish; and
 - (b) if a trip ends in any other month, the concession holder must not possess on the nominated boat more than 50 kilograms of such finfish.
- (6) For the purposes of subsection (5), if a fish has been processed while on the boat, the weight of the fish to be used is the whole weight equivalent worked out using one of the following methods:
 - (a) multiply the weight of the gilled and gutted fish by 1.1 and express the result in kilograms;

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- (b) multiply the weight of the fillets from the fish by 2.6 and express the result in kilograms;
- (c) multiply the weight of the headed and gutted fish by 1.4 and express the result in kilograms.

65 Other species

The holder must not take any fish of a species mentioned in clause 6 of Schedule 5 from prawn fishery waters.

Division 12—Fish processing during a trip

66 Conditions

For the purposes of section 42B of the Act, this Division prescribes conditions that apply to fishing concessions.

67 Prohibited ways of processing fish

If a fish of a species mentioned in an item of the following table is taken and retained during a trip, the concession holder must ensure that none of the parts of the fish mentioned in the item are removed from the carcass before the fish is landed and disposed of in accordance with any requirements under the Act.

Prohibited ways of processing fish		
Item	Species	Parts of fish that must not be removed
1	Any species of shark other than the following: (a) angel shark (family Squatinidae); (b) ray; (c) skate; (d) spurdog (of genus <i>Squalus</i>)	The following: (a) the caudal lobe; (b) a dorsal, pectoral or caudal fin
2	Any species of: (a) angel shark (family Squatinidae); or (b) dogfish (family Squalidae)	A dorsal or caudal fin
3	Any species of: (a) ray; or (b) skate	The following: (a) the skin; (b) a fillet
4	Any species of banjo shark (of genus <i>Trygonorrhina</i>)	The following: (a) the skin; (b) a fillet; (c) a pectoral fin; (d) the tail
5	Any species of elephant fish (of family Callorhynchidae, Chimaeridae or Rhinochimaeridae)	The following: (a) the second dorsal fin; (b) the tail

68 Removal of shark liver

- (1) This section applies if a shark is:
 - (a) taken during a trip; and
 - (b) processed during the trip by the removal of its liver.
- (2) The concession holder must ensure that the shark's carcass and the liver are retained for the duration of the trip.
- (3) The concession holder must ensure that the liver is disposed of:

- (a) at the same time as the shark's carcass is disposed of; and
- (b) if section 43 applies—to the same holder of a fish receiver permit.

Division 13—Impacts on the marine environment

69 Conditions

For the purposes of section 42B of the Act, this Division sets out conditions that apply to fishing concessions.

70 No interaction with protected organism

The concession holder must ensure that, as far as practicable, there is no interaction with a protected organism during a trip.

71 Reporting interaction with protected organism

If there is an interaction with a protected organism during a trip and an observer is on board the nominated boat, the concession holder must ensure that the interaction is reported to the observer as soon as practicable.

Note: The concession holder may have an additional obligation to record the interaction in a logbook kept in accordance with a determination made under section 42 of the Act.

72 Requirements if protected organism is injured by interaction

(1) If during a trip:

- (a) there is an interaction with a protected organism; and
- (b) the interaction injures the organism;

the concession holder must ensure that the organism is given as much assistance as is practicable.

(2) If an observer is on board the nominated boat, the concession holder must ensure that the injury is reported to the observer as soon as practicable.

Note: The concession holder may have an additional obligation to record the injury in a logbook kept in accordance with a determination made under section 42 of the Act.

73 Requirements if protected organism killed by interaction

(1) If during a trip:

- (a) there is an interaction with a protected organism; and
- (b) the interaction results in the death of the organism; and
- (c) an observer is on board the nominated boat;

the concession holder must ensure that the death is reported to the observer as soon as practicable.

Note: The concession holder may have an additional obligation to record the death in a logbook kept in accordance with a determination made under section 42 of the Act.

(2) If during a trip:

- (a) there is an interaction with a protected organism; and
- (b) the interaction results in the death of the organism; and
- (c) it is necessary to discharge the organism's carcass;

the concession holder must ensure that the carcass is discharged from the boat in a way that does not attract birds or mammals to the boat.

Part 8—Fish receiver permits

74 Simplified outline of this Part

Holders of fish receiver permits must keep records, and give AFMA returns, about fish they receive and dispose of.

75 Holder of fish receiver permit to keep records

- (1) For the purposes of paragraph 92(2)(a) of the Act, the holder of a fish receiver permit must make a record in respect of fish received by the holder.
- (2) The record:
 - (a) must be in the form required by a determination by AFMA in force under section 42 of the Act for a logbook in respect of the relevant fishery (being, if the determination so provides, a record in an electronic form); and
 - (b) must include the information required by sections 77 and 78 of this instrument.
- (3) The holder of the fish receiver permit must keep the record for at least 5 years:
 - (a) if the permit specifies premises at which fish received under the permit by the holder of the permit are to be kept while in the possession of the holder—at those premises; or
 - (b) in any other case—at the holder's business or residential premises.

76 Holder of fish receiver permit to give returns of information

- (1) For the purposes of paragraph 92(2)(b) of the Act, the holder of a fish receiver permit must give a return in respect of fish received by the holder within 3 days after receiving the fish.
- (2) The return:
 - (a) must be in a form required by a determination by AFMA in force under section 42 of the Act for returns in respect of the relevant fishery (being, if the determination so provides, a return in an electronic form); and
 - (b) must include the information required by sections 77 and 78 of this instrument.

77 Information about fish received

- (1) A record or return required by section 75 or 76 must include the following information in relation to the receiving of fish:
 - (a) the full name and address of the holder of the fish receiver permit;
 - (b) the full name and address of the person from whom the fish were received;
 - (c) the name of the boat that was used to take the fish;
 - (d) the name and amount (by weight) of each species of fish;

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- (e) the type (if any) of processing to which the fish were subjected before being received;
 - (f) the date on which the fish were received;
 - (g) the full name and office of the person providing the information.
- (2) The record or return must also include:
- (a) the number (if any) of Southern Bluefin Tuna received; and
 - (b) for each Southern Bluefin Tuna received in processed form—whether the Southern Bluefin Tuna was in processed form A or processed form B.
- (3) The record or return must also include the number (if any) of fish received that are of any of the following kinds:
- (a) yellowfin tuna (*Thunnus albacares*);
 - (b) bigeye tuna (*Thunnus obesus*);
 - (c) longtail tuna (*Thunnus tonggol*);
 - (d) albacore tuna (*Thunnus alalunga*);
 - (e) black marlin (*Makaira indica*);
 - (f) blue marlin (*Makaira nigricans*);
 - (g) striped marlin (*Tetrapturus audax*);
 - (h) broadbill swordfish (*Xiphias gladius*);
 - (i) fish of the family Bramidae (commonly known as pomfrets or Ray's bream).

78 Information about fish disposed of

- (1) A record or return required by section 75 or 76 must include the following information in relation to the disposal of fish (except for private or domestic use):
- (a) the full name and address of the holder of the fish receiver permit;
 - (b) the full name and address of the person to whom the holder of the fish receiver permit disposed of the fish;
 - (c) the name and amount (by weight) of each species of fish;
 - (d) the type (if any) of processing to which the fish were subjected before their disposal;
 - (e) the date on which the fish were disposed of;
 - (f) the full name and office of the person providing the information.
- (2) The record or return must also include:
- (a) the number (if any) of Southern Bluefin Tuna disposed of; and
 - (b) for each Southern Bluefin Tuna disposed of in processed form—whether the Southern Bluefin Tuna was in processed form A or processed form B.
- (3) The record or return must also include the number (if any) of fish disposed of that are of any of the following kinds:
- (a) yellowfin tuna (*Thunnus albacares*);
 - (b) bigeye tuna (*Thunnus obesus*);
 - (c) longtail tuna (*Thunnus tonggol*);
 - (d) albacore tuna (*Thunnus alalunga*);

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- (e) black marlin (*Makaira indica*);
 - (f) blue marlin (*Makaira nigricans*);
 - (g) striped marlin (*Tetrapturus audax*);
 - (h) broadbill swordfish (*Xiphias gladius*);
 - (i) fish of the family Bramidae (commonly known as pomfrets or Ray's bream).
- (4) A record or return that relates to the disposal of fish for private or domestic use must include the following information:
- (a) the full name and address of the holder of the fish receiver permit;
 - (b) a declaration that the fish were disposed of for private or domestic use;
 - (c) the name and amount (by weight) of each species of fish;
 - (d) the type (if any) of processing to which the fish were subjected before their disposal;
 - (e) the month in which the fish were disposed of.

Part 9—Operation of boats and equipment

Division 1—Preliminary

79 Simplified outline of this Part

Masters and owners of boats must ensure information such as identification codes allocated by AFMA, and names and radio call signs of foreign boats, are clearly displayed on the boats. Certain information must also be given to AFMA.

Under the Act, AFMA may direct that fishing not occur in parts of the fishery. It is an offence for the master of a boat to navigate the boat in certain ways in an area subject to such a direction.

There are rules about keeping and disposing of fishing equipment an officer finds in the AFZ if the owner of the equipment is unknown.

Division 2—Operation of boats

80 Identification code for a boat

Identification codes

- (1) AFMA must allocate an identification code to any boat that is to be used for the purposes of a fishing right or fishing permit.
- (2) The identification code must be in the form of:
 - (a) a number or numbers; or
 - (b) a letter or letters; or
 - (c) a combination of one or more numbers and one or more letters.

Requirement to display identification code

- (3) The identification code must be displayed clearly and prominently on the boat at all times so that it is visible from the outside of the boat.
- (4) A person commits an offence of strict liability if:
 - (a) the person is the master or owner of a boat; and
 - (b) the boat has been allocated an identification code under subsection (1); and
 - (c) the boat is being used for the purposes of the fishing right or fishing permit for which the identification code was allocated; and
 - (d) the boat does not display its identification code in accordance with subsection (3).

Penalty: 15 penalty units.

Requirement to remove identification code if boat no longer being used

- (5) The identification code must be removed from the boat or obliterated as soon as practicable after the fishing right or fishing permit ceases to apply in relation to the boat.
- (6) A person commits an offence of strict liability if:
 - (a) the person is the master or owner of a boat; and
 - (b) the boat has been allocated an identification code under subsection (1); and
 - (c) the fishing right or fishing permit for which the identification code was allocated ceases to apply in relation to the boat; and
 - (d) the boat's identification code is not removed from the boat or obliterated in accordance with subsection (5).

Penalty: 15 penalty units.

Exception

- (7) Subsections (4) and (6) do not apply in relation to a boat that:
 - (a) is licensed to be used to take fish under a law of a State or Territory; and
 - (b) displays an identifying marking under that law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Displaying incorrect information on boat

- (8) A person commits an offence of strict liability if:
- (a) the person is the master or owner of a boat; and
 - (b) the boat has been allocated an identification code under subsection (1); and
 - (c) the boat is being used for the purposes of the fishing right or fishing permit for which the identification code was allocated; and
 - (d) the boat shows a letter or number that is not:
 - (i) the boat's name or identification code; or
 - (ii) an identification marking allocated to the boat under a law of a State or Territory.

Penalty: 15 penalty units.

81 Production of documents on a foreign boat

- (1) This section applies for the purposes of paragraph 168(2)(l) of the Act in relation to a foreign boat that is being used under a foreign fishing licence or a Treaty licence.
- (2) For the purposes of subsection 84(1) of the Act, if a document in a foreign language is given to an officer, the officer may ask the master to give the officer a written translation of the document into English.
- (3) The officer may nominate a person who is to make the translation.
- (4) If the officer asks the master for a translation, the master must give the officer the translation as soon as practicable.

Penalty: 15 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) For the purposes of subsection 84(1) of the Act, if an officer removes a document from the boat to make a copy of, or take an extract from, the document, the officer must:
 - (a) keep the document for no longer than is reasonably necessary to make the copy or take the extract; and
 - (b) allow the master, or a person nominated by the master, to accompany the officer while the officer has the document away from the boat.

82 Identification of the call sign of a foreign boat

- (1) The master of a foreign boat that is being used in the AFZ under a foreign fishing licence must show the boat's international radio call sign on the boat in accordance with subsections (2) and (3).

Penalty: 25 penalty units.

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- (2) The call sign must be displayed clearly and prominently on the boat at all times so that it is visible from the outside of the boat.
- (3) The call sign must be displayed in a position or positions on the boat that makes each sign clearly visible from an aircraft or a boat.
- (4) An offence against subsection (1) is an offence of strict liability.

83 Identification of the name of a foreign boat

- (1) The master of a foreign boat that is being used in the AFZ under a foreign fishing licence must show the boat's name on the boat in accordance with subsection (2).

Penalty: 25 penalty units.

- (2) The name must be displayed clearly and prominently on the boat at all times so that it is visible from the outside of the boat.
- (3) An offence against subsection (1) is an offence of strict liability.

84 Information relating to persons on board a boat

- (1) This section applies in relation to:
 - (a) a boat that is used in the AFZ under a fishing concession; and
 - (b) an Australian boat engaged in fishing outside the AFZ.
- (2) AFMA may, at any time, ask the master of the boat to give it the names, dates of birth, residential addresses and positions of persons on board the boat.
- (3) The master must give the information to AFMA as soon as practicable.

Penalty: 15 penalty units.

- (4) AFMA must not ask the master under subsection (2) more than once in a period of 48 hours.
- (5) An offence against subsection (3) is an offence of strict liability.

Division 3—Closure or partial closure of a fishery

85 Meaning of *closed zone*

- (1) A ***closed zone*** is any part of a fishery that is subject to a direction given under subsection 41A(2) of the Act (for such period or periods as the direction is in force under section 41A of the Act).
- (2) A closed zone relates to a boat if the boat may be used:
 - (a) to engage in fishing in any part of a closed zone under a fishing concession or a foreign master fishing licence; or
 - (b) to engage in fishing for scientific research in any part of a closed zone under a scientific permit.

86 Navigating in area that is a closed zone

Offence

- (1) The master of a boat commits an offence of strict liability if the boat is navigated in an area that is a closed zone that relates to the boat.

Penalty: 25 penalty units.

Exceptions

- (2) Subsection (1) does not apply if information given by the boat's vessel monitoring system shows, for the period that the boat was in the closed zone:
 - (a) that the boat was travelling at a speed of 5 knots or more as worked out under subsection (4); or
 - (b) that:
 - (i) the boat was navigated in the closed zone for a period of 30 minutes or more; and
 - (ii) the boat was stationary (see subsection (5)).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) does not apply if:
 - (a) AFMA had given approval for the boat to be navigated in the closed zone because of an unforeseen emergency, or circumstances beyond the control of the master of the boat; and
 - (b) the boat was navigated in the closed zone in accordance with any instructions given by AFMA.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Working out a boat's speed

- (4) To work out a boat's speed in knots for the purposes of this section:

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- (a) for each consecutive pair of points identified by the boat's vessel monitoring system, identify the shortest distance between the pair of points in a straight line; and
 - (b) divide the distance by the time taken by the boat to travel between the 2 points.
- (5) For the purposes of this section, a boat is taken to be stationary if it is travelling at a speed of 0.5 knots or less as worked out under subsection (4).

Division 4—Unclaimed equipment

87 Sale or disposal of unclaimed equipment

- (1) This section applies to equipment used for fishing if:
 - (a) an officer finds the equipment in the AFZ; and
 - (b) the identity of the owner of the equipment is unknown.
- (2) The officer must keep the equipment in safe custody for 30 days after the day on which it was found.
- (3) If the owner of the equipment has not been identified by the end of the period, AFMA must place a notice in:
 - (a) one or more newspapers circulating in the port in Australia or an external Territory nearest to where the equipment was found; or
 - (b) if there is no newspaper circulating in the port—one or more newspapers nominated by the CEO.
- (4) The notice must:
 - (a) describe the equipment; and
 - (b) identify the place, or approximate place, where it was found; and
 - (c) state that unless the owner of the equipment is identified within 14 days after the date of publication of the newspaper, the equipment may be sold by public auction.
- (5) AFMA may attempt to sell the equipment by public auction if:
 - (a) the owner of the equipment is not identified at the end of 14 days after the date on which the latest of the notices is published; and
 - (b) the equipment is in saleable condition.
- (6) For the purposes of the auction:
 - (a) the Commonwealth is taken to be the absolute owner of the equipment; and
 - (b) an officer may conduct the auction without holding an auctioneer's licence under the law of the State or Territory in which the auction is held; and
 - (c) the proceeds of the sale of the equipment must be paid to AFMA.
- (7) AFMA may direct how the equipment is to be disposed of if:
 - (a) the equipment is not in saleable condition; or
 - (b) the equipment is offered, but not sold, at the auction.
- (8) AFMA may dispose of equipment that is marine debris in such manner as AFMA considers to be appropriate without complying with subsections (2) to (7).

Part 10—Detention of suspected illegal foreign fishers

Division 1—Simplified outline of this Part

88 Simplified outline of this Part

There are rules about the kinds of personal identifier to be obtained from persons detained because they are reasonably suspected of having committed an offence using a foreign boat and are not Australian citizens or Australian residents.

Authorised officers must give such persons certain information before carrying out identification tests to obtain personal identifiers from the persons.

There are also rules about what kinds of personal identifiers may be disclosed to other organisations and which Australian and international organisations they may be disclosed to.

This Part also identifies Australian Government agencies that may disclose information about potentially illegal fishing to foreign governments and intergovernmental bodies.

Division 2—Identifying detainees

89 Personal identifiers

For the purposes of paragraph (g) of the definition of *personal identifier* in subclause 26(1) of Schedule 1A to the Act, other identifiers are as follows:

- (a) a sample of a person's handwriting;
- (b) a photograph of a tattoo, scar or other identifying mark of a person, if the obtaining of the photograph does not involve:
 - (i) the removal of any of the person's clothing; or
 - (ii) the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.

90 Personal identifiers detainees must provide

For the purposes of paragraph 28(2)(e) of Schedule 1A to the Act, other types of personal identifier are as follows:

- (a) an audio or a video recording of the detainee (other than a video recording under clause 37 of Schedule 1A to the Act);
- (b) an iris scan of the detainee's eyes;
- (c) a sample of the detainee's handwriting;
- (d) a photograph of a tattoo, scar or other identifying mark of the detainee, if the obtaining of the photograph does not involve:
 - (i) the removal of any of the detainee's clothing; or
 - (ii) the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.

91 Personal identifiers officers must require non-citizens to provide by way of identification tests

For the purposes of paragraph 29(1)(a) of Schedule 1A to the Act, the types of personal identifier are as follows:

- (a) fingerprints or handprints of the non-citizen (including those taken using paper and ink or digital livescanning technologies);
- (b) a measurement of the non-citizen's height and weight;
- (c) a photograph or other image of the non-citizen's face and shoulders;
- (d) an audio or a video recording of the non-citizen (other than a video recording under clause 37 of Schedule 1A to the Act);
- (e) an iris scan of the non-citizen's eyes;
- (f) the non-citizen's signature;
- (g) a sample of the non-citizen's handwriting;
- (h) a photograph of a tattoo, scar or other identifying mark of the non-citizen, if the obtaining of the photograph does not involve:
 - (i) the removal of any of the non-citizen's clothing; or
 - (ii) the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.

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92 Information to be provided before carrying out identification tests

- (1) For the purposes of paragraph 30(1)(b) of Schedule 1A to the Act, the matters of which the authorised officer must inform the non-citizen before carrying out an identification test are:
- (a) the reason why a personal identifier is required to be provided; and
 - (b) how a personal identifier may be collected; and
 - (c) how any personal identifier that is collected may be used; and
 - (d) the circumstances in which a personal identifier may be disclosed to a third party; and
 - (e) that a personal identifier may be produced in evidence in a court or tribunal in relation to the person; and
 - (f) that the *Privacy Act 1988* applies to a personal identifier, and that the person has a right to make a complaint to the Australian Information Commissioner about the handling of personal information; and
 - (g) that the *Freedom of Information Act 1982* gives a person access to certain information and documents in the possession of the Government of the Commonwealth and its agencies, and that the person has a right to seek access to that information or those documents under that Act, and to seek amendment of records containing personal information that is incomplete, incorrect, out of date or misleading; and
 - (h) if the non-citizen is a minor or an incapable person—how a personal identifier is to be obtained from a minor or incapable person.

Note: Division 3 of Part 5 of Schedule 1A to the Act deals with the identification of minors and incapable persons.

- (2) For the purposes of subclause 30(3) of Schedule 1A to the Act, if a form is to be given to a non-citizen setting out any information mentioned in subsection (1), it must be given to the non-citizen at a time that gives the non-citizen enough time to read and understand the form before the identification test is conducted.

93 Authorising access to video recordings

For the purposes of subclause 41(3) of Schedule 1A to the Act, the types of personal identifier are as follows:

- (a) fingerprints or handprints of a non-citizen (including those taken using paper and ink or digital liveness scanning technologies);
- (b) a measurement of a non-citizen's height and weight;
- (c) a photograph or other image of a non-citizen's face and shoulders;
- (d) an audio or a video recording of a non-citizen (other than a video recording under clause 37 of Schedule 1A to the Act);
- (e) an iris scan of a non-citizen's eyes;
- (f) a non-citizen's signature;
- (g) a sample of a non-citizen's handwriting;
- (h) a photograph of a tattoo, scar or other identifying mark of a non-citizen.

94 Providing video recordings—permitted provision

For the purposes of paragraph 42(2)(f) of Schedule 1A to the Act, the Australian Human Rights Commission is prescribed.

95 Providing video recordings—limitations

For the purposes of paragraph 42(3)(a) of Schedule 1A to the Act, the types of personal identifier are as follows:

- (a) fingerprints or handprints of a non-citizen (including those taken using paper and ink or digital liveness scanning technologies);
- (b) a measurement of a non-citizen's height and weight;
- (c) a photograph or other image of a non-citizen's face and shoulders;
- (d) an audio or a video recording of a non-citizen (other than a video recording under clause 37 of Schedule 1A to the Act);
- (e) an iris scan of a non-citizen's eyes;
- (f) a non-citizen's signature;
- (g) a sample of a non-citizen's handwriting;
- (h) a photograph of a tattoo, scar or other identifying mark of a non-citizen.

Division 3—Disclosure of identifying information

96 Authorising access to identifying information

For the purposes of subclause 52(3) of Schedule 1A to the Act, the types of personal identifier are as follows:

- (a) fingerprints or handprints of a non-citizen (including those taken using paper and ink or digital livescanning technologies);
- (b) a measurement of a non-citizen's height and weight;
- (c) a photograph or other image of a non-citizen's face and shoulders;
- (d) an audio or a video recording of a non-citizen (other than a video recording under clause 37 of Schedule 1A to the Act);
- (e) an iris scan of a non-citizen's eyes;
- (f) a non-citizen's signature;
- (g) a sample of a non-citizen's handwriting;
- (h) a photograph of a tattoo, scar or other identifying mark of a non-citizen.

97 Authorising disclosure of identifying information

For the purposes of subclause 54(1) of Schedule 1A to the Act, AFMA may authorise the following agencies to disclose identifying information under that subclause:

- (a) the Department of Foreign Affairs and Trade;
- (b) the Department administered by the Minister administering Part XII of the *Customs Act 1901*.

98 Disclosure of identifying information to Australian bodies

For the purposes of paragraph 54(1)(d) of Schedule 1A to the Act, AFMA may authorise the disclosure of identifying information under subclause 54(1) of that Schedule to any of the bodies mentioned in the following table:

Disclosure of identifying information to Australian bodies

Item	Name of body
1	Attorney-General's Department
2	Australian Criminal Intelligence Commission
3	Australian Federal Police
4	Australian Securities and Investments Commission
5	Australian Security Intelligence Organisation
6	Australian Taxation Office
7	Australian Transaction Reports and Analysis Centre (AUSTRAC)
8	Commonwealth Director of Public Prosecutions
9	Department of Agriculture and Water Resources
10	Department of Defence
11	Department of Foreign Affairs and Trade

Disclosure of identifying information to Australian bodies

Item	Name of body
12	Department of Health
13	Department of Home Affairs
14	New South Wales Department of Primary Industries
15	New South Wales Office of Director of Public Prosecutions
16	New South Wales Police Service
17	Northern Territory Department of Industry and Resources
18	Northern Territory Office of Director of Public Prosecutions
19	Northern Territory Police
20	Queensland Department of Agriculture and Fisheries
21	Queensland Office of Director of Public Prosecutions
22	Queensland Police Service
23	South Australian Department of Primary Industries and Regions
24	South Australian Office of Director of Public Prosecutions
25	South Australian Police
26	Tasmanian Department of Primary Industries, Parks, Water and Environment
27	Tasmanian Office of the Director of Public Prosecutions
28	Tasmanian Police
29	Victorian Department of Justice
30	Victorian Department of Economic Development, Jobs, Transport and Resources
31	Office of Public Prosecutions, Victoria
32	Victorian Police
33	Western Australian Department of Fisheries
34	Western Australian Department of Justice
35	Office of Director of Public Prosecutions for Western Australia
36	Western Australian Police Service

99 Disclosure of identifying information to international organisations

For the purposes of paragraph 54(1)(e) of Schedule 1A to the Act, AFMA may authorise the disclosure of identifying information under subclause 54(1) of that Schedule to any of the following organisations:

- (a) Interpol;
- (b) the United Nations;
- (c) any of the intergovernmental organisations (known as Regional Fisheries Bodies) mentioned in the following table:

Disclosure of identifying information to international organisations

Item	Name of intergovernmental organisation
1	Advisory Committee on Fishery Research (ACFR)
2	Asia-Pacific Fishery Commission (APFIC)
3	Bay of Bengal Programme (BOBP-IGO)

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Disclosure of identifying information to international organisations

Item	Name of intergovernmental organisation
4	Comisión de Pesca Continental Para America Latina (COPESCAL)
5	Comisión Permanente del Pacifico Sur (CPPS)
6	Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)
7	Commission for the Conservation of Southern Bluefin Tuna (CCSBT)
8	Committee for Inland Fisheries and Aquaculture for Africa (CIFAA)
9	Coordinating Working Party on Fisheries Statistics (CWP)
10	Council of the Eastern Pacific Tuna Fishing Agreement (CEPTFA)
11	European Inland Fisheries and Aquaculture Advisory Commission (EIFAAC)
12	Fisheries Committee for the Western Central Gulf of Guinea (FCWC)
13	Fishery Committee for the Eastern Central Atlantic (CECAF)
14	Forum Fisheries Agency (FFA)
15	General Fisheries Commission for the Mediterranean (GFCM)
16	Indian Ocean Tuna Commission (IOTC)
17	Inter-American Tropical Tuna Commission (IATTC)
18	International Baltic Sea Fishery Commission (IBSFC)
19	International Commission for the Conservation of Atlantic Tunas (ICCAT)
20	International Council for Exploration of the Sea (ICES)
21	International Pacific Halibut Commission (IPHC)
22	International Whaling Commission (IWC)
23	La Commission Sous-Régionale des Pêches (CSR/P)
24	Lake Victoria Fisheries Organization (LVFO)
25	Latin American Fisheries Development Organization (OLDEPESCA)
26	Mekong River Commission (MRC)
27	Network of the Aquaculture Centres in Asia-Pacific (NACA)
28	North Atlantic Fisheries Organisation (NAFO)
29	North Atlantic Salmon Conservation Organization (NASCO)
30	North East Atlantic Fisheries Commission (NEAFC)
31	North Pacific Anadromous Fish Commission (NPAFC)
32	North Pacific Marine Science Organisation (PICES)
33	Northwest Atlantic Fisheries Organization (NAFO)
34	Pacific Salmon Commission (PSC)
35	Regional Commission for Fisheries (RECOFI)
36	Regional Fisheries Advisory Committee for the Southwest Atlantic (CARPAS)
37	Secretariat of the Pacific Community (SPC)
38	Southeast Asian Fisheries Development Center (SEAFDEC)
39	South East Atlantic Fisheries Organisation (SEAFO)
40	Southern Indian Ocean Fisheries Agreement (SIOFA)
41	South Pacific Regional Fisheries Management Organisation (SPRFMO)
42	Southwest Indian Ocean Fisheries Commission (SWIOFC)
43	Western and Central Pacific Fisheries Commission (WCPFC)

Disclosure of identifying information to international organisations

Item Name of intergovernmental organisation

44 Western Central Atlantic Fishery Commission (WECAFC)

45 Western Indian Ocean Tuna Organization (WIOTO)

Division 4—Disclosures relating to illegal fishing activities

100 Authorising disclosure of information relating to illegal fishing activities

- (1) This section is made for the purposes of paragraph 108B(3)(b) of the Act.
- (2) The following agencies are declared to be prescribed agencies for the purposes of subsection 108B(1) of the Act:
 - (a) the Department of Foreign Affairs and Trade;
 - (b) the Department administered by the Minister administering Part XII of the *Customs Act 1901*.

Part 11—Administration

Division 1—Simplified outline of this Part

101 Simplified outline of this Part

Under the Act, information described in Division 2 of this Part must be included in the Register of Statutory Fishing Rights, the High Seas Register and the Fishing Permits Register.

AFMA may collect, and disclose to government bodies, researchers and the holders of fishing concessions concerned, information about:

- (a) possible breaches of laws; and
- (b) border protection; and
- (c) management and monitoring of, and research into, fisheries and the marine environment.

There are rules about the operation of the Statutory Fishing Rights Allocation Review Panel, covering the operation of the Panel's registries and fees for witnesses appearing before the Panel.

There is also a scheme for the placement of caveats on the transfer of certain fishing concessions.

Fees set out in Schedule 6 apply for certain applications, registrations and other matters.

If satisfied that a person has contravened section 93, 95 or 100 of the Act, an officer may issue the person responsible for the contravention with an infringement notice allowing the person to pay an amount to AFMA as an alternative to prosecution.

Division 2—Registers

102 Information to be included in registers

- (1) This section prescribes particulars to be included in:
 - (a) the Register of Fishing Rights for the purposes of paragraph 45(1)(f) of the Act; and
 - (b) the High Seas Register for the purposes of paragraph 57B(2)(i) of the Act; and
 - (c) the Fishing Permits Register for the purposes of paragraph 57H(1)(e) of the Act.
- (2) A particular mentioned in subsection (3) does not apply if:
 - (a) the particular does not exist in relation to the particular fishing concession; or
 - (b) it is not necessary for AFMA to collect the particular, either for its own purposes, or in accordance with an international fisheries agreement.
- (3) For the purposes of subsection (1), the particulars are set out in the following table.

Particulars to be included in registers

Item	Particular
1	For the person to whom the fishing concession is granted: <ol style="list-style-type: none">(a) name; and(b) postal address; and(c) telephone number; and(d) fax number; and(e) email address; and(f) ABN or ACN
2	For any other holder of the fishing concession: <ol style="list-style-type: none">(a) name; and(b) postal address; and(c) telephone number; and(d) fax number; and(e) email address; and(f) ABN or ACN
3	Number of the fishing permit
4	Number of the boat statutory fishing right
5	Number of the quota statutory fishing right
6	Any alphanumeric code assigned for the purposes of the registration of the fishing concession
7	Total weight in kilograms of fish that may be taken for the purposes of the fishing concession
8	Total headrope length in metres that can be used for the purposes of the fishing concession
9	Whether a gear statutory fishing right has been nominated in relation to a boat statutory fishing right

Particulars to be included in registers

Item	Particular
10	Whether a quota statutory fishing right has been nominated in relation to a boat statutory fishing right
11	For a boat that has been nominated for the fishing concession: <ul style="list-style-type: none"> (a) name; and (b) any previous names; and (c) any distinguishing symbol that identifies the boat; and (d) length; and (e) colour; and (f) beam in metres; and (g) gross registered tonnage; and (h) moulded depth in metres; and (i) when it was built; and (j) where it was built; and (k) a code representing the type of boat; and (l) a code representing the gear type used on the boat; and (m) port of registry; and (n) registry number; and (o) whether the boat's registration has previously been cancelled or suspended, and the country which cancelled or suspended the registration; and (p) any previous flag under which it has been operated; and (q) normal crew complement; and (r) a code representing the boat's current flag state; and (s) a code representing any previous flag state; and (t) number of freezers on the boat; and (u) each type of freezer used on the boat; and (v) capacity of each freezer used on the boat; and (w) fish hold capacity; and (x) engine type; and (y) power in kilowatts of the main engine or engines; and (z) serial number of each engine; and (za) aspiration of each engine; and (zb) number of turbochargers; and (zc) type of aftercooler system; and (zd) radio call sign; and (ze) International Radio Call Sign; and (zf) make and model of each communication system on the boat; and (zg) whether the boat is authorised to conduct transshipping in the area of competence for the Indian Ocean Tuna Commission; and (zh) colour photographs of the boat, in high resolution and with sufficient brightness and contrast to show the boat clearly, including: <ul style="list-style-type: none"> (i) a photograph measuring at least 12 cm × 7 cm that shows the full overall length of the starboard side of the boat and all of the boat's structural features along that side; and

Part 11 Administration

Division 2 Registers

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Particulars to be included in registers

Item	Particular
	(ii) a photograph measuring at least 12 cm × 7 cm that shows the full overall length of the port side of the boat and all of the boat's structural features along that side; and (iii) a photograph measuring at least 12 cm × 7 cm that is taken from astern and shows the boat's stern
12	For the owner of a boat that has been nominated for the fishing concession: (a) name; and (b) postal address; and (c) nationality
13	For the master of a boat that has been nominated for the fishing concession: (a) name; and (b) nationality

Division 3—Collection and disclosure of information

103 Collection of information

For the purposes of paragraph 168(2)(u) of the Act, AFMA may collect information relating to:

- (a) possible breaches of the laws of Australia or of a foreign country; or
- (b) the control and protection of Australia's borders; or
- (c) the administration and management of fisheries or marine environments; or
- (d) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments.

104 Disclosure of information

- (1) This section applies to information, including e-monitoring data and personal information, of the kind referred to in paragraph 168(2)(v) of the Act.
- (2) AFMA may disclose the information:
 - (a) to a government entity if AFMA is satisfied that the information relates to the performance of a function of the entity; or
 - (b) to a person conducting research if AFMA is satisfied that the research is related to, or will support, AFMA's functions or objectives; or
 - (c) in the case of data collected from a vessel monitoring system fitted to a boat that has been nominated for a fishing concession, e-monitoring data or information collected from the holder of a fishing concession (and without limiting paragraph (a) or (b))—to a person who:
 - (i) was the holder of the fishing concession at the time to which the data or information relates; or
 - (ii) has been nominated by a person described in subparagraph (i); or
 - (d) in the case of information relating to the disposal of fish by the holder of a fish receiver permit—to the person who was the holder of the permit when the fish were disposed of.
- (3) In this section:

government entity means:

 - (a) the Commonwealth, a State or a Territory; or
 - (b) an agency or authority of the Commonwealth or of a State or Territory; or
 - (c) a foreign country or part of a foreign country.

Division 4—Statutory Fishing Rights Allocation Review Panel

105 Administrative matters

- (1) For the purposes of paragraph 137(3)(a) of the Act, the Registrar of the Statutory Fishing Rights Allocation Review Panel must ensure that each Registry of the Panel is open for business from 9.30 am to 1.00 pm, and from 2.00 pm to 4.00 pm, on each business day in the place where the Registry is located.
- (2) For the purposes of paragraph 137(3)(a) of the Act, the Registrar of the Panel must:
 - (a) date documents received by the Panel; and
 - (b) for an application for review of a decision to grant a fishing right, acknowledge the application in writing.

106 Fees and allowances for appearing before Panel

For the purposes of subsection 158(1) of the Act, a person who is summoned under paragraph 146(2)(a) of the Act to appear before the Statutory Fishing Rights Allocation Review Panel to give evidence is entitled to be paid the same fees and allowances for expenses in relation to the appearance as are payable under the *Administrative Appeals Tribunal Regulation 2015* to a person summoned to appear before the Administrative Appeals Tribunal.

Division 5—Restrictions on transfers

107 Caveats

- (1) This section is made for the purposes of paragraphs 32A(4)(d) and 46(4D)(d) of the Act and prescribes circumstances that relate to the following fishing concessions:
 - (a) a fishing permit;
 - (b) a fishing right.
- (2) A transfer of a fishing concession (or ownership of a fishing concession) must not be registered if:
 - (a) AFMA has received a notification in the approved form for the purposes of this section; and
 - (b) the notification was made by the concession holder, other than a lessee of the fishing concession; and
 - (c) the notification is expressed as having the effect of placing a caveat on a transfer of the fishing concession for the benefit of another person; and
 - (d) either:
 - (i) the caveat has not been withdrawn by the person for whose benefit the caveat exists by further notification given to AFMA in the approved form; or
 - (ii) the transfer is not being made with the consent of that person given to AFMA in the approved form; and
 - (e) subsection (3) does not apply.
- (3) This subsection applies if AFMA is satisfied, on the application of the concession holder who made the notification, that the transfer should be registered on account of an order made by a court.

Note: Sections 54 and 57K of the Act provide for applications to be made to a prescribed court for an order for the rectification of a register that is relevant to the operation of this section.
- (4) Nothing in this section requires AFMA to be satisfied as to the accuracy or validity of any information or matter that is notified under this section.

Division 6—Fees

108 Fees

- (1) For the purposes of subsections 52(1), 57D(1) and 57J(1) and paragraph 168(2)(e), of the Act, the fee payable for an application, registration, inspection or other matter mentioned in an item in the table in clause 1 of Schedule 6 to this instrument is the fee applicable under that item.
- (2) Despite subsection (1), no fee is payable for an application for the grant of a port permit, or for a variation of a condition of a port permit, for a foreign fishing boat that is engaged in fisheries research activities in collaboration with:
 - (a) the Commonwealth, a State or a Territory; or
 - (b) an agency or authority of the Commonwealth or of a State or Territory.

Division 7—Infringement notices

109 Purpose of Division

This Division is made for the purposes of paragraph 168(2)(i) of the Act, which is about paying penalties to AFMA as an alternative to prosecution under the Act.

110 When an infringement notice may be given

- (1) If an officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice, the officer may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) An officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:
 - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than 1 day; and
 - (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.

111 Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name and contact details of the person who gave the notice, and that the person is authorised to issue the infringement notice; and
 - (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose if the provision were contravened; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
 - (f) state the amount that is payable under the notice; and
 - (g) give an explanation of how payment of the amount is to be made; and

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- (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) the person will not be liable to be prosecuted in a court for the alleged contravention; and
 - (i) state that payment of the amount is not an admission of guilt or liability; and
 - (j) state that the person may apply to the CEO to have the period in which to pay the amount extended; and
 - (k) state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court for the alleged contravention; and
 - (l) set out how the notice can be withdrawn; and
 - (m) state that if the notice is withdrawn, the person may be prosecuted in a court for the alleged contravention; and
 - (n) state that the person may make written representations to the CEO seeking the withdrawal of the notice.
- (2) If the notice relates to only one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
- (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
 - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.
- (3) If the notice relates to more than one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
- (a) one-fifth of the amount worked out by adding together the maximum penalty that a court could impose on the person for each offence; and
 - (b) either:
 - (i) if the person is an individual—the number of penalty units worked out by multiplying the number of alleged contraventions by 12; or
 - (ii) if the person is a body corporate—the number of penalty units worked out by multiplying the number of alleged contraventions by 60.

112 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the CEO for an extension of the period referred to in paragraph 111(1)(h).
- (2) If the application is made before the end of that period, the CEO may, in writing, extend that period. The CEO may do so before or after the end of that period.
- (3) If the CEO extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 111(1)(h) is taken to be a reference to the period as so extended.
- (4) If the CEO does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in

paragraph 111(1)(h) is taken to be a reference to the period that ends on the later of the following days:

- (a) the day that is the last day of the period referred to in paragraph 111(1)(h);
- (b) the day that is 7 days after the day the person was given notice of the CEO's decision not to extend.

- (5) The CEO may extend the period more than once under subsection (2).

113 Withdrawal of an infringement notice

Representation seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the CEO seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The CEO may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the CEO:
 - (a) must take into account any written representations seeking the withdrawal that were given by the person to the CEO; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
 - (iv) any other matter the CEO considers relevant.

Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
 - (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that the person may be prosecuted in a court for the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
 - (a) the CEO withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;

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AFMA must refund to the person an amount equal to the amount paid.

114 Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 111(1)(h):
 - (a) any liability of the person for the alleged contravention is discharged; and
 - (b) the person may not be prosecuted in a court for the alleged contravention; and
 - (c) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
 - (d) the person is not regarded as having been convicted of the alleged offence.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

115 Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice.

116 Delegation by CEO

The CEO may, in writing, delegate the following powers and functions to an officer:

- (a) the power under section 112 to extend the period referred to in paragraph 111(1)(h) in relation to an infringement notice;
- (b) the power under section 113 to withdraw an infringement notice.

Part 12—Transitional provisions

Division 1—Simplified outline of this Part

117 Simplified outline of this Part

This Part deals with matters of a transitional nature relating to the making or amendment of this instrument.

Division 2—Provisions for this instrument as originally made

118 Things done under the *Fisheries Management Regulations 1992* or the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995*

- (1) If:
 - (a) a thing was done for a particular purpose under the *Fisheries Management Regulations 1992*, or the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995*, as in force immediately before those instruments were repealed; and
 - (b) the thing could be done for that purpose under this instrument;
the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application, or other instrument being given or made.

119 Infringement notices

- (1) Division 7 of Part 11 applies in relation to an alleged contravention of a provision subject to an infringement notice whether the alleged contravention occurs before, on or after the commencement of this instrument.
- (2) However, Part 10 of the *Fisheries Management Regulations 1992*, as in force immediately before the repeal of that instrument, continues to apply to an infringement notice given under that Part before that repeal.

Schedule 1—Application of Act outside the AFZ

Note: See sections 12 and 13.

Part 1—High seas fishing zone

1 High seas fishing zone

- (1) For the purposes of section 12, the area is so much of the area of waters, bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table, as is outside the AFZ and not within the exclusive economic zone of another country.

High seas fishing zone	
Item	Description
1	The equator at its intersection with the meridian 50°00'00"W
2	East along the equator to its intersection with the meridian 140°00'00"W
3	South along that meridian to its intersection with the parallel 60°00'00"S
4	West along that parallel to its intersection with the meridian 50°00'00"W
5	North along that meridian to the starting point

- (2) The geographic coordinates used in this clause are expressed in terms of WGS84.

Part 2—South Tasman Rise

2 South Tasman Rise

- (1) For the purposes of section 13, the area is the area of waters bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

South Tasman Rise	
Item	Description
1	The intersection of the outer limit of the AFZ south of Tasmania with the meridian 150°00'00"E
2	South along that meridian to its intersection with the parallel 48°30'00"S
3	West along that parallel to its intersection with the meridian 146°30'00"E
4	North along that meridian to the intersection with the outer limit of the AFZ south of Tasmania
5	Generally easterly then north-easterly along that outer limit to the starting point

- (2) The geographic coordinates used in this clause are expressed in terms of WGS84.

Schedule 2—References to areas of the AFZ

Note: See section 18.

Part 1—Area of the Coral Sea Fishery

1 Area of the Coral Sea Fishery

The area of the Coral Sea Fishery is the area within the AFZ bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of the Coral Sea Fishery	
Item	Description
1	The point 24°30'00"S 154°40'00"E
2	North along the meridian 154°40'00"E to its intersection with the parallel 22°15'00"S
3	North-westerly along the geodesic to 18°45'00"S 152°35'00"E
4	North-westerly along the geodesic to 18°20'S 148°20'00"E
5	North-westerly along the geodesic to 15°00'00"S 146°00'00"E
6	North-westerly along the geodesic to 13°00'00"S 145°00'00"E
7	North along the meridian 145°00'00"E to its intersection with the outer limit of the AFZ
8	Generally south-easterly, north-easterly, south-easterly, south-westerly then south-easterly along that outer limit to its intersection with the parallel 24°30'00"S
9	West along the parallel 24°30'00"S to the starting point

Part 2—Areas of the Eastern Skipjack Fishery

2 Areas of the Eastern Skipjack Fishery

- (1) Area A of the Eastern Skipjack Fishery is the area within the AFZ bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area A of the Eastern Skipjack Fishery	
Item	Description
1	The intersection of the southern coastline of Australia at mean low water with the meridian 141°00'00"E
2	South along that meridian to its intersection with the outer limit of the AFZ
3	Generally south-easterly, north-easterly then north-westerly along that outer limit to its intersection with the meridian 142°30'00"E
4	South along that meridian to its intersection with the northern coastline of the mainland at mean low water, in the vicinity of Cape York
5	Generally southerly along that coastline at mean low water to the starting point

Note 1: The Protected Zone within the meaning of the *Torres Strait Fisheries Act 1984* is excluded from the AFZ by operation of section 9 of the Act.

Note 2: At the time of the making of this instrument, the Commonwealth had entered into arrangements under Part 5 of the Act which mean that, for the purposes of the description of this fishery, the coastal waters of Queensland, Victoria and South Australia are taken to be in the AFZ (see section 76 of the Act).

- (2) Area B of the Eastern Skipjack Fishery is the area within the AFZ that is adjacent to Norfolk Island, other than the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area B of the Eastern Skipjack Fishery	
Item	Description
1	The point 28°35'00"S 167°25'00"E
2	East along the parallel 28°35'00"S to its intersection with the meridian 168°25'00"E
3	South along that meridian to its intersection with the parallel 29°50'00"S
4	West along that parallel to its intersection with the meridian 167°25'00"E
5	North along that meridian to the starting point

Part 3—Area of the Norfolk Island Inshore Fishery

3 Area of the Norfolk Island Inshore Fishery

The area of the Norfolk Island Inshore Fishery is the area within the AFZ bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of the Norfolk Island Inshore Fishery	
Item	Description
1	The point 28°38'00"S 167°40'00"E
2	East along the parallel 28°38'00"S to its intersection with the meridian 168°20'00"E
3	South along that meridian to its intersection with the parallel 29°45'00"S
4	West along that parallel to its intersection with the meridian 167°40'00"E
5	North along that meridian to the starting point

Part 4—Area of the Norfolk Island Offshore Demersal Finfish Fishery

4 Area of the Norfolk Island Offshore Demersal Finfish Fishery

The area of the Norfolk Island Offshore Demersal Finfish Fishery is the area within the AFZ surrounding Norfolk Island, excluding the area constituted by the Norfolk Island Inshore Fishery.

Part 5—Area of the North West Slope Trawl Fishery

5 Area of the North West Slope Trawl Fishery

The area of the North West Slope Trawl Fishery is the area within the AFZ bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of the North West Slope Trawl Fishery	
Item	Description
1	The intersection of the meridian 114°00'00"E with the parallel 21°37'00"S
2	North along the meridian to the outer limit of the AFZ
3	Generally north-easterly along the outer limit of the AFZ to the point 13°13'00"S 118°29'00"E
4	South-easterly along the geodesic to the point 13°56'00"S 120°01'00"E
5	North-easterly along the geodesic to the point 13°15'00"S 121°49'00"E
6	North-easterly along the geodesic to the point 12°30'00"S 123°06'00"E
7	Generally north-westerly, north-easterly, south-easterly then south-westerly along the outer limit of the territorial sea adjacent to Ashmore Reef to the point 12°19'00"S 123°21'00"E
8	North-easterly along the geodesic to the point 11°55'00"S 125°00'00"E
9	South-westerly along the geodesic to the point 13°19'00"S 124°00'00"E
10	West along the parallel 13°19'00"S to its intersection with the meridian 123°49'00"E
11	South-westerly along the geodesic to the point 13°35'00"S 123°37'00"E
12	Southerly along the geodesic to the point 14°00'00"S 123°36'00"E
13	South-westerly along the geodesic to the point 14°03'00"S 123°25'00"E
14	South-westerly along the geodesic to the point 14°13'00"S 123°10'00"E
15	West along the parallel 14°13'00"S to its intersection with the meridian 122°53'00"E
16	South-westerly along the geodesic to the point 14°56'00"S 121°42'00"E
17	South-westerly along the geodesic to the point 15°00'00"S 121°38'00"E
18	South-westerly along the geodesic to the point 15°23'00"S 121°25'00"E
19	South-westerly along the geodesic to the point 15°36'00"S 121°08'00"E
20	South-westerly along the geodesic to the point 15°47'00"S 120°59'00"E
21	South-westerly along the geodesic to the point 16°20'00"S 120°50'00"E
22	South along the meridian 120°50'00"E to its intersection with the parallel 16°48'00"S
23	South-westerly along the geodesic to the point 17°00'00"S 120°47'00"E
24	South-westerly along the geodesic to the point 17°12'00"S 120°35'00"E
25	South-westerly along the geodesic to the point 17°39'00"S 120°10'00"E
26	South-westerly along the geodesic to the point 17°55'00"S 119°11'00"E
27	South-westerly along the geodesic to the point 18°01'00"S 119°00'00"E
28	South-westerly along the geodesic to the point 19°00'00"S 117°14'00"E
29	South-westerly along the geodesic to the point 19°09'00"S 116°50'00"E

Schedule 2 References to areas of the AFZ

Part 5 Area of the North West Slope Trawl Fishery

Clause 5

Area of the North West Slope Trawl Fishery	
Item	Description
30	South-westerly along the geodesic to the point 19°11'00"S 116°28'00"E
31	South-westerly along the geodesic to the point 19°17'00"S 116°05'00"E
32	South-westerly along the geodesic to the point 19°30'00"S 115°50'00"E
33	South-westerly along the geodesic to the point 19°40'00"S 115°25'00"E
34	South-westerly along the geodesic to the point 19°55'00"S 115°14'00"E
35	South-westerly along the geodesic to the point 20°03'00"S 115°03'00"E
36	South-westerly along the geodesic to the point 20°15'00"S 114°55'00"E
37	South-westerly along the geodesic to the point 20°35'00"S 114°47'00"E
38	Southerly along the geodesic to the point 20°53'00"S 114°43'00"E
39	South along the meridian 114°43'00"E to its intersection with the parallel 21°00'00"S
40	South-westerly along the geodesic to the point 21°30'00"S 114°06'00"E
41	South-westerly along the geodesic to the starting point

Part 6—Area of the South Tasman Rise Fishery

6 Area of the South Tasman Rise Fishery

The area of the South Tasman Rise Fishery is the area within the AFZ bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of the South Tasman Rise Fishery	
Item	Description
1	The intersection of the outer limit of the AFZ with the meridian 150°00'00"E south of Tasmania
2	South along that meridian to its intersection with the parallel 48°30'00"S
3	West along that parallel to its intersection with the meridian 146°30'00"E
4	North along that meridian to the intersection with the outer limit of the AFZ
5	Generally north-easterly along that outer limit to the starting point

Part 7—Area of the Western Deepwater Trawl Fishery

7 Area of the Western Deepwater Trawl Fishery

The area of the Western Deepwater Trawl Fishery is the area within the AFZ bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of the Western Deepwater Trawl Fishery	
Item	Description
1	The point 21°37'00"S 114°00'00"E
2	South-westerly along the geodesic to the point 21°41'00"S 113°57'00"E
3	South-westerly along the geodesic to the point 21°48'00"S 113°51'00"E
4	Southerly along the geodesic to the point 22°01'00"S 113°47'00"E
5	Southerly along the geodesic to the point 22°12'00"S 113°45'00"E
6	South-westerly along the geodesic to the point 22°50'00"S 113°26'00"E
7	South-westerly along the geodesic to the point 23°20'00"S 113°13'00"E
8	South-westerly along the geodesic to the point 23°36'00"S 113°02'00"E
9	South-westerly along the geodesic to the point 24°06'00"S 112°37'00"E
10	South-westerly along the geodesic to the point 24°25'00"S 112°25'00"E
11	South-westerly along the geodesic to the point 24°39'00"S 112°19'00"E
12	Southerly along the geodesic to the point 25°00'00"S 112°14'00"E
13	Southerly along the geodesic to the point 25°33'00"S 112°12'00"E
14	Southerly along the geodesic to the point 26°00'00"S 112°18'00"E
15	South-easterly along the geodesic to the point 26°24'00"S 112°30'00"E
16	South-easterly along the geodesic to the point 26°50'00"S 112°44'00"E
17	South-easterly along the geodesic to the point 27°20'00"S 112°55'00"E
18	South-easterly along the geodesic to the point 27°55'00"S 113°10'00"E
19	South-easterly along the geodesic to the point 28°35'00"S 113°29'00"E
20	South-easterly along the geodesic to the point 29°00'00"S 113°46'00"E
21	South-easterly along the geodesic to the point 29°54'00"S 114°25'00"E
22	South-easterly along the geodesic to the point 30°40'00"S 114°41'00"E
23	South-easterly along the geodesic to the point 31°14'00"S 114°55'00"E
24	Southerly along the geodesic to the point 31°48'00"S 115°01'00"E
25	South-easterly along the geodesic to the point 31°58'00"S 115°13'00"E
26	South-westerly along the geodesic to the point 32°16'00"S 115°05'00"E
27	South-westerly along the geodesic to the point 32°53'00"S 114°41'00"E
28	South-westerly along the geodesic to the point 33°10'00"S 114°34'00"E
29	South-westerly along the geodesic to the point 33°30'00"S 114°29'00"E
30	Southerly along the geodesic to the point 34°00'00"S 114°27'00"E
31	Southerly along the geodesic to the point 34°20'00"S 114°30'00"E
32	South-easterly along the geodesic to the point 34°41'00"S 114°40'00"E

Area of the Western Deepwater Trawl Fishery	
Item	Description
33	South-easterly along the geodesic to the point 34°52'00"S 114°50'00"E
34	South-easterly along the geodesic to the point 34°58'00"S 115°00'00"E
35	South-easterly along the geodesic to the point 35°01'00"S 115°08'00"E
36	South along the meridian 115°08'00"E to its intersection with the outer limit of the AFZ
37	Generally north-westerly along the outer limit to its intersection off the north-west coast of Australia with the meridian 114°00'00"E
38	South along that meridian to the starting point

Part 8—Areas of the Western Skipjack Fishery

8 Area of the Western Skipjack Fishery

The area of the Western Skipjack Fishery consists of Western Skipjack Fishery subarea 1 (see clause 9) and Western Skipjack Fishery subarea 2 (see clause 10).

9 Western Skipjack Fishery subarea 1

The area of Western Skipjack Fishery subarea 1 is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of the Western Skipjack Fishery—subarea 1	
Item	Description
1	The intersection of the northern coastline of Australia at mean low water with the meridian 142°30'00"E
2	North along that meridian to the outer limit of the AFZ
3	Generally westerly, southerly then easterly along the outer limit of the AFZ to its intersection with the meridian 141°00'00"E off the southern coastline of Australia
4	North along that meridian to its intersection with the southern coastline of Australia at mean low water
5	Generally westerly, northerly then easterly along that coastline to the starting point

Note 1: The Protected Zone within the meaning of the *Torres Strait Fisheries Act 1984* is excluded from the AFZ by operation of section 9 of the Act.

Note 2: At the time of the making of this instrument, the Commonwealth had entered into arrangements under Part 5 of the Act which mean that, for the purposes of the description of this fishery, the coastal waters of Northern Territory, Western Australia and South Australia are taken to be in the AFZ (see section 76 of the Act).

10 Western Skipjack Fishery subarea 2

The area of Western Skipjack Fishery subarea 2 is those parts of the AFZ surrounding the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, excluding the territorial sea adjacent to those Territories.

Schedule 3—Catch limits for fishing in northern waters

Note: See the definition of *northern waters* in subsection 5(1) and section 44.

Part 1—Northern waters

1 Northern waters

The area for the purposes of the definition of *northern waters* in subsection 5(1) is that part of the AFZ that is within the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of northern waters	
Item	Description
1	The intersection of the southern coastline of Australia at mean low water with the meridian 129°00'00"E
2	South along that meridian to the outer limit of the AFZ
3	Generally westerly, northerly, easterly then southerly along that outer limit to its second intersection with the parallel 28°10'00"S off the east coast of Australia
4	West along that parallel to its intersection with the coastline of Australia at mean low water
5	Generally northerly, westerly, southerly then easterly along that coastline to the starting point

Note: At the time of the making of this instrument, the Commonwealth had entered into arrangements under Part 5 of the Act which mean that, for the purposes of the description of this fishery, the coastal waters of Queensland, Northern Territory, Western Australia and South Australia are taken to be in the AFZ (see section 76 of the Act).

Part 2—Restricted species for northern waters

2 Species with limit of 2 fish

For the purposes of subsection 44(2), the following table sets out species of fish that are subject to the catch limit prescribed by that subsection.

Species with limit of 2 fish		
Item	Common name	Scientific name
1	Amberjack	<i>Seriola dumerili</i>
2	Cobia that are in northern waters east of the boundary between Northern Territory and Queensland waters (see clause 5)	<i>Rachycentron canadus</i>
3	Yellowtail kingfish	<i>Seriola lalandi</i>

3 Species with limit of 10 fish

For the purposes of subsection 44(3), the following table sets out species of fish that are subject to the catch limit prescribed by that subsection.

Species with limit of 10 fish		
Item	Common name	Scientific name
1	Australian bonito	<i>Sarda australis</i>
2	Australian spotted mackerel	<i>Scomberomorus munroi</i>
3	Bass groper	<i>Polyprion americanus</i>
4	Blue eye trevalla	<i>Hyperoglyphe antarctica</i>
5	Cod	Any species of family Serranidae that is commonly known as cod
6	Dog toothed tuna	<i>Gymnosarda unicolor</i>
7	Emperor	Any species of family Lethrinidae or family Lutjanidae that is commonly known as emperor
8	Frigate mackerel	<i>Auxis thazard</i>
9	Grouper	Any species of family Serranidae that is commonly known as grouper
10	Hapuku	<i>Polyprion oxygeneios</i>
11	Leaping bonito	<i>Cybiosarda elegans</i>
12	Long-jawed mackerel	<i>Rastrelliger kanagurta</i>
13	Mackerel tuna	<i>Euthynnus affinis</i>
14	Mahi mahi that are in northern waters west of the boundary between Northern Territory and Queensland waters (see clause 5)	<i>Coryphaena hippurus</i>
15	Oriental bonito	<i>Sarda orientalis</i>
16	Rainbow runner	<i>Elagatis bipinnulata</i>

Species with limit of 10 fish

Item	Common name	Scientific name
17	Shark mackerel	<i>Grammatorcynus bicarinatus</i>
18	Snapper	<i>Chrysophrys auratus</i>
19	Spanish mackerel	<i>Scomberomorus commerson</i>
20	Trevally	Any species of family Carangidae (except species of genus <i>Seriola</i>)
21	Tropical snapper	Any species of family Lethrinidae or family Lutjanidae that is commonly known as tropical snapper
22	Tuskfish	Any species of family Labridae that is commonly known as tuskfish
23	Wrasse	Any species of family Labridae that is commonly known as wrasse

4 Species with limit of 20 fish

For the purposes of subsection 44(4), the following table sets out species of fish that are subject to the catch limit prescribed by that subsection.

Species with limit of 20 fish

Item	Common name	Scientific name
1	Butterfly mackerel	<i>Gasterochisma melampus</i>
2	Rockcod	Any species of family Serranidae that is commonly known as rockcod
3	Shark	Any species of subclass Elasmobranchii
4	Slender tuna	<i>Allothunnus fallai</i>
5	Wahoo	<i>Acanthocybium solandri</i>

5 Boundary between Northern Territory and Queensland waters

For the purposes of this Part, the boundary between Northern Territory and Queensland waters is the boundary between the scheduled area for the Northern Territory, and the scheduled area for Queensland, under Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Schedule 4—Catch limits for Victorian, South Australian and Tasmanian waters

Note: See sections 45 to 60.

Part 1—Areas of application

1 Victorian waters

- (1) The area for the purposes of the definition of *Victorian waters* in subsection 5(1) is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table (excluding any area covered by subclause (2)).

Area of Victorian waters	
Item	Description
1	The intersection of the coastline at mean low water with the border between New South Wales and Victoria
2	South-easterly along the geodesic towards the point 37°35'00"S 150°10'00"E to the intersection of the geodesic with a line parallel to, and 3 nautical miles from, the coastline at mean low water
3	Along that line to its intersection with the geodesic that is a continuation of the land border between New South Wales and Victoria
4	South-easterly along that geodesic to its intersection with the outer limit of the AFZ
5	Generally southerly along that outer limit to its intersection with the parallel 39°11'54.2900"S
6	Westerly along the loxodrome to the point 39°11'54.6590"S 143°40'00.0000"E
7	South along the meridian 143°40'00.0000"E to its intersection with the parallel 40°00'00"S
8	West along that parallel to its intersection with the meridian 140°57'56.8883"E
9	North along that meridian to its intersection with the coastline of Victoria at mean low water
10	Along the coastline of Victoria at mean low water to the starting point

Note: At the time of the making of this instrument, the Commonwealth had entered into arrangements under Part 5 of the Act which mean that, for the purposes of the description of this fishery, the coastal waters of Victoria are taken to be in the AFZ (see section 76 of the Act).

- (2) This subclause covers the following areas:
- (a) the area described in Part 1 (Wilson's Promontory Marine Reserve) of Schedule 4 to the *National Parks Act 1975* (Vic.) as in force on 1 November 1997;
 - (b) the area described in Part 2 (Wilson's Promontory Marine Park) of Schedule 4 to the *National Parks Act 1975* (Vic.) as in force on 1 November 1997;
 - (c) the area described in Part 7 (Bunurong Marine Park) of Schedule 4 to the *National Parks Act 1975* (Vic.) as in force on 1 November 1997;
 - (d) the area described in Schedule 2 (Point Lonsdale) to the *Harold Holt Marine Reserves Proclamation 1979* (Vic.), published in the Government Gazette of Victoria, No. 11 on 7 February 1979;

- (e) the area described in Schedule 3 (Point Nepean) to the *Harold Holt Marine Reserves Proclamation 1979* (Vic.), published in the Government Gazette of Victoria, No. 11 on 7 February 1979.

2 South Australian waters

The area for the purposes of the definition of **South Australian waters** in subsection 5(1) is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of South Australian waters	
Item	Description
1	The point on the meridian 140°57'56.8883"E that is the intersection of the coastline at mean low water with the border between South Australia and Victoria
2	South along that meridian to its intersection with the outer limit of the AFZ
3	Generally westerly along that outer limit to its intersection with the meridian 129°00'00"E
4	North along that meridian to its intersection with the parallel 31°45'00"S
5	Northerly along the geodesic to the intersection of the coastline at mean low water with the border between South Australia and Western Australia
6	Along the coastline of South Australia at mean low water to the starting point

Note: At the time of the making of this instrument, the Commonwealth had entered into arrangements under Part 5 of the Act which mean that, for the purposes of the description of this fishery, the coastal waters of South Australia are taken to be in the AFZ (see section 76 of the Act).

3 Tasmanian waters

- (1) The area for the purposes of the definition of **Tasmanian waters** in subsection 5(1) is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table (excluding any area covered by subclause (2)).

Area of Tasmanian waters	
Item	Description
1	The point 40°00'00.0000"S 140°57'56.8883"E
2	South along the meridian 140°57'56.8883"E to its intersection with the outer limit of the AFZ
3	Generally southerly, easterly then northerly along that outer limit to its intersection with the parallel 39°11'54.2900"S
4	Westerly along the loxodrome to the point 39°11'54.6590"S 143°40'00.0000"E
5	South along the meridian 143°40'00.0000"E to its intersection with the parallel 40°00'00"S
6	West along that parallel to the starting point

Note: At the time of the making of this instrument, the Commonwealth had entered into arrangements under Part 5 of the Act which mean that, for the purposes of the description of this fishery, the coastal waters of Tasmania are taken to be in the AFZ (see section 76 of the Act).

- (2) This subclause covers the following areas:

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Part 1 Areas of application

Clause 3

- (a) the area known as South West National Park, being all waters to the north and east of a line extending from Hilliard Head to Point Vincent;
- (b) the area known as Nine Pin Point Marine Nature Reserve, being all waters within 500 metres of Nine Pin Point;
- (c) the area known as Tinderbox Marine Nature Reserve, being the area of waters bounded by a notional line beginning at Piersons Point and running progressively as follows:
 - (i) 200 metres due east;
 - (ii) generally southerly and westerly 200 metres from and parallel to the low water mark to the point 43°03.84'S, 147°19.13'E;
 - (iii) due north to the high water mark;
 - (iv) generally northerly and easterly along the high water mark to the starting point;
- (d) the area known as Governor Island Marine Nature Reserve, being the area of waters bounded by a line beginning at the southernmost point of Governor Island and running progressively as follows:
 - (i) due south for 400 metres;
 - (ii) generally easterly, northerly and westerly at 600 metres from and parallel to the low water mark to its intersection with the notional line of longitude that passes through the northernmost point of Governor Island.

Part 2—Crustaceans

4 Prawns

For the purposes of Divisions 8, 9 and 10 of Part 7 of this instrument, the following table sets out species of crustaceans that are not subject to the catch limits applying under those Divisions.

Prawns		
Item	Common name	Scientific name
1	Deepwater prawn	<i>Haliporoides cristatus</i>
2	Prawn	Any species of genus <i>Aristeus</i>
3	Red prawn	<i>Aristeomorpha foliacea</i>
4	Royal red prawn	<i>Haliporoides sibogae</i>
5	Scarlet prawn	<i>Plesiopenaeus edwardsianus</i>

5 Other crustaceans

For the purposes of Divisions 8 and 9 of Part 7 of this instrument, the following table sets out species of crustaceans that are not subject to the catch limits applying under those Divisions.

Other crustaceans		
Item	Common name	Scientific name
1	Carid	Any species of family Pandalidae

Clause 6

Part 3—Molluscs

6 Molluscs

For the purposes of Divisions 9 and 10 of Part 7 of this instrument, the following table sets out species of molluscs that are not subject to the catch limits applying under those Divisions.

Molluscs		
Item	Common name	Scientific name
1	Arrow squid	<i>Nototodarus gouldi</i>
2	Red ocean squid	<i>Ommastrephes bartrami</i>
3	Scallops	Any species of family Pectinidae
4	Southern ocean arrow squid	<i>Todarodes filippovae</i>
5	Yellowback squid	<i>Sthenoteuthis oualaniensis</i>

Part 4—Finfish

Division 1—Victorian waters

7 Species not to be taken

For the purposes of subsection 49(1), the following table sets out species of finfish that must not be taken from Victorian waters.

Species not to be taken		
Item	Common name	Scientific name
1	Australian anchovy	<i>Engraulis australis</i>
2	Australian salmon	Any species of genus <i>Arripis</i> that is commonly known as Australian salmon
3	Blue sprat	<i>Spratelloides robustus</i>
4	King George whiting	<i>Sillaginodes punctatus</i>
5	Pilchard	<i>Sardinops neopilchardus</i>
6	Sprat	<i>Chupea bassensis</i>
7	Wrasse	Any species of family Labridae that is commonly known as wrasse

8 Species subject to limits

For the purposes of subsection 49(2), the following table sets out species of finfish that are subject to the catch limits prescribed by that subsection.

Species subject to limits		
Item	Common name	Scientific name
1	Barracouta	<i>Thyrsites atun</i>
2	Leatherjackets	Any species of family Monacanthidae
3	Snapper	<i>Chrysophrys auratus</i>
4	Striped trumpeter	<i>Latris lineata</i>
5	Yellowtail kingfish	<i>Seriola lalandi</i>

Division 2—South Australian waters

9 Species not to be taken

For the purposes of subsection 54(1), the following table sets out species of finfish that must not be taken from South Australian waters.

Species not to be taken		
Item	Common name	Scientific name
1	Australian anchovy	<i>Engraulis australis</i>
2	Australian salmon/Tommy ruff	Any species of genus <i>Arripis</i> that is commonly known as Australian salmon or Tommy ruff
3	Australian sardine (pilchard)	<i>Sardinops sagas</i>
4	Australian sprat	<i>Sprattus novaehollandiae</i>
5	Banded morwong	<i>Cheilodactylus spectabilis</i>
6	Black bream	<i>Acanthopagrus butcheri</i>
7	Bluespotted goatfish	<i>Upeneichthys vlamingii</i>
8	Blue sprat	<i>Spratelloides robustus</i>
9	Dusky morwong	<i>Dactylophora nigricans</i>
10	Grassy (rock) flathead	<i>Platycephalus laevigatus</i>
11	King gar	<i>Scomberesox scombroides</i>
12	King George whiting	<i>Sillaginodes punctatus</i>
13	Luderick	<i>Girrella tricuspidata</i>
14	Magpie morwong	<i>Cheilodactylus nigripes</i>
15	Sea sweep	<i>Scorpiis aequipinnis</i>
16	Snook	<i>Sphyræna novaehollandiae</i>
17	Southern garfish	<i>Hyporhamphus melanochir</i>
18	Wrasse	Any species of family Labridae that is commonly known as wrasse
19	Yellow eye mullet	<i>Aldrichetta forsteri</i>
20	Yellowfin whiting	<i>Sillago schomburgkii</i>

10 Species with combined catch limit of 20 kilograms per trip

For the purposes of subsections 54(2), (3) and (4), the following table sets out species of finfish that are subject to the catch limits prescribed by those subsections.

Species with combined limit of 20 kilograms per trip		
Item	Common name	Scientific name
1	Bastard trumpeter	<i>Latridopsis forsteri</i>
2	Striped trumpeter	<i>Latris lineata</i>

11 Species with combined catch limit of 50 kilograms per trip

For the purposes of subsections 54(2), (3) and (4), the following table sets out species of finfish that are subject to the catch limits prescribed by those subsections.

Species with combined limit of 50 kilograms per trip		
Item	Common name	Scientific name
1	Blue groper	<i>Achoerodus gouldii</i>
2	Snapper	<i>Chrysophrys auratus</i>

12 Other controlled species

For the purposes of subsections 54(2) and (3), the following table sets out species of finfish that are subject to the catch limits prescribed by those subsections.

Other controlled species		
Item	Common name	Scientific name
1	Mulloway	<i>Argyrosomus japonicus</i>
2	Yellowtail kingfish	<i>Seriola lalandi</i>

Note: These species are also subject to catch limits prescribed by subsection 54(4).

13 Other species to be taken into account for total catch limit

For the purposes of subsection 54(3), the following table sets out species of finfish that are also subject to the catch limit prescribed by that subsection (applying only to fish taken by a method other than trawling).

Other species relevant to total catch limit		
Item	Common name	Scientific name
1	Black reef leatherjacket	<i>Eubalichthys bucephalus</i>
2	Chinaman leatherjacket	<i>Nelusetta ayraudi</i>
3	Fanbelly leatherjacket	<i>Monacanthus chinensis</i>
4	Parrotfish (or knifejaw)	<i>Oplegnathus woodwardi</i>

Division 3—Tasmanian waters

14 Species not to be taken

For the purposes of subsection 59(1), the following table sets out species of finfish that must not be taken from Tasmanian waters.

Species not to be taken		
Item	Common name	Scientific name
1	Australian anchovy	<i>Engraulis australis</i>
2	Australian salmon/Tommy ruff	Any species of genus <i>Arripis</i> that is commonly known as Australian salmon or Tommy ruff
3	Australian sardine (pilchard)	<i>Sardinops sagas</i>
4	Australian sprat	<i>Sprattus novaehollandiae</i>
5	Banded morwong	<i>Cheilodactylus spectabilis</i>
6	Black bream	<i>Acanthopagrus butcheri</i>
7	Bluespotted goatfish	<i>Upeneichthys vlamingii</i>
8	Blue sprat	<i>Spratelloides robustus</i>
9	Dusky morwong	<i>Dactylophora nigricans</i>
10	Grassy (rock) flathead	<i>Platycephalus laevigatus</i>
11	King gar	<i>Scomberesox scombroides</i>
12	King George whiting	<i>Sillaginodes punctatus</i>
13	Luderick	<i>Girrella tricuspidata</i>
14	Magpie morwong	<i>Cheilodactylus nigripes</i>
15	Mulloway	<i>Argyrosomus hololepidotus</i>
16	Sea sweep	<i>Scorpius aequipinnis</i>
17	Snook	<i>Sphyræna novaehollandiae</i>
18	Southern garfish	<i>Hyporhamphus melanochir</i>
19	Wrasse	Any species of family Labridae that is commonly known as wrasse
20	Yellow eye mullet	<i>Aldrichetta forsteri</i>
21	Yellowfin whiting	<i>Sillago schomburgkii</i>

15 Species subject to combined limit

For the purposes of subsection 59(4), the following table sets out species of finfish that are subject to the catch limits prescribed by that subsection.

Species subject to combined limit		
Item	Common name	Scientific name
1	Snapper	<i>Chrysophrys auratus</i>
2	Striped trumpeter	<i>Latris lineata</i>
3	Yellowtail kingfish	<i>Seriola lalandi</i>

Part 5—Other species

16 Other species not to be taken from Tasmanian waters

For the purposes of section 60, the following table sets out other species of fish that must not be taken from Tasmanian waters.

Other species not to be taken		
Item	Common name	Scientific name
1	Handfish	Any species of family Brachionichthyidae
2	Seahorses and pipefish	Any species of family Sygnathidae
3	Three-finned blennies	Any species of family Tripterygiidae

Schedule 5 Catch limits for prawn fishery waters
Part 1 Prawn fishery waters

Clause 1

Schedule 5—Catch limits for prawn fishery waters

Note: See the definition of *prawn fishery waters* in subsection 5(1) and sections 61 to 65.

Part 1—Prawn fishery waters

1 Prawn fishery waters

The area for the purposes of the definition of *prawn fishery waters* in subsection 5(1) is the coastal waters and waters within the AFZ bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area of prawn fishery waters	
Item	Description
1	The intersection of the northern coastline of Australia at mean low water with the meridian 126°58'00"E
2	North along that meridian to the outer limit of the AFZ
3	North-easterly then south-easterly along that outer limit to its intersection with the meridian 141°20'00"E
4	South along that meridian to its intersection with the northern coastline of Australia at mean low water
5	Generally southerly along that coastline to the starting point

Note 1: The Protected Zone within the meaning of the *Torres Strait Fisheries Act 1984* is excluded from the AFZ by operation of section 9 of the Act.

Note 2: At the time of the making of this instrument, the Commonwealth had entered into arrangements under Part 5 of the Act which mean that, for the purposes of the description of this fishery, the coastal waters of Queensland, Western Australia and Northern Territory are taken to be in the AFZ (see section 76 of the Act).

Part 2—Molluscs

2 Species not to be taken

For the purposes of section 63, the following table sets out species of molluscs that must not be taken from prawn fishery waters.

Species not to be taken		
Item	Common name	Scientific name
1	Pearl shell	Any species of the genus <i>Pinctada</i>
2	Trepang	Any species of class Holothuroidea
3	Trochus	Any species of family Trochidae

Part 3—Finfish

3 Species not to be taken

For the purposes of subsection 64(2), the following table sets out species of finfish that must not be taken from prawn fishery waters.

Species not to be taken		
Item	Common name	Scientific name
1	Barramundi	<i>Lates calcarifer</i>
2	Barred javelin	<i>Pomadasys kaakan</i>
3	Blue (threadfin) salmon	<i>Eleutheronema tetradactylum</i>
4	Jewfish	<i>Nibea squamosa</i> , <i>Protonibea diacanthus</i>
5	King threadfin	<i>Polydactylus sheridani</i>
6	Queenfish	<i>Scomberoides lysan</i> , <i>S. commersonianus</i>

4 Species with a combined limit of 10 fish

For the purposes of subsection 64(4), the following table sets out species of finfish that are subject to the catch limit prescribed by that subsection.

Species with a combined limit of 10 fish		
Item	Common name	Scientific name
1	Broad barred Spanish (Grey) mackerel	<i>Scomberomorus semifasciatus</i>
2	Gold band snapper	<i>Pristipomoides multidens</i>
3	Narrow barred Spanish mackerel	<i>Scomberomorus commerson</i>
4	Rockcod	Any species of family Serranidae that is commonly known as rockcod
5	Sweet lips	Any species of family Lethrinidae that is commonly known as sweet lips

5 Catch limits by weight

For the purposes of subsection 64(5), the following table sets out species of finfish that are subject to the catch limits prescribed by that subsection.

Catch limits by weight		
Item	Common name	Scientific name
1	Crimson snapper	<i>Lutjanus erythropterus</i>
2	Saddle-tailed snapper	<i>Lutjanus malabaricus</i>
3	Red emperor	<i>Lutjanus sebae</i>

Part 4—Other species

6 Other species not to be taken

For the purposes of section 65, the following table sets out other species of fish that must not be taken from prawn fishery waters.

Other species not to be taken		
Item	Common name	Scientific name
1	Coral	
2	Sharks, rays and skates	Any species of subclass Elasmobranchii

Clause 1

Schedule 6—Fees

Note: See section 108.

1 Fees

The following table sets out the fees prescribed for the purposes of the Act.

Fees			
Item	Column 1 Description	Column 2 Fee (if online portal not used)	Column 3 Fee (if online portal used)
1	Application under section 32 of the Act for the grant of a fishing permit to fish in a fishery within the AFZ:		
	(a) if the application is for a new fishing permit in connection with the expiry of an existing fishing permit; or	\$160	Nil
	(b) if the application is for a new fishing permit that is not in connection with the expiry of an existing fishing permit that authorises the carrying or transshipping of fish	\$160	Nil
2	Application under section 32 of the Act for the grant of a new fishing permit (known as a High Seas Permit) to fish in the fishery outside the AFZ that is not in an area of waters south of the Antarctic Convergence:		
	(a) if the application is being made in connection with the expiry of an existing fishing permit; or	\$160	Nil
	(b) if the application is not being made in connection with the expiry of an existing fishing permit	\$160	\$160
3	Application for the variation, revocation or specification, under subsection 32(8) of the Act, of a condition or conditions of:		
	(a) if the application is for a variation to take account of the transfer of quota units of a scheduled species of fish:		
	(i) to that concession from another concession in the same fishery; or	\$115	Nil
	(ii) from that concession to another concession for the same fishery; or	\$115	Nil
	(b) in any other case	\$300	\$300
4	Giving notice under paragraph 32(1A)(b) of the Act of the nomination of another Australian boat in lieu of the boat specified in one or more permits	\$115	Nil
5	Giving notice under subsection 32(1B) of the Act of the nomination of an Australian boat to one or more permits	\$115	Nil
6	Giving notice under subsection 32(1B) of the Act of the nomination of an Australian boat if the notice is given at the same time as a nomination of the boat for a	Nil	Nil

Clause 1			
Fees			
Item	Column 1 Description	Column 2 Fee (if online portal not used)	Column 3 Fee (if online portal used)
	statutory fishing right		
7	Application under subsection 32A(2) of the Act for the transfer of one or more permits	\$115	Nil
8	Nomination of a boat for a statutory fishing right under subsection 33(3) of this instrument	\$115	Nil
9	Application under subsection 46(3) of the Act to register the transfer or lease of a fishing right	\$115	Nil
10	Registration under subsection 46(4A) of the Act of a claim to an interest in a fishing right	\$160	Registration is not available via the portal
11	Cancellation under subsection 46(4B) of the Act of the registration of a claim to an interest in a fishing right	\$160	Cancellation is not available via the portal
12	Application for an extract of a register under the Act	\$30	Nil
13	Inspecting a register under the Act	\$430	Nil
14	Application under subsection 91(2) of the Act for:		
	(a) a new fish receiver permit in connection with the expiry of an existing fish receiver permit; or	\$245	Nil
	(b) a new fish receiver permit that is not in connection with the expiry of an existing fish receiver permit	\$245	\$245
15	Application under subsection 91(6) of the Act for the variation of a condition of a fish receiver permit	\$160	\$160
16	Application under subsection 94(1) of the Act for a port permit	\$860	Application is not available via the portal
17	Application under subsection 94(5) of the Act for the variation of a condition of a port permit	\$400	Application is not available via the portal
18	Application under subsection 4(2) of the Act for a declaration that a foreign boat is taken to be an Australian boat	\$1,790	Application is not available via the portal
19	Application to validate a European Community catch document	\$85	Application is not available via the portal
20	Application to validate a catch export document	\$85	Application is not available via the portal
21	Application for an Electronic Dissostichus Catch Document	\$165	Application is not available via the portal
22	Application for a quota holding statement	\$30	Nil
23	Application for a quota transaction statement	\$30	Nil

Schedule 6 Fees

Clause 1

Fees

Item	Column 1 Description	Column 2 Fee (if online portal not used)	Column 3 Fee (if online portal used)
24	Application to enter into an arrangement for the payment of a fee, levy, charge or other amount relating to a fishing concession	\$220	Application is not available via the portal
25	Application under the Act or this instrument for which a fee is not prescribed in another item of this Schedule Note: The fee will be calculated on the basis of the time taken by AFMA to assess and action the application, multiplied by the hourly cost to AFMA of the staff involved.	The cost to AFMA of providing the service	Nil



Maritime Powers Act 2013

No. 15, 2013

Compilation No. 6

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About this compilation

This compilation

This is a compilation of the *Maritime Powers Act 2013* that shows the text of the law as amended and in force on 5 April 2017 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the administration and enforcement of Australian laws in maritime areas, and for related purposes

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act may be cited as the *Maritime Powers Act 2013*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 March 2013
2. Sections 3 to 122	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	27 March 2014

Part 1 Introduction
Division 1 Preliminary

Section 3

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Act binds the Crown

This Act binds the Crown in each of its capacities.

4 Application of Act

- (1) This Act extends to every external Territory.
- (2) This Act extends to acts, omissions, matters and things outside Australia.

Note: Division 5 of Part 2 sets out geographical limits on the exercise of powers under this Act.

5 Effect on executive power

This Act does not limit the executive power of the Commonwealth.

6 Relationship to other laws

- (1) The provisions of this Act are in addition to, not in substitution for, any other law of the Commonwealth.
- (2) This Act is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

Division 2—Guide to this Act

7 Guide to this Act

This Act provides a broad set of enforcement powers for use in, and in relation to, maritime areas. Most of these powers are set out in Part 3.

The powers can be used by maritime officers to give effect to Australian laws and international agreements and decisions.

The following are maritime officers:

- (a) Customs officers;
- (b) members of the Australian Defence Force;
- (c) members of the Australian Federal Police;
- (d) other persons appointed by the Minister.

An authorisation is necessary to begin the exercise of powers in relation to a vessel, installation, aircraft, protected land area or isolated person. The only exceptions are the exercise of aircraft identification powers and the exercise of powers to ensure the safety of persons.

Once an authorisation is in force, maritime officers can exercise powers for a range of purposes.

Division 3—Definitions

8 Definitions

In this Act:

actionable contravention, in relation to an aircraft, has the meaning given by section 10.

aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface.

aircraft identification powers has the meaning given by subsection 55(4).

approval, given by the Minister for the exercise of powers, has the meaning given by section 24.

archipelagic waters has the same meaning as in the Convention.

Australia, when used in a geographical sense, includes:

- (a) the external Territories; and
- (b) the territorial seas of Australia and the external Territories; and
- (c) any installation attached to:
 - (i) the continental shelf of Australia or an external Territory; or
 - (ii) the seabed within the exclusive economic zone of Australia or an external Territory; and
- (d) the safety zone around any such installation; and
- (e) the airspace above Australia (including the airspace above the areas covered by paragraphs (a) to (d)).

Australian aircraft means:

- (a) an aircraft registered, or required to be registered, under regulations made under the *Civil Aviation Act 1988*; or

(b) a Commonwealth aircraft.

Australian law:

- (a) means a law of the Commonwealth or a State or Territory, and includes this Act; but
- (b) does not include a law prescribed by the regulations.

Australian national means:

- (a) an Australian citizen; or
- (b) a body corporate established by or under a law of the Commonwealth or a State or Territory; or
- (c) the Commonwealth or a State or Territory.

Australian vessel means:

- (a) an Australian ship within the meaning of the *Shipping Registration Act 1981*; or
- (b) a vessel that is not registered under the law of a foreign country and is either wholly owned or solely operated by:
 - (i) one or more residents of Australia; or
 - (ii) one or more Australian nationals; or
 - (iii) one or more residents of Australia and one or more Australian nationals.

authorisation has the meaning given by subsection 23(1).

authorising officer has the meaning given by subsection 16(1).

border controlled drug has the same meaning as in Part 9.1 of the *Criminal Code*.

border controlled plant has the same meaning as in Part 9.1 of the *Criminal Code*.

chased without interruption, in relation to a vessel, has the meaning given by section 42.

Commonwealth aircraft means an aircraft that is owned by, or in the possession or control of, the Commonwealth or a Commonwealth authority.

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Commonwealth officer means a person who:

- (a) holds, or performs the duties of, an appointment, office or position under a law of the Commonwealth; or
- (b) is otherwise in the service of the Commonwealth.

Commonwealth ship means a vessel that is owned by, or in the possession or control of, the Commonwealth or a Commonwealth authority.

contiguous zone has the same meaning as in the Convention.

continental shelf has the same meaning as in the Convention.

continuous exercise of powers has the meaning affected by section 11.

contravention, of a law, includes an offence against the law.

Convention means the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31 ([1994] ATS 31). In 2013, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

conveyance includes a vessel, aircraft or vehicle.

cooperating agency has the meaning given by subsection 116(4).

country, when used in a geographical sense, includes:

- (a) the territorial sea, and any archipelagic waters, of the country; and
- (b) any installation attached to the continental shelf, or the seabed within the exclusive economic zone, of the country; and
- (c) any safety zone around any such installation; and
- (d) the airspace above the country (including the airspace above the areas covered by paragraphs (a) to (c)).

destination:

- (a) in relation to a vessel or aircraft detained under subsection 69(1)—see subsections 69(2), (3) and (3A); or
- (b) in relation to a person detained under subsection 72(4)—see subsections 72(4), (4A) and (4B).

Note: See also section 75C.

detained aircraft has the meaning given by subsection 69(5).

detained vessel has the meaning given by subsection 69(4).

detention provision has the meaning given by subsection 73(2).

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

evidence and warrants authorisation has the meaning given by subsection 20(2).

evidential material means any thing that may afford evidence of a contravention of an Australian law, including such a thing in electronic form.

exclusive economic zone has the same meaning as in the Convention.

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

foreign aircraft means an aircraft other than an Australian aircraft.

foreign installation means an installation controlled by a foreign country.

foreign vessel means a vessel other than an Australian vessel.

frisk search has the meaning given by subsection 61(5).

installation:

- (a) means:

Section 8

- (i) an artificial island within the meaning of the Convention; or
 - (ii) an installation within the meaning of the Convention; or
 - (iii) a structure within the meaning of the Convention; but
- (b) does not include a thing that has been, or could be, such an island, installation or structure but is not installed.

international agreement means an agreement or arrangement between Australia and one or more other countries.

international decision means a decision made by:

- (a) the Security Council of the United Nations; or
- (b) another international body that, under international law, makes decisions that are binding on its members.

involved, in a contravention of a law, has the meanings given by section 9.

isolated person means a person who is not on, or in the vicinity of, a vessel, installation, aircraft or protected land area.

Marine Safety (Domestic Commercial Vessel) National Law has the meaning given by section 17 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

maritime officer has the meaning given by subsection 104(1).

maritime powers means the powers in Part 3.

migration zone has the same meaning as in the *Migration Act 1958*.

monitoring law means:

- (a) the *Customs Act 1901*; or
- (b) the *Fisheries Management Act 1991*; or
- (c) the *Migration Act 1958*; or
- (d) the *Torres Strait Fisheries Act 1984*; or
- (e) section 72.13 or Division 73 or 307 of the *Criminal Code*; or

- (f) clause 8 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*; or
- (g) a law prescribed by the regulations.

ordinary search has the meaning given by subsection 61(4).

personal information has the same meaning as in the *Privacy Act 1988*.

person assisting, in the exercise of powers under this Act, has the meaning given by subsection 38(5).

person in charge, in relation to the exercise of powers by a maritime officer:

- (a) in relation to a vessel, installation or aircraft—means the person who appears to the officer to be in charge of the vessel, installation or aircraft; or
- (b) in relation to a protected land area—means the person who appears to the officer to be in control, possession or occupation of the land, or any premises on the land.

protected land area means an area of land that is:

- (a) outside the States and internal Territories; and
- (b) prescribed by the regulations.

resident of Australia means:

- (a) an individual who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law; or
- (b) a body corporate that has its principal place of business in Australia.

retained thing has the meaning given by subsection 68(3).

safety zone, in relation to an installation:

- (a) has the same meaning as in the Convention; and
- (b) includes the column of water below that zone.

seizable transit goods means:

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- (a) goods that are connected, either directly or indirectly, with the carrying out of a terrorist act, whether the terrorist act has occurred, is occurring or is likely to occur; or
- (b) goods, the existence or the shipment of which, prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.

Note: Seizable transit goods may be forfeited to the Commonwealth under the *Customs Act 1901*.

seized thing has the meaning given by subsection 67(3).

support vessel has the meaning given by subsection 9(4).

territorial sea has the same meaning as in the Convention.

terrorist act has the same meaning as in Part 5.3 of the *Criminal Code*.

thing includes a record or document.

this Act includes the regulations.

vessel means a vessel or boat of any description and includes a hovercraft and any floating structure, but does not include an installation.

vessel identification powers means the powers set out in the following provisions:

- (a) section 52 (boarding vessels, installations and aircraft);
- (b) section 53 (requirement to facilitate boarding);
- (c) section 54 (additional powers—vessels);
- (d) section 57 (requiring answers, records and documents);
- (e) section 58 (obtaining readings);
- (f) section 59 (searching places);
- (g) section 61 (searching persons);
- (h) section 63 (examining things);
- (i) section 66 (securing weapons).

vessels without nationality authorisation has the meaning given by subsection 21(2).

weapon includes a thing that:

- (a) is capable of being used to inflict bodily injury (including ammunition); or
- (b) is capable of being used to help a person escape from detention or custody; or
- (c) is capable of being used to cause damage to a vessel, installation or aircraft; or
- (d) except for the absence of, or a defect in, a part of the thing, would be a weapon of a kind mentioned in paragraph (a), (b) or (c); or
- (e) is reasonably capable of being converted into a weapon of a kind mentioned in paragraph (a), (b) or (c).

9 Involved in a contravention

Vessels, installations, aircraft and protected land areas

- (1) A vessel, installation, aircraft or protected land area is **involved** in a contravention of a law, if:
 - (a) the law has been, is being, or is intended to be, contravened on, or in the vicinity of, the vessel, installation, aircraft or land; or
 - (b) there is some other connection between the vessel, installation, aircraft or land and a contravention, or intended contravention, of the law.

Vessels, installations and aircraft

- (2) A vessel, installation or aircraft is **involved** in a contravention of a law, if the vessel, installation or aircraft has been, is being, or is intended to be, used in contravention of the law.

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Support vessels

- (3) A vessel is **involved** in a contravention of a law if it has been, is being, or is intended to be, used:
- (a) in direct support of another vessel or aircraft that is involved in a contravention of the law; or
 - (b) in preparation for a contravention of the law in which another vessel or aircraft is involved.
- (4) A vessel involved in a contravention of a law within the meaning of subsection (3) is a **support vessel**.

Isolated persons

- (5) An isolated person is **involved** in a contravention of a law if:
- (a) the law has been, is being, or is intended to be, contravened by the person; or
 - (b) there is some other connection between the person and a contravention, or intended contravention, of the law.

10 Actionable contraventions—aircraft

A contravention of a law is an **actionable contravention** in relation to an aircraft if:

- (a) the law is prescribed by the regulations; or
- (b) the Minister has approved the exercise of maritime powers in relation to the aircraft for the purposes of investigating the contravention, or contraventions in general, and the approval has not lapsed.

Note: For **approval** by the Minister, see Division 3 of Part 2.

11 Continuous exercise of powers

- (1) For the purposes of this Act, the **continuous exercise of powers** does not end only because there is a period of time between the exercise of one or more of those powers.

- (2) To avoid doubt, a *continuous exercise of powers* does not end merely because the destination to which a vessel, aircraft or person is to be taken (or caused to be taken) is changed to a different place under subsection 69(3A) or 72(4B).

Division 4—International agreements and decisions

12 When international agreements and decisions apply

An international agreement or international decision applies to a vessel, installation or aircraft at a particular time if:

- (a) the agreement or decision provides for the exercise of powers by Australia in relation to the vessel, installation or aircraft at that time; and
- (b) either:
 - (i) the agreement or decision is prescribed by the regulations; or
 - (ii) the Minister has approved the exercise of powers under the agreement or decision in relation to the vessel, installation or aircraft, and the approval has not lapsed.

Note 1: For *international agreement* and *international decision*, see section 8.

Note 2: For *approval* by the Minister, see Division 3 of Part 2.

13 Treating foreign vessels as Australian vessels

An Australian law applies in relation to a foreign vessel as if the foreign vessel were an Australian vessel if:

- (a) an international agreement provides for the law to so apply; and
- (b) the country of the vessel's nationality is a party to the agreement.

Note: For *international agreement*, see section 8.

14 Applying Australian law in other places

Places in other countries

- (1) An Australian law applies in, or in relation to, a place in another country as if that place were in Australia if an agreement or

arrangement between Australia and the other country provides for the law to so apply.

Places in exclusive economic zones of other countries

- (2) An Australian law applies in, or in relation to, a place in the exclusive economic zone of another country as if that place were in the exclusive economic zone of Australia if an agreement or arrangement between Australia and the other country provides for the law to so apply.

Places on or above the continental shelves of other countries

- (3) An Australian law applies in, or in relation to, a place on or above the continental shelf of another country as if that place were on or above the continental shelf of Australia if an agreement or arrangement between Australia and the other country provides for the law to so apply.

Part 2—Exercising powers

Division 1—Introduction

15 Guide to this Part

This Part provides for the exercise of maritime powers and powers specified in international agreements and decisions.

An authorisation must be given by an authorising officer before powers can be exercised in relation to a vessel, installation, aircraft, protected land area or isolated person. The only exceptions are:

- (a) the exercise of aircraft identification powers to identify aircraft; and
- (b) the exercise of maritime powers to ensure the safety of a maritime officer or any other person.

Once an authorisation is in force, a maritime officer may exercise powers for the purposes of the authorisation, and for other purposes set out in Division 4.

The exercise of powers in relation to a vessel, installation, aircraft or protected land area extends to persons and things with a connection to the vessel, installation, aircraft or protected land area.

Powers can be exercised in, and in relation to, maritime areas, but their exercise is limited in places outside Australia (see Division 5).

Division 2—Authorising the exercise of maritime powers

16 Authorising officers

- (1) For the purposes of authorising the exercise of maritime powers in relation to a vessel, installation, aircraft, protected land area or isolated person, each of the following is an **authorising officer**:
- (a) the most senior maritime officer who is in a position to exercise any of the maritime powers in person;
 - (b) the most senior member or special member of the Australian Federal Police who is in a position to exercise any of the maritime powers in person;
 - (c) the most senior maritime officer on duty in a duly established operations room;
 - (d) the person in command of a Commonwealth ship or Commonwealth aircraft from which the exercise of powers is to be directed or coordinated;
 - (e) a person appointed in writing by the Minister.

Limited appointments

- (2) The Minister may appoint a person under paragraph (1)(e) as an authorising officer:
- (a) for the purposes of authorising the exercise of powers in relation to one or more of the following only:
 - (i) a specified law;
 - (ii) a specified international agreement or international decision; and
 - (b) subject to any other conditions specified in the appointment.

Purported authorisations

- (3) A purported authorisation given by a person who reasonably believed that he or she was an authorising officer has effect as if it were an authorisation.

17 Contraventions

Vessels, installations, protected land areas and isolated persons

- (1) An authorising officer may authorise the exercise of maritime powers in relation to a vessel, installation, protected land area or isolated person if the officer suspects, on reasonable grounds, that the vessel, installation, land or person is involved in a contravention of an Australian law.

Note: For *involved* in a contravention of a law, see section 9.

Aircraft—actionable contraventions

- (2) An authorising officer may authorise the exercise of maritime powers in relation to an aircraft if:
- (a) the officer suspects, on reasonable grounds, that the aircraft is involved in a contravention of an Australian law; and
 - (b) the contravention is an actionable contravention in relation to the aircraft.

Note 1: For *involved* in a contravention of a law, see section 9.

Note 2: For *actionable contravention*, see section 10.

18 Monitoring laws

Vessels, installations, protected land areas and isolated persons

An authorising officer may authorise the exercise of maritime powers in relation to a vessel, installation, protected land area or isolated person for the purposes of administering or ensuring compliance with a monitoring law.

Note: For *monitoring law*, see section 8.

19 International agreements and decisions

Vessels, installations and aircraft

An authorising officer may authorise the exercise of maritime powers in relation to a vessel, installation or aircraft if the officer suspects, on reasonable grounds, that an international agreement or international decision applies to the vessel, installation or aircraft.

Note 1: For when international agreements and international decisions apply, see section 12.

Note 2: The regulations may provide for additional powers, or for limited powers, to be exercised under an international agreement or international decision: see section 33.

20 Evidential material and warrants

Vessels, installations and protected land areas

- (1) An authorising officer may authorise the exercise of maritime powers in relation to a vessel, installation or protected land area if the officer:
 - (a) suspects, on reasonable grounds, that there is evidential material on the vessel, installation or land; or
 - (b) believes, on reasonable grounds, that the exercise of the powers is necessary to enforce a warrant that is in force under an Australian law.

Meaning of evidence and warrants authorisation

- (2) An authorisation under this section is an ***evidence and warrants authorisation***.

21 Identifying vessels and aircraft

Vessels without nationality

- (1) An authorising officer may authorise the exercise of maritime powers in relation to a vessel if:

Part 2 Exercising powers

Division 2 Authorising the exercise of maritime powers

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- (a) the vessel is not flying the flag of a State; or
- (b) the officer suspects, on reasonable grounds, that the vessel:
 - (i) has been flying the flag of more than one State; or
 - (ii) is flying the flag of a State that it is not entitled to fly; or
 - (iii) is not entitled to fly the flag of any State.

Meaning of vessels without nationality authorisation

- (2) An authorisation under subsection (1) is a ***vessels without nationality authorisation***.

Aircraft that fail to meet identification requirements

- (3) An authorising officer may authorise the exercise of maritime powers in relation to an aircraft if:
 - (a) a requirement made in the exercise of aircraft identification powers in relation to the aircraft has not been complied with; or
 - (b) the officer suspects, on reasonable grounds, that information given in response to such a requirement is false or misleading in a material particular.

Note 1: Aircraft identification powers can be exercised without authorisation: see section 28.

Note 2: For ***aircraft identification powers***, see subsection 55(4).

22 Seizable transit goods—aircraft

An authorising officer may authorise the exercise of maritime powers in relation to an aircraft if the officer suspects, on reasonable grounds, that the aircraft is carrying seizable transit goods.

Note: For ***seizable transit goods***, see section 8.

22A Failure to consider international obligations etc. does not invalidate authorisation

- (1) The exercise of a power to give an authorisation under a provision of this Division is not invalid:
 - (a) because of a failure to consider Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (b) because of a defective consideration of Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (c) because the exercise of the power is inconsistent with Australia's international obligations.
- (2) Subsection (1) is not to be taken to imply that the exercise of a power under any other provision of this Act is invalid for a reason of a kind specified in paragraph (1)(a), (b) or (c).

22B Rules of natural justice do not apply to authorisations

- (1) The rules of natural justice do not apply to the exercise of a power to give an authorisation under a provision of this Division.
- (2) Subsection (1) is not to be taken to imply that the rules of natural justice do apply in relation to the exercise of powers under any other provision of this Act.

Division 3—Authorisations and approvals

23 When authorisations are in force

- (1) An *authorisation* given by an authorising officer under Division 2 is in force until:
- (a) it is spent; or
 - (b) it lapses.

When authorisation is spent

- (2) An authorisation is spent when the continuous exercise of powers under the authorisation ends.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

When authorisation lapses

- (3) An authorisation lapses if powers have not been exercised under the authorisation within 72 hours after it is given.

24 When approvals lapse

An *approval* given by the Minister for the purposes of one of the following provisions lapses 14 days after it is given:

- (a) paragraph 10(b) (actionable contraventions);
- (b) subparagraph 12(b)(ii) (when international agreements and decisions apply).

25 Form of authorisations and approvals

- (1) An authorisation or approval need not be in writing.
- (2) An authorisation or approval in writing is not a legislative instrument.

26 Further authorisations and approvals

Nothing in this Division prevents the giving of further authorisations or approvals in relation to a particular vessel, installation, aircraft, protected land area or isolated person.

Division 4—Exercising powers

Subdivision A—Effect of Division

27 Effect of Division

This Division has effect subject to Division 5 (geographical limits).

Subdivision B—Exercising powers without authorisation

28 Identifying aircraft

A maritime officer may, without authorisation, exercise aircraft identification powers to identify an aircraft.

Note: For *aircraft identification powers*, see subsection 55(4).

29 Ensuring safety

A maritime officer may, without authorisation, exercise maritime powers to ensure the safety of the officer or any other person.

Subdivision C—Exercising powers with authorisation

30 Authorisation required

If an authorisation is in force in relation to a vessel, installation, aircraft, protected land area or isolated person, a maritime officer may exercise powers in relation to the vessel, installation, aircraft, land or person in accordance with this Subdivision.

31 Exercising powers for authorised purpose

The maritime officer may exercise maritime powers to do whichever of the following applies in accordance with the authorisation:

- (a) investigate or prevent the contravention;

- (b) administer or ensure compliance with the monitoring law;
- (c) administer, ensure compliance with or investigate a contravention of the international agreement or international decision;
- (d) access or seize the evidential material;
- (e) enforce the warrant that is in force under an Australian law;
- (f) identify the vessel or aircraft;
- (g) retain the seizable transit goods.

32 Exercising powers for other purposes

- (1) The maritime officer may also exercise maritime powers as follows:
 - (a) to investigate or prevent any contravention of an Australian law that the officer suspects, on reasonable grounds, the vessel, installation, aircraft, protected land area or isolated person to be involved in;
 - (b) to administer or ensure compliance with any monitoring law;
 - (c) in the case of a vessel, installation or aircraft—to administer, ensure compliance with or investigate a contravention of any international agreement or international decision that the officer suspects, on reasonable grounds, applies to the vessel, installation or aircraft;
 - (d) to access or seize any thing that the officer suspects, on reasonable grounds, is:
 - (i) evidential material; or
 - (ii) a border controlled drug or border controlled plant; or
 - (iii) owned by the Commonwealth or a State or Territory;
 - (e) to arrest any person whom the officer suspects, on reasonable grounds, has committed an indictable offence against an Australian law;
 - (f) to enforce any warrant that is in force under an Australian law;
 - (g) to retain any thing that the officer believes, on reasonable grounds, could be seized under an Australian law;

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- (h) in the case of a vessel or aircraft—to identify the vessel or aircraft.

Exception—aircraft in flight

- (2) Subsection (1) does not apply in relation to an aircraft in flight.

33 Additional powers and limitations under international agreements and decisions

Additional powers

- (1) The maritime officer may also exercise powers in the case of a vessel, installation or aircraft if the powers are:
 - (a) specified in an international agreement or international decision that applies to the vessel, installation or aircraft; and
 - (b) prescribed by the regulations as powers that may be exercised in relation to vessels, installations or aircraft of that kind; and
 - (c) exercised for the purposes of administering, ensuring compliance with or investigating a contravention of the agreement or decision.

Limitations on powers

- (2) However, the officer must not exercise a power in relation to a vessel, installation or aircraft to administer, ensure compliance with or investigate a contravention of an international agreement or international decision if:
 - (a) the power is prescribed by the regulations as a power that must not be exercised under the agreement or decision in relation to vessels, installations or aircraft of that kind; or
 - (b) the officer is of a kind prescribed by the regulations as officers who must not exercise powers under the agreement or decision in relation to vessels, installations or aircraft of that kind.
- (3) Subsection (2) has effect despite any other provision of this Subdivision.

Subdivision D—Scope of power

34 Scope of power—vessels, installations, aircraft and protected land areas

A maritime officer exercising powers in relation to a vessel, installation, aircraft or protected land area may exercise the powers:

- (a) on or in any part of the vessel, installation, aircraft or land; or
- (b) in relation to any person or thing on, or in the vicinity of, the vessel, installation, aircraft or land; or
- (c) in relation to any person whom the officer suspects, on reasonable grounds, was on or is intending to go onto the vessel, installation, aircraft or land; or
- (d) in relation to any thing that the officer suspects, on reasonable grounds:
 - (i) was on or is to be taken onto the vessel, installation, aircraft or land; or
 - (ii) is, was or is to be, attached to or controlled or directed from the vessel, installation, aircraft or land.

35 Warrants not required

A maritime officer is not required to obtain a warrant to exercise any power under this Act.

36 Enforcing warrants

In enforcing a warrant that is in force under an Australian law, a maritime officer must comply with any requirements in the warrant that would have to be complied with by a person executing the warrant.

Subdivision E—Using force and assistance

37 Using force

- (1) In exercising powers under this Act, a maritime officer may use such force against a person or thing as is necessary and reasonable in the circumstances.
- (2) The maritime officer must not:
 - (a) subject a person to greater indignity than is necessary and reasonable to exercise the powers; or
 - (b) do anything that is likely to cause the death of, or grievous bodily harm to, a person unless:
 - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or prevent serious injury to another person (including the officer); and
 - (ii) if the person is attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

38 Requesting assistance

- (1) A maritime officer may request the assistance of any other person (including an officer of another country).
- (2) The request may include a request to:
 - (a) operate a vessel, aircraft or installation in a particular manner; or
 - (b) operate machinery or equipment on a vessel, aircraft, installation or land in a particular manner; or
 - (c) search a person; or
 - (d) assist the officer to access data held in, or accessible from, an electronic device that is on a vessel, aircraft, installation or land.
- (3) Subsection (2) does not limit subsection (1).

- (4) The person may refuse to assist.
- (5) If the person agrees to assist, he or she:
 - (a) must follow any directions given by the officer; and
 - (b) is a *person assisting*.

Use of force by person assisting

- (6) A person assisting may use such force against a thing as is necessary and reasonable in the circumstances.

39 Requiring assistance

- (1) A maritime officer exercising powers in relation to a vessel, installation, aircraft or protected land area may require the assistance of a person who is on, in or in the vicinity of the vessel, installation, aircraft or land.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The requirement may include a requirement to:
 - (a) operate the vessel, installation or aircraft in a particular manner; or
 - (b) operate machinery or equipment on the vessel, installation, aircraft or land in a particular manner; or
 - (c) assist the officer to access data held in, or accessible from, an electronic device or any other equipment on the vessel, installation, aircraft or land; or
 - (d) use such force against a thing as is necessary and reasonable in the circumstances.
- (3) Subsection (2) does not limit subsection (1).
- (4) However, the officer must not require the person to do anything that would endanger the health or safety of the person or any other person.

Division 5—Geographical limits

Subdivision A—Exercising powers in other countries

40 Exercising powers in other countries

- (1) This Act does not authorise the exercise of powers at a place in another country unless the powers are exercised:
- (a) at the request or with the agreement of the other country; or
 - (b) to administer, ensure compliance with or investigate a contravention of an international agreement or international decision that applies in that place; or
 - (c) to investigate a contravention of a law that:
 - (i) applies in that place; and
 - (ii) is prescribed by the regulations; or
 - (d) to administer or ensure compliance with a monitoring law that:
 - (i) applies in that place; and
 - (ii) is prescribed by the regulations; or
 - (e) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.
- (2) Subsection (1) does not apply to an exercise of powers if:
- (a) the exercise of powers:
 - (i) is part of a continuous exercise of powers that commenced in accordance with any applicable requirements of this Part (disregarding this subsection); and
 - (ii) occurs in the course of passage of a vessel or aircraft through or above waters that are part of a country; and
 - (b) a relevant maritime officer, or the Minister, considers that the passage is in accordance with the Convention.

Note 1: The definition of *country* in section 8 includes the territorial sea and any archipelagic waters of the country.

Note 2: The fact that the Minister considers that passage of a particular vessel or aircraft through or above waters that are part of a country is in accordance with the Convention may (for example) be apparent from the terms of a direction given under section 75F.

- (3) An exercise of powers in reliance (or purported reliance) on subsection (2) is not invalid because of a defective consideration of the Convention.

Subdivision B—Exercising powers between countries

41 Foreign vessels between countries

- (1) This Act does not authorise the exercise of powers in relation to a foreign vessel at a place between Australia and another country unless the powers are exercised:
- (a) to investigate a contravention of a law that applies to foreign vessels, or persons on foreign vessels, in that place; or
 - (b) in relation to a contravention covered by paragraph (a), to:
 - (i) arrest a person; or
 - (ii) require a person to cease conduct; or
 - (c) in the contiguous zone of Australia to:
 - (i) investigate a contravention of a customs, fiscal, immigration or sanitary law prescribed by the regulations that occurred in Australia; or
 - (ii) prevent a contravention of such a law occurring in Australia; or
 - (d) to administer or ensure compliance with a monitoring law that applies to foreign vessels, or persons on foreign vessels, in that place; or
 - (e) to administer, ensure compliance with or investigate a contravention of an international agreement or international decision that applies to foreign vessels, or persons on foreign vessels, in that place; or
 - (f) to identify the vessel under a vessels without nationality authorisation; or

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- (g) in relation to a support vessel supporting a vessel involved in a contravention in Australia; or
- (h) in relation to a support vessel supporting a vessel that is:
 - (i) an Australian vessel involved in a contravention within the exclusive economic zone, or waters above the continental shelf, of Australia; or
 - (ii) a foreign vessel involved in a contravention of a law that applies to the foreign vessel, or persons on the foreign vessel, in that place; or
- (i) after the vessel has been chased without interruption to that place; or
- (j) at the request or with the agreement of the country of the vessel's nationality; or
- (k) to seize a border controlled drug or border controlled plant; or
- (l) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Note 1: For *chased without interruption*, see section 42.

Note 2: This section does not apply to the exercise of powers under Divisions 7 and 8 of Part 3 in some circumstances: see section 75D.

- (2) Only vessel identification powers may be exercised under paragraph (1)(f).

Note: For *vessel identification powers*, see section 8.

42 Meaning of *chased without interruption*

- (1) A vessel is *chased without interruption* if:
- (a) at a place where a maritime officer may exercise powers in relation to the vessel without having chased the vessel, a maritime officer requires the person in charge of the vessel to:
 - (i) stop the vessel; or
 - (ii) facilitate boarding of the vessel; and
 - (b) the requirement is not complied with; and

- (c) the vessel is chased from that place; and
- (d) the chase is not interrupted.

Note: For requirements to facilitate boarding and stop, see sections 53 and 54.

- (2) The chase is not interrupted only because:
 - (a) it is continued by another maritime officer; or
 - (b) it is begun, or taken over, by a vessel or aircraft (including a vessel or aircraft of a foreign country) other than the vessel or aircraft from which the requirement was made; or
 - (c) if the chase is continued by a vessel or aircraft of a foreign country—there is no maritime officer on board the vessel or aircraft; or
 - (d) the vessel is out of sight of any or all of the maritime officers, or officers of a foreign country, involved in the chase; or
 - (e) the vessel cannot be tracked by remote means, including radio, radar, satellite or sonar.

43 Foreign installations between countries

This Act does not authorise the exercise of powers in relation to a foreign installation at a place between Australia and another country unless the powers are exercised:

- (a) to administer, ensure compliance with or investigate a contravention of an international agreement or international decision that applies to foreign installations, or persons on foreign installations, in that place; or
- (b) at the request or with the agreement of the country that controls the installation; or
- (c) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

44 Foreign aircraft between countries

This Act does not authorise the exercise of powers, other than aircraft identification powers, in relation to a foreign aircraft at a

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place between Australia and another country unless the powers are exercised:

- (a) to investigate a contravention of a law that applies to foreign aircraft, or persons on foreign aircraft, in that place; or
- (b) to administer, ensure compliance with or investigate a contravention of an international agreement or international decision that applies to foreign aircraft, or persons on foreign aircraft, in that place; or
- (c) at the request or with the agreement of the country of the aircraft's nationality; or
- (d) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Subdivision C—Exercising powers in Australia

45 Foreign vessels in Australia—evidence and warrants authorisations

- (1) This Act does not authorise the exercise of powers in relation to a foreign vessel under an evidence and warrants authorisation at a place in Australia unless:
 - (a) the vessel is at a place in the internal waters of Australia; or
 - (b) the vessel is passing through the territorial sea of Australia after leaving the internal waters of Australia; or
 - (c) the powers are exercised:
 - (i) at the request or with the agreement of the country of the vessel's nationality; or
 - (ii) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.
- (2) Subsection (1) has effect subject to section 46.

46 Vessels, installations and isolated persons in States and internal Territories

This Act does not authorise the exercise of powers in relation to a vessel, installation or isolated person in a State or internal Territory unless the powers are exercised:

- (a) both:
 - (i) as part of the continuous exercise of powers begun outside the State or internal Territory; and
 - (ii) in relation to conduct that occurred outside a State or internal Territory; or
- (b) in relation to a law of the Commonwealth in waters navigable from waters of the sea; or
- (c) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

47 Aircraft in States and internal Territories

This Act does not authorise the exercise of powers in relation to an aircraft in a State or internal Territory unless the powers are exercised:

- (a) as part of the continuous exercise of powers begun outside the State or internal Territory in relation to conduct that occurred outside a State or internal Territory; or
- (b) in relation to a law of the Commonwealth; or
- (c) in connection with the exercise of powers in accordance with this section, to ensure the safety of a maritime officer or any other person.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

Subdivision D—Requests and agreements of other countries

48 Manner and form of requests and agreements

- (1) For the purposes of this Division, a request or agreement of another country:
 - (a) need not be in writing; and
 - (b) includes the following:
 - (i) a standing request or agreement;
 - (ii) a request or agreement relating to particular circumstances;
 - (iii) a request or agreement that covers a particular period of time.
- (2) The request or agreement may be made or given by any of the following:
 - (a) the head of state of the country;
 - (b) the head of the government of the country;
 - (c) the minister of the government of the country who is responsible for foreign affairs;
 - (d) the minister of the government of the country who is responsible for defence;
 - (e) any official or body of the country that has, or could be expected to have, authority to make or give such a request or agreement.

49 Scope of powers under requests and agreements

- (1) If:
 - (a) the request or agreement of another country is made or given for the exercise of powers in relation to a vessel, installation, aircraft or isolated person for a particular purpose (the *agreed purpose*); and
 - (b) the request or agreement is relied on for the purposes of this Division;

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a maritime officer may exercise any maritime power in relation to the vessel, installation, aircraft or person for the agreed purpose.

- (2) However, subsection (1) does not authorise the exercise of a power specified in the request or agreement as a power that must not be exercised under the request or agreement in relation to the vessel, installation, aircraft or person.

Part 3—Maritime powers

Division 1—Introduction

50 Guide to this Part

This Part sets out maritime powers.

Maritime powers may be exercised only in accordance with Part 2 and include the following:

- (a) boarding and entry powers;
- (b) information gathering powers;
- (c) search powers;
- (d) powers to seize and retain things;
- (e) powers to detain vessels and aircraft;
- (f) powers to place, detain, move and arrest persons;
- (g) the power to require persons to cease conduct that contravenes Australian law.

51 Effect of Part

The powers in this Part may be exercised only in accordance with Part 2.

Division 2—Boarding

52 Boarding vessels, installations and aircraft

- (1) A maritime officer may board a vessel, installation or aircraft.
- (2) If the person in charge of the vessel, installation or aircraft requests the officer to produce identification, the officer must produce:
 - (a) the officer's identity card; or
 - (b) other written evidence of the fact that the officer is a Commonwealth officer.
- (3) If the officer fails to produce the identity card or other written evidence, the officer must:
 - (a) leave the vessel, installation or aircraft; and
 - (b) not re-board the vessel, installation or aircraft without producing the identity card or other written evidence.
- (4) Subsections (2) and (3) do not apply if the officer is one of the following in uniform:
 - (a) a member of the Australian Defence Force;
 - (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
 - (c) a member or special member of the Australian Federal Police;
 - (d) an officer prescribed by the regulations.

53 Requirement to facilitate boarding

- (1) A maritime officer may require the person in charge of a vessel, installation or aircraft to take reasonable steps to facilitate the boarding of the vessel, installation or aircraft.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The requirement may be made by any reasonable means.

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- (3) The requirement is made whether or not the person in charge of the vessel, installation or aircraft understands or is aware of the requirement.

54 Additional powers—vessels

Stopping, manoeuvring etc.

- (1) A maritime officer may require the person in charge of a vessel to do one or more of the following:
- (a) stop or manoeuvre the vessel;
 - (b) adopt a specified course or speed;
 - (c) maintain a specified course or speed.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The requirement is made whether or not the person in charge of the vessel understands or is aware of the requirement.

Chasing

- (3) If the person in charge of a vessel does not comply with a requirement to stop or facilitate boarding of the vessel, a maritime officer may do one or more of the following:
- (a) chase the vessel;
 - (b) use any reasonable means to obstruct the passage of the vessel;
 - (c) use any reasonable means to halt or slow the passage of the vessel, including by fouling the propellers of the vessel;
 - (d) after firing a warning shot, fire at or into the vessel to disable it or compel it to be brought to for boarding.

Requirement taken to be made to support vessels

- (4) A requirement made to a person in charge of a vessel (the **supported vessel**) to stop or facilitate boarding of the supported vessel, is taken to have been made also to the person in charge of any vessel supporting the supported vessel.

55 Additional powers—aircraft

Identifying

- (1) A maritime officer may require the person in charge of an aircraft to disclose any or all of the following to the officer:
 - (a) the identity of the aircraft;
 - (b) the identity of all persons on the aircraft;
 - (c) the flight path of the aircraft;
 - (d) the flight plan of the aircraft.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The requirement may be made by any reasonable means.
- (3) The requirement is made whether or not the person in charge of the aircraft understands or is aware of the requirement.
- (4) The powers in subsection (1) are ***aircraft identification powers***.

Intercepting

- (5) A maritime officer who is on board an aircraft may use his or her aircraft to intercept another aircraft.
- (6) The interception must be in accordance with the practices recommended in Annex 2 (headed “Rules of the Air”) to the Convention on International Civil Aviation done at Chicago on 7 December 1944 (that was adopted in accordance with that Convention).

Note: The text of the Convention is set out in Australian Treaty Series 1957 No. 5 ([1957] ATS 5). In 2013, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Landing

- (7) A maritime officer may require the person in charge of an aircraft to land the aircraft:

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- (a) at the nearest airport in Australia; or
- (b) at another place in Australia that the officer considers appropriate.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (8) A maritime officer must have regard to the safety of the aircraft when making a requirement under subsection (7).

Division 3—Entering on land

56 Entering on land

- (1) A maritime officer may enter onto land.
- (2) If the person in charge of the land requests the officer to produce identification, the officer must produce:
 - (a) the officer's identity card; or
 - (b) other written evidence of the fact that the officer is a Commonwealth officer.
- (3) If the officer fails to produce the identity card or other written evidence, the officer must:
 - (a) leave the land; and
 - (b) not re-enter the land without producing the identity card or other written evidence.
- (4) Subsections (2) and (3) do not apply if the officer is one of the following in uniform:
 - (a) a member of the Australian Defence Force;
 - (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
 - (c) a member or special member of the Australian Federal Police;
 - (d) an officer prescribed by the regulations.

Note: The exercise of powers on land is limited: see the definition of ***protected land area*** in section 8 and the geographical limits on the exercise of powers set out in sections 46 and 47.

Division 4—Obtaining information

57 Requiring answers, records and documents

- (1) A maritime officer may require a person to answer questions or produce records or documents.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

- (2) The questions, records or documents may be about, or relate to:
- (a) a vessel, installation, aircraft or land; or
 - (b) the operations of a vessel, installation or aircraft, or activities conducted on a vessel, installation, aircraft or land; or
 - (c) any thing on or in the vicinity of a vessel, installation, aircraft or land (including stores and cargo); or
 - (d) the identity of the person or any other person; or
 - (e) the reasons for the person or any other person being on or in the vicinity of a vessel, installation, aircraft or land; or
 - (f) any journey undertaken by the person or any other person; or
 - (g) any contravention, or suspected contravention, of an Australian law.

- (3) Subsection (2) does not limit subsection (1).

58 Obtaining readings

A maritime officer may read, make readings from, or require the person in charge of a vessel, installation or aircraft to show the officer readings of, navigational or other instruments that relate to the operations of a vessel, installation or aircraft.

Note: It is an offence to fail to comply with a requirement under this section: see section 103.

Division 5—Searching

59 Searching places

- (1) A maritime officer may conduct a search, including a search of private living quarters.

Opening holds etc.

- (2) In conducting a search, a maritime officer may break open any space (including a hold, compartment, container, receptacle or any place that could be used as a receptacle).
- (3) Before breaking open a space, a maritime officer must give the person in charge of the vessel, installation, aircraft or land concerned a reasonable opportunity to open the space.
- (4) Subsection (3) does not apply if it is not reasonably practicable to give the person such an opportunity.

Use of dogs, equipment etc.

- (5) A maritime officer may use a dog or any equipment or other thing to assist in a search.

60 Lifting persons or things from the sea

A maritime officer may cause a person or thing to be lifted from the sea.

61 Searching persons

- (1) A maritime officer may search a person.
- (2) The search may be either or both of the following:
 - (a) an ordinary search;
 - (b) a frisk search.

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- (3) The officer may require the production of any thing found as a result of the search.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

Meanings of ordinary search and frisk search

- (4) An **ordinary search** is a search of a person, or of articles in the possession of a person, that may include:
- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and
 - (b) an examination of those items.
- (5) A **frisk search** is:
- (a) a search of a person conducted by quickly running hands over the person's outer garments; and
 - (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

62 Conducting frisk searches

- (1) A frisk search must be conducted by a maritime officer or person assisting who is of the same sex as the person being searched.

Note: For *person assisting*, see paragraph 38(5)(b).

- (2) If the search is conducted by a person assisting, the search must be conducted in the presence of a maritime officer.
- (3) If:
- (a) there is no maritime officer of the same sex available; and
 - (b) no other suitable person of the same sex will agree to assist;
- any maritime officer may conduct the search.

Division 6—Things found or produced

63 Examining things

Maritime officer may examine things

- (1) A maritime officer may examine a thing.

Examples of examining

- (2) The officer may do the following:
- (a) open any package in which the thing is or may be contained;
 - (b) use a device, such as an X-ray machine or ion scanning equipment, on the thing;
 - (c) test or analyse the thing;
 - (d) measure or count the thing;
 - (e) take samples of the thing (even if the sampling destroys the thing);
 - (f) operate the thing;
 - (g) if the thing is or contains a record or document—read the record or document either directly or with the use of an electronic device;
 - (h) use a dog to assist in examining the thing;
 - (i) take photographs or a video recording of the thing;
 - (j) make sketches of the thing.
- (3) Subsection (2) does not limit subsection (1).

Use of force to examine

- (4) The officer may use force to open the thing, or any part of the thing.
- (5) However, before doing so, the officer must give a reasonable opportunity to open the thing, or the part of the thing, to:
- (a) the person in whose possession the thing was found; and

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- (b) if the thing was found on a vessel, installation, aircraft or land—the person in charge of the vessel, installation, aircraft or land.
- (6) Subsection (5) does not apply if it is not reasonably practicable to give such an opportunity.

64 Securing and marking things

- (1) A maritime officer may do one or more of the following:
 - (a) seal a thing;
 - (b) mark a thing;
 - (c) lock up, or otherwise secure a thing (including in the hold of a vessel or aircraft);
 - (d) if the thing is a live plant:
 - (i) mark or label a cage or container in which the plant is kept or in which the plant is growing; or
 - (ii) place a label or tag on the plant;
 - (e) if the thing is a live animal:
 - (i) implant a scannable device in the animal; or
 - (ii) place a band on any part of the animal; or
 - (iii) place (whether by piercing or otherwise) a tag or ring on any part of the animal; or
 - (iv) mark or label a cage or container within which the animal is kept.

Offences

- (2) A person commits an offence if:
 - (a) in the exercise of powers in relation to a vessel, installation, aircraft or land, a maritime officer seals, marks, labels, locks up or secures a thing; and
 - (b) the continuous exercise of those powers has not ceased; and
 - (c) the person:
 - (i) breaks or defaces the seal; or
 - (ii) erases or defaces the mark or label; or

(iii) breaks or unlocks the lock or otherwise causes the thing to be unsecured; and

(d) the person does so without the consent of a maritime officer.

Penalty: 50 penalty units.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

(3) A person commits an offence if:

(a) in the exercise of powers in relation to a vessel, installation, aircraft or land, a maritime officer:

(i) implants a scannable device in an animal; or

(ii) places a band on any part of an animal; or

(iii) places (whether by piercing or otherwise) a tag or ring on any part of an animal; and

(b) the continuous exercise of those powers has not ceased; and

(c) the person removes, or interferes with, the implant, band, tag or ring; and

(d) the person does so without the consent of a maritime officer.

Penalty: 50 penalty units.

Note: The continuous exercise of powers does not end only because there is a period of time between the exercise of one or more of those powers: see section 11.

65 Copying records or documents

A maritime officer may copy a record or document, or a part of a record or document.

66 Securing weapons

(1) A maritime officer may secure a weapon.

(2) The officer may:

(a) take temporary possession of the weapon; or

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- (b) give temporary possession of the weapon to another person;
or
 - (c) move or guard the weapon; or
 - (d) disarm or dismantle the weapon.
- (3) Subsection (2) does not limit subsection (1).

Note: A weapon can be seized under section 67 (seizing things), and could be retained under section 68 (retaining things).

67 Seizing things

- (1) A maritime officer may seize:
- (a) a weapon; or
 - (b) any thing that the officer suspects, on reasonable grounds:
 - (i) is evidential material; or
 - (ii) is a border controlled drug or border controlled plant; or
 - (iii) is owned by the Commonwealth or a State or Territory.

Note: Written notice must be given if a thing is seized: see section 80.

- (2) To avoid doubt, a thing owned by the Commonwealth or a State or Territory includes a thing that has been forfeited to the Commonwealth or the State or Territory.
- (3) A thing seized under subsection (1) is a *seized thing*.

68 Retaining things

- (1) A maritime officer may retain any thing that the officer suspects, on reasonable grounds, could be seized under an Australian law.

Note: Written notice must be given if a thing is retained: see section 80.

- (2) The officer may retain the thing even if a warrant would be required to take possession of the thing under that law.
- (3) A thing retained under subsection (1) is a *retained thing*.

Division 7—Detaining vessels, aircraft and other conveyances

69 Vessels and aircraft

- (1) A maritime officer may detain a vessel or aircraft.

Note: For other provisions affecting powers under this section, see section 69A and Division 8A.

- (2) The officer may:

- (a) take the vessel or aircraft, or cause the vessel or aircraft to be taken, to a place (the *destination*); and
- (b) remain in control of the vessel or aircraft, or require the person in charge of the vessel or aircraft to remain in control of the vessel or aircraft, at the destination, until whichever of the following occurs first:
 - (i) the vessel or aircraft is returned to a person referred to in subsection 87(1);
 - (ii) action is taken as mentioned in subsection 87(3) in relation to the vessel or aircraft.

- (3) The destination may be:

- (a) in the migration zone; or
- (b) outside the migration zone (including outside Australia).

Note: Section 75C contains additional provisions about the place that may be the destination.

- (3A) A maritime officer may change the destination to a different place at any time (including a time after arrival at the place that was previously the destination). If the destination is changed to a different place:

- (a) that different place is then the destination; but
- (b) this does not affect the exercise of powers under this Act before the change.

Note: It is possible that the destination may change more than once.

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(4) A vessel detained under subsection (1) is a *detained vessel*.

(5) An aircraft detained under subsection (1) is a *detained aircraft*.

69A Additional provisions relating to taking a vessel or aircraft to a destination under section 69

(1) For the purpose of taking a vessel or aircraft (or causing a vessel or aircraft to be taken) to a destination under paragraph 69(2)(a), the vessel or aircraft may be detained under subsection 69(1):

(a) for any period reasonably required:

- (i) to decide which place should be the destination; or
- (ii) to consider whether the destination should be changed to a different place under subsection 69(3A), and (if it should be changed) to decide what that different place is; and

(b) for any period reasonably required for the Minister to consider whether to make or give a determination or direction under section 75D, 75F or 75H in relation to:

- (i) a matter referred to in subparagraph (a)(i) or (ii); or
- (ii) any other matter relating to the exercise of powers in relation to the vessel or aircraft, or in relation to persons on (or suspected as having been on) the vessel or aircraft; and

(c) for the period it actually takes to travel to the destination.

Note: The total period for which the vessel or aircraft is detained may be longer than the periods covered by this subsection: see subsection (3) and section 87.

(2) For the purpose of paragraph (1)(c):

- (a) the period it actually takes to travel to the destination may include stopovers at other places on the way to the destination, and time for other logistical, operational or other contingencies relating to travelling to the destination; and
- (b) there is no requirement that the most direct route to the destination must be taken.

- (3) Days in periods covered by subsection (1) do not count towards the 28 day limit specified in paragraph 87(2)(a).

70 Other conveyances

A maritime officer may detain a vehicle or other conveyance on land.

Division 8—Placing and moving persons

71 Placing persons

A maritime officer exercising powers in relation to a vessel, installation, aircraft or land may place or keep a person in a particular place on the vessel, installation, aircraft or land.

Note 1: The exercise of powers under this Act must be for a purpose set out in Division 4 of Part 2.

Note 2: A maritime officer must not subject a person to greater indignity than is necessary and reasonable in the exercise of powers: see section 37.

Note 3: A person arrested, detained or otherwise held under this Act must be treated with humanity and respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment: see section 95.

72 Persons on detained vessels and aircraft

- (1) This section applies to a person:
- (a) on a detained vessel or detained aircraft; or
 - (b) whom a maritime officer reasonably suspects was on a vessel or aircraft when it was detained.

Note 1: For detaining vessels and aircraft, see section 69.

Note 2: For other provisions affecting powers under this section, see section 72A and Division 8A.

- (2) A maritime officer may return the person to the vessel or aircraft.
- (3) A maritime officer may require the person to remain on the vessel or aircraft until whichever of the following occurs first:
- (a) the vessel or aircraft is returned to a person referred to in subsection 87(1);
 - (b) action is taken as mentioned in subsection 87(3) in relation to the vessel or aircraft.

Note: It is an offence to fail to comply with a requirement under this subsection: see section 103.

(4) A maritime officer may detain the person and take the person, or cause the person to be taken, to a place (the *destination*).

(4A) The destination may be:

- (a) in the migration zone; or
- (b) outside the migration zone (including outside Australia).

Note: Section 75C contains additional provisions about the place that may be the destination.

(4B) A maritime officer may change the destination to a different place at any time (including a time after arrival at the place that was previously the destination). If the destination is changed to a different place:

- (a) that different place is then the destination; but
- (b) this does not affect the exercise of powers under this Act before the change.

Note: It is possible that the destination may change more than once.

(5) For the purposes of taking the person to the destination, a maritime officer may within or outside Australia:

- (a) place the person on a vessel or aircraft, or in a particular place on a vessel or aircraft; or
- (b) restrain the person on a vessel or aircraft, or in a particular place on a vessel or aircraft; or
- (c) remove the person from a vessel or aircraft.

72A Additional provisions relating to taking a person to a destination under subsection 72(4)

(1) A person may be detained under subsection 72(4):

- (a) for any period reasonably required:
 - (i) to decide which place should be the destination; or
 - (ii) to consider whether the destination should be changed to a different place under subsection 72(4B), and (if it should be changed) to decide what that different place is; and

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- (b) for any period reasonably required for the Minister to consider whether to make or give a determination or direction under section 75D, 75F or 75H in relation to:
 - (i) a matter referred to in subparagraph (a)(i) or (ii); or
 - (ii) any other matter relating to the exercise of powers in relation to the person; and
 - (c) for the period it actually takes to travel to the destination; and
 - (d) for any period reasonably required to make and effect arrangements relating to the release of the person.
- (2) For the purpose of paragraph (1)(c):
- (a) the period it actually takes to travel to the destination may include stopovers at other places on the way to the destination, and time for other logistical, operational or other contingencies relating to travelling to the destination; and
 - (b) there is no requirement that the most direct route to the destination must be taken.
- (3) The person must not be detained under subsection 72(4) for any longer than is permitted by subsection (1) of this section.
- (4) Powers may be exercised in accordance with subsection 72(5) in relation to the person at any time while the person continues to be detained under subsection 72(4).
- (5) Subsection (3) does not prevent:
- (a) the arrest of the person; or
 - (b) the detention of the person under another Australian law; or
 - (c) the exercise of any other power in relation to the person.

73 Using detention provisions

- (1) A maritime officer may detain a person under a detention provision as if the officer were an officer (however described) within the meaning of that provision.

Note: For dealing with a person who has been detained under a detention provision, see section 98.

- (2) Each of the following is a *detention provision*:
- (a) clause 8 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (b) clause 8 of Schedule 1A to the *Fisheries Management Act 1991*;
 - (c) clause 8 of Schedule 2 to the *Torres Strait Fisheries Act 1984*;
 - (d) a provision prescribed by the regulations.

74 Safety of persons

A maritime officer must not place or keep a person in a place, unless the officer is satisfied, on reasonable grounds, that it is safe for the person to be in that place.

75 Restraint is not arrest

- (1) Any restraint on the liberty of a person that results from the operation of this Division does not constitute arrest, and is not unlawful.
- (2) Proceedings, whether civil or criminal, in respect of that restraint may not be instituted or continued in any court against the Commonwealth, a maritime officer or a person assisting.

Note: This section does not affect the jurisdiction of the High Court under section 75 of the Constitution.

Division 8A—General provisions relating to powers under Divisions 7 and 8

75A Failure to consider international obligations etc. does not invalidate exercise of powers

- (1) The exercise of a power under section 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H is not invalid:
 - (a) because of a failure to consider Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (b) because of a defective consideration of Australia's international obligations, or the international obligations or domestic law of any other country; or
 - (c) because the exercise of the power is inconsistent with Australia's international obligations.
- (2) Subsection (1) is not to be taken to imply that the exercise of a power under any other provision of this Act is invalid for a reason of a kind specified in paragraph (1)(a), (b) or (c).

75B Rules of natural justice do not apply to exercise of powers

- (1) The rules of natural justice do not apply to the exercise of powers under section 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H.
- (2) Subsection (1) is not to be taken to imply that the rules of natural justice do apply in relation to the exercise of powers under any other provision of this Act.

75C Additional provisions about destination to which a vessel, aircraft or person may be taken

- (1) To avoid doubt:
 - (a) the destination to which a vessel, aircraft or person is taken (or caused to be taken) under section 69 or 72:

- (i) does not have to be in a country; and
- (ii) without limiting subparagraph (i)—may be just outside a country; and
- (iii) may be a vessel; and
- (b) a vessel, aircraft or person may be taken (or caused to be taken) to a destination under section 69 or 72:
 - (i) whether or not Australia has an agreement or arrangement with any other country relating to the vessel or aircraft (or the persons on it), or the person; and
 - (ii) irrespective of the international obligations or domestic law of any other country.

Note: The definition of *country* in section 8 includes the territorial sea and archipelagic waters of the country, as well as various other areas.

- (2) However, if the destination is in another country, section 40 (exercising powers in other countries) must be complied with.

75D Exercising powers between countries

- (1) Section 41 (foreign vessels between countries) does not apply to an exercise of power under section 69, 69A, 71, 72, 72A or 74 if:
 - (a) the exercise of power is:
 - (i) covered by a determination in force under subsection (2); or
 - (ii) required by a direction in force under paragraph 75F(2)(a); and
 - (b) the exercise of power is part of a continuous exercise of powers that commenced in accordance with any applicable requirements of Division 5 of Part 2.
- (2) For the purpose of subparagraph (1)(a)(i), the Minister may make a written determination that is expressed to cover the exercise, in a specified circumstance, of powers under one or more of the sections referred to in subsection (1).

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Division 8A General provisions relating to powers under Divisions 7 and 8

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- (3) The Minister may, in writing, vary or revoke a determination made under subsection (2).
- (4) The only condition for the exercise of the power to make a determination under subsection (2), or to vary a determination, is that the Minister thinks that it is in the national interest to make or vary the determination.
- Note: There are no conditions for the exercise of the power to revoke a determination.
- (5) A determination under subsection (2), or an instrument varying or revoking a determination, comes into force:
- (a) unless paragraph (b) applies—when it is made; or
 - (b) if the determination or instrument specifies a later time as the time when it is to come into force—at that later time.
- (6) A determination under subsection (2) remains in force until whichever of the following occurs first:
- (a) an instrument revoking the determination comes into force;
 - (b) if the determination is expressed to cease to be in force at a specified time—the time so specified.
- (7) A determination under subsection (2), or a variation or revocation of a determination, is not a legislative instrument.

75E Powers are not limited by the *Migration Act 1958*

- (1) Powers under sections 69, 69A, 71, 72, 72A, 74, 75D, 75F, 75G or 75H are not in any respect subject to, or limited by, the *Migration Act 1958* (including regulations and other instruments made under that Act).
- (2) Subsection (1) of this section is not to be taken to imply that other powers under this Act are subject to, or limited by, the *Migration Act 1958* (including regulations and other instruments made under that Act).

75F Minister may give directions about exercise of powers

- (1) This section applies in relation to the powers in sections 69, 69A, 71, 72 and 72A.
- (2) The Minister may, in writing, give directions:
 - (a) requiring the exercise of a power or powers in a specified circumstance, or in circumstances in a specified class, in a specified manner; or
 - (b) relating to the exercise of a power or powers in a specified circumstance, in a specified class of circumstances or more generally.
- (3) Without limiting subsection (2), the Minister may give a direction under that subsection:
 - (a) specifying a place that is to be, or is not to be, the destination to which a vessel, aircraft or person is taken under paragraph 69(2)(a) or subsection 72(4); or
 - (b) specifying matters to be taken into account in deciding the destination to which a vessel, aircraft or person is to be so taken.
- (4) The Minister may, in writing, vary or revoke a direction given under subsection (2).
- (5) The only condition for the exercise of the power to give a direction under subsection (2), or to vary a direction, is that the Minister thinks that it is in the national interest to give or vary the direction.

Note: There are no conditions for the exercise of the power to revoke a direction.
- (6) A direction under subsection (2) may specify circumstances in which the direction need not be complied with.
- (7) A direction under subsection (2), or an instrument varying or revoking a direction, comes into force:
 - (a) unless paragraph (b) applies—when it is made; or
 - (b) if the direction or instrument specifies a later time as the time when it is to come into force—at that later time.

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- (8) A direction under subsection (2) remains in force until whichever of the following occurs first:
- (a) an instrument revoking the direction comes into force;
 - (b) if the direction is expressed to cease to be in force at a specified time—the time so specified.
- (9) If the Minister gives a direction as mentioned in paragraph (2)(a):
- (a) the direction is taken to constitute an authorisation of the exercise of the power or powers in accordance with the direction; and
 - (b) that authorisation is taken (despite section 23) to remain in force while the direction is in force.
- (10) A direction under subsection (2), or an instrument varying or revoking a direction, is not a legislative instrument.

75G Compliance with directions

- (1) Subject to subsections (2) and (3) of this section, and subsection 75F(6), a maritime officer must comply with any applicable directions in force under section 75F. However, a failure to comply does not invalidate any exercise of power by a maritime officer.
- (2) A maritime officer who is a member of the Australian Defence Force is not required to comply with a direction under section 75F to the extent that the direction is inconsistent with an order or other exercise of command under sections 8 and 9 of the *Defence Act 1903*.
- (3) A maritime officer is not required to comply with a direction under section 75F to the extent that he or she reasonably believes that it would be unsafe to do so.

75H Certain maritime laws do not apply to certain vessels detained or used in exercise of powers

Vessels detained under section 69

- (1) The laws specified in subsection (3) (including regulations and other instruments made under those laws) do not apply in relation to a vessel at any time when the vessel is detained in exercise (or purported exercise) of powers under section 69.

Vessels used in exercise of powers under subsections 72(4) or (5)

- (2) The laws specified in subsection (3) (including regulations and other instruments made under those laws) do not apply in relation to a vessel at any time when the following paragraphs are satisfied:
- (a) the vessel is being used in the exercise (or purported exercise) of powers under subsection 72(4) or (5), or the Commonwealth intends that the vessel is for use in the exercise of such powers;
 - (b) the vessel is specified in, or is included in a class of vessels specified in, a determination under subsection (4) that is in force;
 - (c) if the determination states that it has effect, in relation to the vessel or class of vessels, only in specified circumstances—those circumstances exist;
 - (d) if the determination states that it has effect, in relation to the vessel or the class of vessels, only in one or more specified periods—the time is in that period, or one of those periods.

Note: Paragraph (c) and (d) do not have to be satisfied unless the determination states as mentioned in those paragraphs.

The laws that are disapplied

- (3) The laws that, because of subsection (1) or (2), do not apply in relation to a vessel are:
- (a) the *Navigation Act 2012*; and
 - (b) the *Shipping Registration Act 1981*; and

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- (c) the Marine Safety (Domestic Commercial Vessel) National Law.

Determinations of vessels and classes of vessels

- (4) For the purpose of paragraph (2)(b), the Minister may make a written determination specifying a vessel, or a class of vessels. The determination may also state either or both of the following:
 - (a) that it has effect, in relation to the vessel or class of vessels, only in specified circumstances;
 - (b) that it has effect, in relation to the vessel or the class of vessels, only in one or more specified periods.
- (5) The Minister may, in writing, vary or revoke a determination made under subsection (4).
- (6) The only condition for the exercise of the power to make a determination under subsection (4), or to vary a determination, is that the Minister thinks that it is in the national interest to make or vary the determination.

Note: There are no conditions for the exercise of the power to revoke a determination.
- (7) A determination under subsection (4), or an instrument varying or revoking a determination, comes into force:
 - (a) unless paragraph (b) applies—when it is made; or
 - (b) if the determination or instrument specifies a later time as the time when it is to come into force—at that later time.
- (8) A determination under subsection (4) remains in force until whichever of the following occurs first:
 - (a) an instrument revoking the determination comes into force;
 - (b) if the determination is expressed to cease to be in force at a specified time—the time so specified.
- (9) A determination under subsection (4), or a variation or revocation of a determination, is not a legislative instrument.

Division 9—Arrest

76 Arrest for indictable offences

- (1) A maritime officer may arrest a person if the officer suspects, on reasonable grounds, that the person has committed an indictable offence against an Australian law.

Note: For dealing with a person who has been arrested, see section 100.

Release from arrest

- (2) The person must be released from arrest if, before the person is charged with the offence, the officer ceases to suspect, on reasonable grounds, that the person committed the offence.

77 Enforcing arrest warrants

A maritime officer may arrest a person for whom an arrest warrant is in force under an Australian law.

Note: For dealing with a person who has been arrested, see section 100.

Division 10—Requiring conduct to cease

78 Requiring conduct to cease

A maritime officer may require a person to cease conduct if the officer believes, on reasonable grounds, that the conduct constitutes a contravention of an Australian law.

Note: It is an offence to fail to comply with a requirement under this section: see section 103.

Part 4—Dealing with things taken

Division 1—Introduction

79 Guide to this Part

This Part sets out processes for dealing with things taken in the exercise of powers under this Act.

Things taken fall into the following 3 categories:

- (a) seized things;
- (b) retained things;
- (c) detained vessels and aircraft.

Written notice must be given to the owner of a seized, retained or detained thing, or to a person who had possession or control of the thing.

Seized things may be used for certain purposes, but must be returned unless:

- (a) they are required for proceedings; or
- (b) they have been disposed of under an Australian law; or
- (c) they are seized under another Australian law; or
- (d) the Commonwealth claims ownership of them.

Retained and detained things must be returned unless:

Part 4 Dealing with things taken

Division 1 Introduction

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- (a) they have been disposed of under an Australian law; or
- (b) they are seized under an Australian law; or
- (c) the Commonwealth claims ownership of them.

The Minister may dispose of seized, retained and detained things on the grounds set out in Division 5.

If the Commonwealth claims ownership of a seized, retained or detained thing, a person may apply to a court for its return.

Division 2—Notice of seizure, retention or detention

80 Notice of seizure, retention or detention

- (1) If a maritime officer seizes or retains a thing, or detains a vessel or aircraft (also the *thing*), the officer must give written notice, within 14 days, to:
 - (a) the owner of the thing; or
 - (b) a person who had possession or control of the thing immediately before it was seized, retained or detained.

Note: Things may be seized under section 67 and retained under section 68. Vessels and aircraft may be detained under section 69.

- (2) If the officer cannot conveniently give the notice in person, the officer may give the notice by fixing the notice to a prominent part of the thing, unless the thing is perishable.
- (3) The notice must:
 - (a) identify the thing; and
 - (b) state that the thing has been seized, retained or detained; and
 - (c) specify the reason for this; and
 - (d) specify contact details of an officer who can provide further information; and
 - (e) include information about the return of the thing.

81 Information about the return of things

Seized things

- (1) Information about the return of a seized thing must state that the thing will be returned within 120 days of its seizure unless:
 - (a) the thing is required for the purposes of proceedings that have been instituted, or an appeal arising from such proceedings; or
 - (b) the period of 120 days is extended by a magistrate under section 88; or

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Division 2 Notice of seizure, retention or detention

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- (c) the thing is disposed of under an Australian law; or
- (d) the thing is seized under another Australian law; or
- (e) notice of Commonwealth ownership of the thing is given.

Retained things and detained vessels and aircraft

- (2) Information about the return of a retained thing, or a detained vessel or detained aircraft (also the *thing*), must state that the thing will be returned within 28 days of its retention or detention unless:
 - (a) the period of 28 days is extended by a magistrate under section 88; or
 - (b) the thing is disposed of under an Australian law; or
 - (c) the thing is seized under an Australian law; or
 - (d) notice of Commonwealth ownership of the thing is given.
- (3) If a detained vessel or aircraft is to be taken to a destination under paragraph 69(2)(a), the information must also explain the effect of subsection 69A(3).

82 Notice of Commonwealth ownership

- (1) Notice of Commonwealth ownership of a thing may be given at any time.
- (2) The notice must:
 - (a) state that the Commonwealth claims ownership of the thing; and
 - (b) state that any other person who claims ownership or possession of the thing may apply to a court of competent jurisdiction, within 30 days after the notice is given, for an order for the return of the thing.
- (3) If the notice cannot conveniently be given in person, the officer may give the notice by fixing the notice to a prominent part of the thing, unless the thing is perishable.

Division 3—Using seized things

83 Using seized things

- (1) A maritime officer may use a seized thing, or make a seized thing available to another Commonwealth officer to use as follows:
- (a) to prevent, investigate or prosecute a contravention of:
 - (i) an Australian law; or
 - (ii) an international agreement or international decision;
 - (b) to administer or ensure compliance with:
 - (i) a monitoring law; or
 - (ii) an international agreement or international decision;
 - (c) for any other purpose under another Australian law, as if the thing had been seized, produced or required (however described) under that law;
 - (d) to decide whether to use the thing as mentioned in any of paragraphs (a) to (c).
- (2) To avoid doubt, paragraph (1)(c) applies even if a warrant would have been required to seize or access the thing under that law.

Note: The thing will have to be returned in accordance with section 86, unless an exception under subsection 86(3) applies.

84 Using seized things—State and Territory officers

A Commonwealth officer may make a seized thing available to an officer of a State or Territory to be:

- (a) seized under a law of the State or Territory; or
- (b) used for any other purpose under a law of the State or Territory.

Note: The thing will have to be returned in accordance with section 86, unless an exception under subsection 86(3) applies.

85 Operating electronic equipment

If:

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Division 3 Using seized things

Section 85

- (a) a seized thing may be used under this Division for a particular purpose; and
- (b) the thing is electronic equipment;
the thing may be operated for that purpose.

Division 4—Returning things

86 Returning seized things

- (1) If a seized thing is no longer required for a purpose mentioned in Division 3 (using seized things), the person who has control of the thing must take reasonable steps to return the thing to:
 - (a) the owner of the thing; or
 - (b) a person who had possession or control of the thing immediately before it was seized.
- (2) The thing must be returned within:
 - (a) 120 days after it is seized; or
 - (b) that period as extended under section 88.
- (3) Subsections (1) and (2) do not apply if:
 - (a) the thing is required for the purposes of proceedings that have been instituted, or an appeal arising from such proceedings; or
 - (b) the thing has been disposed of under an Australian law; or
 - (c) the thing has been seized under another Australian law; or
 - (d) notice of Commonwealth ownership of the thing has been given.

87 Returning retained and detained things

- (1) A retained thing, or a detained vessel or detained aircraft (also the *thing*), must be returned to:
 - (a) the owner of the thing; or
 - (b) a person who had possession or control of the thing immediately before it was retained or detained.
- (2) The thing must be returned within:
 - (a) 28 days after it is retained or detained; or
 - (b) that period as extended under section 88.

Part 4 Dealing with things taken

Division 4 Returning things

Section 88

Note: In the case of a detained vessel or aircraft that is taken to a destination under paragraph 69(2)(a), days in periods covered by subsection 69A(1) (such as the period it takes to travel to the destination) do not count towards the 28 day limit: see subsection 69A(3).

- (3) Subsections (1) and (2) do not apply if:
- (a) the thing has been disposed of under an Australian law; or
 - (b) the thing has been seized under an Australian law; or
 - (c) notice of Commonwealth ownership of the thing has been given.

88 Magistrate may extend holding period

- (1) The person who has control of a seized thing or retained thing, or a detained vessel or detained aircraft (also the *thing*), may apply to a magistrate for an order extending, or further extending, the period for which the thing may be held.
- (2) The magistrate may make an order extending the period for which the thing may be held if the magistrate is satisfied that:
 - (a) the thing is required for a purpose mentioned in Division 3 (using seized things); or
 - (b) there are other grounds for extending the period.
- (3) Before making the application, the person who has control of the thing must:
 - (a) take reasonable steps to discover who has an interest in the thing; and
 - (b) if it is practicable to do so, notify each such person of the proposed application.

89 Returning things if notice of Commonwealth ownership given

Application to court

- (1) If notice of Commonwealth ownership of a thing is given, a person who claims ownership or possession of the thing may apply to a

court of competent jurisdiction for an order for the return of the thing.

- (2) The application must be made within 30 days after the notice of Commonwealth ownership is given.

Order for return of thing

- (3) The court may order the return of the thing if:
- (a) the court is not satisfied that the Commonwealth owns the thing; and
 - (b) the thing has not been:
 - (i) seized under another Australian law; or
 - (ii) disposed of under an Australian law.

90 Seizing under other Australian laws

- (1) If a seized thing is seized under another Australian law, its seizure under this Act does not:
- (a) count as seizure under the other law; or
 - (b) remove or fulfil any requirement under the other law to:
 - (i) give notice or information; or
 - (ii) act under a warrant; or
 - (iii) do any other thing in relation to the seizure under the other law.
- (2) If a retained thing, or a detained vessel or detained aircraft (also the **thing**), is seized under an Australian law (the **other law**), its retention or detention under this Act does not:
- (a) count as seizure under the other law; or
 - (b) remove or fulfil any requirement under the other law to:
 - (i) give notice or information; or
 - (ii) act under a warrant; or
 - (iii) do any other thing in relation to the seizure under the other law.

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Section 90

- (3) Subsections (1) and (2) have effect subject to any express provision to the contrary in an Australian law.

Division 5—Disposing of things

91 Reasons for disposal

- (1) The Minister may dispose of a seized thing or retained thing, or a detained vessel or detained aircraft (also the *thing*), if:
- (a) custody or maintenance (including any necessary movement or transport) of the thing creates serious difficulties; or
 - (b) the expenses of custody or maintenance (including any necessary movement or transport) of the thing are likely to exceed its value; or
 - (c) the thing is a live plant or animal and its return to its native environment would be beneficial to its survival; or
 - (d) if notice of Commonwealth ownership of the thing has been given:
 - (i) an application for an order for the return of the thing has not been made within the time allowed under section 89; or
 - (ii) proceedings in relation to such an application have been finally determined without an order for the return of the thing being made.
- (2) For the purposes of paragraph (1)(a), the custody or maintenance of the thing is taken to create serious difficulties if:
- (a) the thing is perishable; or
 - (b) storage of the thing would be impractical; or
 - (c) the thing poses a serious risk to navigation, safety or public health; or
 - (ca) the thing poses an unacceptable level of biosecurity risk (within the meaning of the *Biosecurity Act 2015*); or
 - (d) the thing poses a serious risk of damage to property or the environment; or
 - (e) if the thing is a vessel—it is unseaworthy; or
 - (f) despite reasonable efforts, it has not been possible to return the thing.

Section 92

- (3) Subsection (2) does not limit paragraph (1)(a).

92 Methods of disposal

- (1) The thing may be:
- (a) sold; or
 - (b) destroyed; or
 - (c) if the thing is a live plant or animal—returned to its native environment; or
 - (d) disposed of in any other way.
- (2) The regulations may prescribe the way in which a thing prescribed by the regulations must be disposed of.

93 Notice of disposal

- (1) If the thing is disposed of under paragraph 91(1)(a), (b) or (c) (reasons for disposal), the Minister must give written notice, as soon as practicable after the disposal, to:
- (a) the person who owned the thing; or
 - (b) a person who had possession or control of the thing immediately before it was seized, retained or detained.
- (2) The notice must state:
- (a) that the thing has been disposed of; and
 - (b) the reason for the disposal; and
 - (c) that compensation may be payable under section 117.

Note: A person may be paid compensation under section 117 if the disposal of the thing results in an acquisition of property otherwise than on just terms.

- (3) Subsection (1) does not apply if, despite making reasonable efforts, the Minister cannot locate any person to whom the notice may be given under that subsection.

Part 5—Dealing with persons held

Division 1—Introduction

94 Guide to this Part

This Part sets out requirements for dealing with persons held in the exercise of powers under this Act.

Persons arrested, detained or otherwise held:

- (a) must not be subject to greater indignity than is necessary and reasonable (see section 37); and
- (b) must be treated with humanity and respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment (see section 95).

Persons detained under provisions of other Acts must be dealt with under those Acts.

Persons arrested must, as soon as practicable, be:

- (a) taken before a magistrate; or
- (b) delivered to a police officer or other appropriate person.

95 Treatment of persons held

A person arrested, detained or otherwise held under this Act must be treated with humanity and respect for human dignity, and must not be subject to cruel, inhuman or degrading treatment.

96 Doing things as soon as practicable

The following are to be taken into account in determining whether a maritime officer has done something as soon as practicable under this Part:

- (a) the location of the place where a person is arrested or detained;
- (b) the weather conditions at the time;
- (c) the means of transport available;
- (d) the need to proceed or continue with the exercise of powers under this Act;
- (e) the need to ensure the safety of a vessel, installation or aircraft;
- (f) the need to take action to:
 - (i) protect human life, animal life or the environment; or
 - (ii) aid a vessel in distress; or
 - (iii) obtain medical assistance for any person.

Division 2—Persons detained

98 Persons detained under detention provisions

Person must be delivered into custody

- (1) If a maritime officer detains a person under a detention provision, the officer must deliver the person, or make arrangements for the person to be delivered, as soon as practicable, into the custody of an officer (however described) within the meaning of the detention provision.

Note: For detention under detention provisions, see section 73.

How detention law applies

- (2) The Act in which the detention provision is contained has effect as if the officer to whom the person is delivered had detained the person at the time when the person is delivered into the officer's custody.

Division 3—Persons arrested

99 Application of this Division

This Division applies to a person arrested under this Act.

100 Person to be informed of reason for arrest

- (1) A maritime officer must inform the person, at the time of the arrest, of the offence for which the person is being arrested.

Note: For arrest powers, see sections 76 and 77.

- (2) It is sufficient if the person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

Person need not be informed if impracticable etc.

- (3) Subsection (1) does not apply if:
- (a) the person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or
 - (b) the person's actions make it impracticable for the officer to inform the person of the offence for which he or she is being arrested; or
 - (c) the officer believes on reasonable grounds that the person does not speak English and it is not practicable for the officer to inform the person, in a language he or she understands, of the offence for which he or she is being arrested.

101 Person to be brought before magistrate

The officer must:

- (a) take the person, or make arrangements for the person to be taken, as soon as practicable, before a magistrate; or
- (b) deliver the person, or make arrangements for the person to be delivered, on land, as soon as practicable, to:

- (i) the Australian Federal Police; or
- (ii) the police force of a State or Territory; or
- (iii) if the arrest relates to an offence against another law—a person with the power to arrest, or the power to deal with a person who has been arrested, under that law.

102 Enforcing arrest warrants

If the person is arrested for the purposes of enforcing an arrest warrant that is in force under an Australian law (see section 77), the arresting officer:

- (a) must, as soon as practicable, comply with any requirements in the warrant that would have to be complied with by a person executing the warrant; and
- (b) need not comply with section 101 (person to be brought before magistrate) to the extent that it is inconsistent with any such requirements.

Part 6—Failing to comply with requirements

103 Offence

A person commits an offence if:

- (a) a requirement is made under a provision mentioned in the table below; and
- (b) the person engages in conduct; and
- (c) the result of the conduct is that the requirement is not complied with.

Penalties		
Item	If the requirement is made under ...	The penalty is ...
1	Subsection 39(1) (requirement to assist)	Imprisonment for 2 years or 120 penalty units, or both
2	Subsection 53(1) (requirement to facilitate boarding)	Imprisonment for 2 years or 120 penalty units, or both
3	Subsection 54(1) (additional powers—vessels)	Imprisonment for 2 years or 120 penalty units, or both
4	Subsection 55(1) (additional powers—aircraft)	Imprisonment for 2 years or 120 penalty units, or both
5	Subsection 55(7) (additional powers—aircraft)	Imprisonment for 2 years or 120 penalty units, or both
6	Subsection 57(1) (requiring answers, records and documents)	Imprisonment for 2 years or 120 penalty units, or both
7	Section 58 (obtaining readings)	Imprisonment for 2 years or 120 penalty units, or both
8	Subsection 61(3) (searching persons)	Imprisonment for 2 years or 120 penalty units, or both
9	Paragraph 69(2)(b) (detaining vessels and aircraft)	Imprisonment for 2 years or 120 penalty units, or both
10	Subsection 72(3) (persons on detained vessels and aircraft)	Imprisonment for 2 years or 120 penalty units, or both

Section 103

Penalties

Item	If the requirement is made under ...	The penalty is ...
11	Section 78 (requirement to cease conduct)	Imprisonment for 2 years or 120 penalty units, or both

Part 7—Miscellaneous

Division 1—Maritime officers

104 Maritime officers

- (1) Each of the following is a *maritime officer*:
 - (a) a member of the Australian Defence Force;
 - (b) an officer of Customs (within the meaning of the *Customs Act 1901*);
 - (c) a member or special member of the Australian Federal Police;
 - (d) a person appointed as a maritime officer by the Minister.

Limited appointments

- (2) The Minister may appoint a person under paragraph (1)(d) as a maritime officer:
 - (a) in relation to one or more of the following only:
 - (i) a specified law;
 - (ii) a specified international agreement or international decision; and
 - (b) subject to any other conditions specified in the appointment.
- (3) The appointment may limit the exercise of powers by the person as a maritime officer.
- (4) Subsection (3) does not limit paragraph (2)(b).

105 Carrying and using arms

- (1) A maritime officer who is authorised in another capacity as an officer (however described) of the Commonwealth or a State or Territory to carry and use arms may carry and use arms as a maritime officer.

- (2) Any conditions applying to the carriage or use of arms by the officer in the officer's other capacity apply in like manner to the carriage and use of arms by the officer as a maritime officer.

106 Identity cards

- (1) The Minister may issue an identity card to a maritime officer.
- (2) The identity card must:
- (a) contain a recent photograph of the officer; and
 - (b) be in a form approved in writing by the Minister.
- (3) A person commits an offence if:
- (a) the person has been issued with an identity card under subsection (1); and
 - (b) the person ceases to be a maritime officer; and
 - (c) the person does not immediately return the identity card to the Minister or a person nominated by the Minister.

Penalty: 1 penalty unit.

107 Protection from suit

None of the following is liable to an action, suit or proceeding, whether civil or criminal, for or in relation to an act done, or omitted to be done, in good faith in the exercise or performance, or the purported exercise or performance, of a power or function under this Act:

- (a) an authorising officer;
- (b) a maritime officer;
- (c) a person assisting;
- (d) any other person acting under the direction or authority of a maritime officer.

Note: For *person assisting*, see subsection 38(5).

Division 2—Evidentiary certificates

108 Evidence of international agreements and decisions

The Foreign Affairs Minister may, by signed writing, certify that, at a particular time, an international agreement or international decision provided for the exercise of powers by Australia in relation to a particular vessel, installation or aircraft.

Note: Certificates under this section relate to requirements set out in paragraph 12(a).

109 Evidence of approvals

The Minister may, by signed writing, certify that the Minister had, at a particular time, approved without writing one or more of the following:

- (a) the exercise of maritime powers in relation to a particular aircraft for the purposes of investigating a particular contravention, or contraventions in general;
- (b) the exercise of powers under a particular international agreement or international decision in relation to a particular vessel, installation or aircraft.

Note: Certificates under this section relate to requirements set out in paragraph 10(b) and subparagraph 12(b)(ii).

110 Evidence of requests and agreements—geographical limits on exercise of powers

The Foreign Affairs Minister may, by signed writing, certify:

- (a) that a particular country requested or agreed to the exercise of powers as required by a provision of Division 5 of Part 2 (geographical limits); and
- (b) the conditions or restrictions (if any) on which the request or agreement was made or given.

111 Certificates are prima facie evidence

For all purposes and in all proceedings, a certificate under this Division is prima facie evidence of the matters certified.

Division 3—Recovery of costs

112 Chase costs

- (1) This section applies if a maritime officer chases a vessel under subsection 54(3).
- (2) The owner of the vessel or, if the vessel is owned by the Commonwealth or a State or Territory, any person who purports to own the vessel is liable to pay to the Commonwealth an amount equal to the reasonable costs incurred by the Commonwealth in conducting the chase.
- (3) If the vessel has more than one owner or purported owner, the owners or purported owners are jointly and severally liable.

113 Seizure costs

- (1) This section applies if:
 - (a) notice of Commonwealth ownership of a thing is given; and
 - (b) an application for an order for the return of the thing is made under section 89; and
 - (c) proceedings in relation to the application have been finally determined without such an order being made.
- (2) The person who made the application is liable to pay to the Commonwealth an amount equal to the sum of the costs reasonably incurred by the Commonwealth in relation to the following:
 - (a) the custody of the thing;
 - (b) the maintenance of the thing;
 - (c) transport of the thing;
 - (d) the costs of disposal of the thing.
- (3) However, subsection (2) does not apply in relation to any costs:
 - (a) met by the person who made the application; and
 - (b) incurred with the agreement of the Commonwealth officer who has control of the thing.

- (4) For the purposes of meeting such costs, the thing may be released into the custody of the person on such conditions as the Commonwealth officer thinks appropriate.

114 Liability to pay costs is a debt to the Commonwealth

- (1) An amount payable by a person under this Division is a debt due by the person to the Commonwealth.
- (2) The amount may be recovered by action in a court of competent jurisdiction.
- (3) The Commonwealth's right to recover the whole or a part of the amount may be waived by:
- (a) the Comptroller-General of Customs (within the meaning of the *Customs Act 1901*); or
 - (b) the Secretary of the Department administered by the Minister who administers the *Defence Act 1903*.

Division 4—Gathering and sharing information

115 Copying records or documents for other purposes

A maritime officer may copy a record or document, or a part of a record or document, found or produced in the exercise of powers under this Act if the officer is satisfied, on reasonable grounds, that the record or document may contain information relevant to:

- (a) security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or
- (b) the performance of functions under section 17 of the *Australian Security Intelligence Organisation Act 1979*; or
- (c) the performance of functions under section 6 of the *Intelligence Services Act 2001*.

116 Sharing information

- (1) A maritime officer may give information, a record or document, or a copy of a record or document, obtained in the exercise of powers under this Act (the **maritime information**) to a cooperating agency for use by that agency in relation to:

- (a) matters concerning maritime security, maritime safety or maritime domain awareness; or
- (b) the exercise of the functions or powers of the agency.

- (2) The maritime information may be or include personal information.

Note: The use or disclosure of personal information obtained under this section is regulated under the *Privacy Act 1988*.

- (3) A maritime officer who is an officer (however described) of the Commonwealth in another capacity may disclose or provide maritime information as if the maritime information had been obtained by the officer in that other capacity.

- (4) Each of the following is a **cooperating agency**:

- (a) the Australian Defence Force;
- (b) the Australian Federal Police;

- (c) the police force of a State or Territory;
- (d) any other agency of the Commonwealth, or a State or Territory, responsible for:
 - (i) investigating contraventions of laws; or
 - (ii) administering or ensuring compliance with laws; or
 - (iii) gathering or evaluating intelligence; or
 - (iv) security; or
 - (v) defence;
- (e) an international body responsible for:
 - (i) investigating contraventions of international agreements or international decisions; or
 - (ii) administering or ensuring compliance with international agreements or international decisions;
- (f) any other body or agency prescribed by the regulations.

Division 5—Compensation for acquisition of property

117 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

118 Compensation for damage to documents

(1) This section applies if:

- (a) as a result of the exercise of powers under this Act, a document is lost, destroyed or damaged; and
- (b) the loss, destruction or damage occurred wholly or partly as a result of:
 - (i) insufficient care being taken in selecting the person to exercise the powers; or
 - (ii) insufficient care being taken by the person exercising the powers.

(2) The Commonwealth is liable to pay the owner of the document a reasonable amount of compensation.

119 Compensation for damage to equipment

(1) This section applies if:

- (a) as a result of equipment being operated in the exercise of powers under this Act:

- (i) damage is caused to the equipment; or
 - (ii) damage is caused to any data recorded on the equipment or data access to which was obtained from the operation of the equipment; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
- (b) the damage or corruption occurs because:
- (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth is liable to pay the owner of the equipment, or the user of the data or programs, a reasonable amount of compensation.
- (3) If the equipment was moved or seized, then, in determining the amount of compensation payable, regard is to be had to whether a person responsible for the equipment at the time provided any appropriate warning or guidance on the operation of the equipment.
- (4) In this section:
- damage*, in relation to data, includes damage by erasure of data or addition of other data.

120 Amount of compensation—proceedings

If the Commonwealth does not agree with a person on the amount of the compensation to be paid under this Division, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Division 6—Delegation and regulations

121 Delegation

- (1) The Minister may, by writing, delegate any or all of his or her functions and powers under this Act, other than the powers under section 75D, 75F or 75H, to:
 - (a) the Chief of the Defence Force; or
 - (b) the Commissioner or a Deputy Commissioner of the Australian Federal Police; or
 - (c) an Agency Head (within the meaning of the *Public Service Act 1999*); or
 - (d) an officer of the Australian Navy who holds a rank not below Commodore; or
 - (e) an officer of the Australian Army who holds a rank not below Brigadier; or
 - (f) an officer of the Australian Air Force who holds a rank not below Air Commodore; or
 - (g) an SES employee with a classification not below Senior Executive Band 1 or equivalent.
- (2) In exercising functions or powers delegated under subsection (1), the delegate must comply with any directions of the Minister.

122 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Maritime Powers Act 2013	15, 2013	27 Mar 2013	s 3–122: 27 Mar 2014 (s 2(1) item 2) Remainder: 27 Mar 2013 (s 2(1) item 1)	
Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014	135, 2014	15 Dec 2014	Sch 1 (items 1-30, 39): 16 Dec 2014 (s 2(1) item 2)	Sch 1 (item 39)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 6 (items 129, 130) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 6 (item 130) and Sch 9
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (items 28, 29) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3: 16 June 2015 (s 2(1) item 3)	Sch 3 and Sch 4
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 58, 59, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 4 (items 4, 5): 21 Oct 2016 (s 2(1) item 1)	—
Customs and Other Legislation Amendment Act 2017	19, 2017	4 Apr 2017	Sch 8: 5 Apr 2017 (s 2(1) item 4)	Sch 8 (item 3)

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Division 2	
s 7	am No 135, 2014
Division 3	
s 8	am No 135, 2014; No 61, 2016
s 11	am No 135, 2014
Part 2	
Division 2	
s 22A	ad No 135, 2014
s 22B	ad No 135, 2014
Division 4	
Subdivision C	
s 31	am No 135, 2014
Division 5	
Subdivision A	
s 40	am No 19, 2017
Subdivision B	
s 41	am No 135, 2014
Part 3	
Division 7	
s 69	am No 135, 2014
s 69A	ad No 135, 2014
Division 8	
s 72	am No 135, 2014
s 72A	am No 135, 2014
Division 8A	
Division 8A	ad No 135, 2014
s 75A	ad No 135, 2014

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 75B.....	ad No 135, 2014
s 75C.....	ad No 135, 2014
s 75D	ad No 135, 2014
s 75E.....	ad No 135, 2014
s 75F	ad No 135, 2014
s 75G	ad No 135, 2014
s 75H	ad No 135, 2014
Part 4	
Division 1	
s 79	am No 135, 2014
Division 2	
s 80	am No 135, 2014
s 81	am No 135, 2014
Division 4	
s 86	am No 135, 2014
s 87	am No 135, 2014
Division 5	
s 91	am No 62, 2015
s 93	am No 135, 2014
Part 5	
Division 1	
s 94	am No 135, 2014
Division 2	
s 97	rep No 135, 2014
Part 7	
Division 1	
s 107	am No 135, 2014
Division 3	
s 114	am No 41, 2015; No 164, 2015

Endnote 4—Amendment history

Provision affected	How affected
Division 6	
s 121	am No 135, 2014; No 164, 2015

WST GENERAL CONDITIONS 01/07/18 TO 30/06/23

AREA OF WATERS

1. This concession is granted for the area of waters described as:
 - (a) Schedule 1A Part 12A of the *Fisheries Management Regulations 1992*, and
 - (b) Those parts of the high seas that are within the area of competence of the Indian Ocean Tuna Commission (hereinafter referred to as "the Convention Area") and west of 141 degrees E as specified in Part 3 of Schedule 1 of the of the *Western Tuna and Billfish Fishery Management Plan 2005*.

Conditions applying to this Fishing Permit

In addition to the conditions specified by sub section 32(5) of the *Fisheries Management Act 1991*, and the condition in sub section 42(2) to comply with any log book determination, and the condition to comply with any Direction under s41A in accordance with sub section 32(7A), the following conditions are specified for the purposes of sub section 32(6) sub paragraph (a)(i):

Note: Under sub section 32(8) these conditions may be varied, revoked or a further condition specified by written notice from AFMA.

By s42B(2) of the Act, Regulations may prescribe conditions that apply to fishing concessions. Regulations have been prescribed in the *Fisheries Management Regulations 1992* providing conditions that apply to this fishing concession in particular:

Regulation 9D:	Concession holder to ensure that vessel monitoring system is operational.
Regulation 9F:	Concession holder to ensure provision for observer and equipment to be carried.
Regulation 9G:	Concession holder to ensure observer enabled to perform functions.
Regulation 9I:	Fish to be disposed of to fish receiver permit holder*
Regulation 9J - 9ZL:	Catch limits.*
Regulation 9ZO:	Prohibited ways of processing fish.
Regulation 9ZP:	Removal of shark liver.
Regulation 9ZS:	No interaction with protected organism.
Regulation 9ZT:	Recording and reporting interaction with protected organism.
Regulation 9ZU:	Reporting interaction with protected organism if protected organism injured.
Regulation 9ZV:	Reporting interaction with protected organism if protected organism killed.
Regulation 9ZX:	Nominated boat used for trip.

* not applicable to some concessions

AREA LIMITATION

1. The holder must not fish under this concession outside the area of waters described in this document.

MOVEMENT LIMITATIONS

2. While the holder is fishing in the Convention Area as detailed in 1 (b) of the area of waters, the holder must not intentionally fish within 1 nautical mile of a data buoy or intentionally interact with a data buoy.
3. Interacting with a data buoy includes, but is not limited to, encircling the buoy with fishing gear; tying up to or attracting the boat, or any fishing gear, part or portion of the boat, to a data buoy or its mooring; or cutting a data buoy anchor line.

4. If the holder unintentionally comes into contact with a data buoy while fishing they must remove any entangled fishing gear with as little damage to the data buoy as possible.
5. The holder must report any data buoys observed to be damaged to AFMA. The report must be sent by fax (+612 6225 5440) or email monitoring@afma.gov.au and include:
 - (a) The date of observation;
 - (b) The buoy location; and
 - (c) Any discernable identifying information contained on the data buoy.

Note: Data buoys are defined as floating devices, either drifting or anchored, that are deployed by governmental or recognised scientific organisations or entities for the purpose of collecting and measuring environmental data, and not for the purposes of fishing activities.

APPLICABLE BOAT

6. The holder must not use a boat to fish on the high seas unless:
 - (a) The boat nominated to this concession is legibly marked with the international radio call sign of the boat;
 - (b) The boat nominated to this concession has the call sign shown:
 - i.
 - a) by white characters on a black background; or
 - b) by black characters on a white background; or
 - c) by black characters on a background of international safety yellow;
 - ii. the characters are in Roman capital letters, or Arabic numerals, without ornamentation; and
 - iii. where the boat is less than 20 metres long the characters:
 - a) are at least 50 centimetres high; and
 - b) consist of strokes at least 6.25 centimetres wide;
 - iv. where the boat is at least 20 metres long, the characters:
 - a) are at least 1 metre high; and
 - b) consist of strokes at least 12.5 centimetres wide
 - (c) Prior to entering and while in the Convention Area continually reports its position via satellite to the IOTC Secretariat;
 - (d) Prior to unloading in a foreign port, the holder must seek approval from AFMA to unload any fish in that foreign port. The approval may be sought by contacting AFMA Licensing by fax on (02) 6225 5426 or by email to licensing@afma.gov.au;
 - (e) At least 48 hours prior to entering a foreign port for the purposes of unloading, provide AFMA with the following information via email to VMSreporting@afma.gov.au or fax (02) 6225 5440:
 - i. the name and international distinguishing symbol of the boat;
 - ii. the proposed foreign port or ports of unloading;
 - iii. the estimated time and date the boat will arrive at that foreign port; and
 - iv. quantities of all species on board the boat.
 - (f) The holder complies with the following:
 - i. ensure all fishing gear remains stowed and secured when transiting any other country's EEZ;
 - ii. where the boat has entered any foreign fishing jurisdiction from the high seas for the intention of mooring in port, the boat must travel to port by the most direct route possible, unless approval for fishing within that jurisdiction has been obtained from that country in respect of the boat;
 - iii. where the boat leaves any foreign port, the boat must travel directly to the high seas by the most direct route possible unless approval for fishing

- within that jurisdiction has been obtained from that country in respect of the boat;
- iv. not to partake in fishing activity within any foreign fishing jurisdiction during a trip unless approval for fishing within that jurisdiction has been obtained from that country in respect of the boat;
 - v. not to partake in any unloading activity within any foreign port unless an approval for unloading within that foreign port has been obtained from that country in respect of the boat; and
 - vi. co-operates with inspections by foreign fisheries officer authorised by other signatories to the United Nations Stocks Agreement. Failure to comply with an authorised officer's direction may result in this concession being suspended.

TRANSHIPPING LIMITATIONS

7. Unless authorised by AFMA, the holder must not carry any fish on board the nominated boat taken by another boat.
8. Unless authorised by AFMA, the holder must not tranship skipjack tuna (*Katsuwonus pelamis*) to another boat.

GEAR LIMITATIONS

9. This concession authorises the use of the following gear only:
 - (a) Gear detailed in Attachment A.
10. If the holder is fishing north of the parallel of latitude 20 degrees South by purse seine method, they must not deploy or fish around a fish aggregating device;

Note: 'Fish Aggregating Device' or 'FAD' means an object or group of objects, of any size, that has or has not been deployed, that is living or non-living, including but not limited to buoys, floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water that fish may associate with. This does not include equipment authorised by this concession.

11. The holder:
 - (a) must not use aircrafts and/or unmanned aerial vehicles as fishing aids.
 - (b) will ensure that the nominated boat shall not deploy at sea, at any one time, more than 350 drifting Fish Aggregating Devices (FADs) with activated instrumented buoys. An instrumented buoy is defined as a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position. The buoy shall be activated exclusively on board the vessel.

SPECIES LIMITATIONS

12. This concession authorises fishing for the following species only:
 - (a) Skipjack tuna (*Katsuwonus pelamis*);
 - (b) Longtail Tuna (*Thunnus tonggol*)
 - (c) Albacore tuna (*Thunnus alalunga*); and
 - (d) Northern pacific bluefin tuna (*Thunnus orientalis*);

13. The holder must not take:

- (a) Bigeye tuna (*Thunnus obesus*);
- (b) Broadbill swordfish (*Xiphias gladius*);
- (c) Striped marlin (*Tetrapturus audax*); or
- (d) Yellowfin tuna (*Thunnus albacares*);

except in accordance with the *Western Tuna and Billfish Fishery Management Plan 2005*.

14. A maximum 35 tonne limit of Longtail tuna (*Thunnus tonggol*) per fishing year is in place across all Commonwealth fisheries. A 10 fish trip limit per operator will be imposed should the 35 tonne trigger limit be reached in any fishing year.

15. The holder must not take fish of the family *bramidae* (commonly known as pomfrets or rays bream) in Commonwealth waters adjacent to the State of Western Australia landward of the 200 metre isobath.

16. When fishing by the purse seine method, the holder must retain on board the nominated boat and land all Bigeye Tuna (*Thunnus obesus*), Skipjack Tuna (*Katsuwonus pelamis*) and Yellowfin Tuna (*Thunnus albacares*) except those fish considered by the holder to be unfit for human consumption.

17. If Bigeye Tuna (*Thunnus obesus*), Skipjack Tuna (*Katsuwonus pelamis*) or Yellowfin Tuna (*Thunnus albacares*) are caught by the purse seine method, the holder must not discard any fish after the point in the set when the purse seine net is fully pursed and more than one half of the net has been retrieved.

Note: if an equipment malfunction affects the process of pursing and retrieving the net in such a way that this condition cannot be complied with, the holder must make efforts to release the tuna as soon as practicable.

In these conditions “unfit for human consumption” means fish that are meshed or crushed in the purse seine net, fish that are damaged due to depredation, or fish that have died in the net where a gear failure has prevented the retrieval of the net and catch and prevented the release of the fish alive. “unfit for human consumption” does NOT include fish that are considered undesirable in terms of size, marketability or species composition, or fish which are spoiled or contaminated as a result of an act or omission of the holder or crew of the nominated boat.

18. If the holder determines there is insufficient well space to accommodate any Bigeye Tuna (*Thunnus obesus*), Skipjack Tuna (*Katsuwonus pelamis*) or Yellowfin Tuna (*Thunnus albacares*) caught during the final set of a trip, the tuna may be discarded only if:

- (a) The holder and crew attempt to release the tuna in a live and vigorous state as soon as possible; and
- (b) No further fishing is undertaken under the authority of this concession after any tuna are discarded.

19. Notwithstanding the conditions above (12-18) and below (23-24), a holder must **retain** on board and then land, to the extent practicable, the following non-targeted species or species group; other tunas, rainbow runner, dolphinfish, triggerfish, billfish (excluding blue and black marlin), wahoo, and barracuda, except fish considered unfit for human consumption as per (17) above, and/or species which are prohibited from retention through domestic legislation and international obligations.
20. This concession does not allow fishing for Southern Bluefin Tuna (*Thunnus maccoyii*). Any take of Southern Bluefin Tuna is to be in accordance with the *Southern Bluefin Tuna Management Plan 1995*.
21. If the holder takes a Northern Pacific Bluefin Tuna or Southern Bluefin Tuna then they must:
- (a) Report to AFMA at email northernbluefin@afma.gov.au (or to fax 02 6225 5439 if email is not possible) at least one hour prior to the boat mooring or anchoring at port the following information:
 - i. NBT/SBT report;
 - ii. the name of the boat;
 - iii. distinguishing symbol of the boat;
 - iv. port of landing;
 - v. date and time of landing;
 - vi. number and weight of Northern Pacific Bluefin Tuna on board;
 - vii. number and weight of Southern Bluefin Tuna on board;
 - (b) Determine whether the fish is a Northern Bluefin or Southern Bluefin:
 - i. if the Bluefin Tuna was taken north of 28 degrees south or was greater than 220cm fork length, it may be deemed to be a Northern Bluefin Tuna; or
 - ii. if the Bluefin Tuna was taken south of 28 degrees south, between 1 January and 1 May and was greater than 200cm, it may be deemed to be a Northern Bluefin Tuna; or
 - iii. If the Bluefin can not be deemed a Northern Bluefin in part c(i) or c(ii) the holder must;
 - a) deem the Bluefin tuna to be a Southern Bluefin Tuna; or
 - b) supply a sample of the fish to an AFMA approved testing agency. The sample must comprise of an intact tail section of the fish (small part of the keel and caudal finlets). The kept part should contain a small section of muscle and caudal fins may be trimmed for transport purposes; or
 - c) Export the fish to the Tokyo Metropolitan Central Wholesale Market (Tsukiji market), documented as a Southern Bluefin Tuna (SBT) on the CDRs; and then provide the documentation from the Tsukiji market showing that the fish in question was sold as a Pacific Bluefin Tuna (AFMA will then deem the fish as Pacific Bluefin Tuna and reverse the CDR and SBT quota decrementation).

Should the landed tuna be deemed a Southern Bluefin Tuna (either by the holder or through identification) the holder must comply with all requirements of the *Southern Bluefin Tuna Management Plan 1995*.

22. Fishing for bait is subject to the following limitations:

(a) QUEENSLAND, WESTERN AUSTRALIA AND NORTHERN TERRITORY
If this concession allows access to waters adjacent to the States of Queensland and Western Australia, and the Northern Territory, the holder may fish for bait.

(b) SOUTH AUSTRALIA
If this concession allows access to waters adjacent to the State of South Australia the holder may use a lampara net, lift net and/or small scale purse seine to fish for:

- i. Unlimited amounts of Emmelichthyes, Trachurus, Sardinops, Clupea, Engaulis and Scomber australasicus for use as live bait; and
- ii. Up to three tonnes per trip in total comprising one or more of Emmelichthyes, Trachurus, Sardinops, Clupea, Engaulis and Scomber australasicus for use as dead bait.

Any bait taken must only be used by the holder for fishing under this concession.

BY CATCH LIMITATIONS

23. (a) WESTERN AUSTRALIA

The holder must not take more than the following amounts of fish per trip while operating in Commonwealth waters off Western Australia:

- i. 2 fish in total consisting of either yellowtail kingfish (*Seriola ialandi*); or Amberjack (*Seriola dumerili*);
- ii. 10 fish in total consisting of Spanish mackerel (*Scomberomorus commerson*), Australian spotted mackerel (*Scomberomorus munroi*), Mackerel tuna (*Euthynnus affinis*), Frigate mackerel (*Auxis thazard*), Shark mackerel (*Grammatorcynus bicarinatus*), Rake Gilled mackerel (*Rastrelliger kanagurta*), Australian bonito (*Sarda australis*), Oriental bonito (*Sarda orientalis*), Leaping bonito (*Cybiosarda elegans*), Rainbow runner (*Elagatis bipinnulata*), Dog Toothed tuna (*Gymnosarda unicolor*), Emperors, Tropical snappers (*family Lutjanidae*), Emperors (*family Lethrinidae*), Cods, Groupers (*family Serranidae*), Wrasses, Tuskfishes (*family Labridae*), Trevallies (*family Carangidae* except for Genus *Seriola*), Dolphinfish (*Coryphaena hippurus*), Snapper (*Pagrus auratus*), Blue Eye trevalla (*Hyperoglyphe antarctica*), Hapuku (*Polyprion oxygeneios*) and Bar cod (*Polyprion moeone*);
- iii. 20 fish in total consisting of Butterfly mackerel (*Gasterochisma melampus*), Slender tuna (*Allothunnus fallai*) and Wahoo (*Acanthocybium solandri*).

(b) ALL WATERS

The holder must not take more than the following amounts of fish per trip while operating in Commonwealth waters:

- i. 20 sharks, excluding School shark, Gummy shark, Elephant fish of the Families *Callorhynchidae*, *Chimaeridae* and *Rhinochimaeridae* and Sawshark;

- ii. If the boat nominated to this concession is not nominated to a Southern and Eastern Scalefish and Shark Fishery Boat SFR, the holder may take 5 carcasses in total of Gillnet, Hook and Trap Fishery quota species comprising School shark (*Galeorhinus galeus*), Gummy shark (*Mustelus antarcticus*), Elephant fish of the Families *Callorhynchidae*, *Chimaeridae* and *Rhinochimaeridae*, and Sawshark (*Pristiophorus cirratus* and *Pristiophorus nudipinnis*).

The holder must not take any of the following species:

Blue grenadier (*Macruronus novaezelandiae*), Blue warehou (*Seriola lalandi*), Flathead (*Platycephalus* sp., *eoplatycephalus* sp.), Gemfish (*Rexea solandri*), Jackass morwong (*Nemadactylus macropterus*), John dory (*Zeus faber*), Ling (*Genypterus blacodes*), Mirror dory (*Zenopsis nebulosus*), Ocean perch (*Helicolenus* sp.), Orange roughy (*Hoplostethus atlanticus*), Redfish (*Centroberyx affinis*), Royal red prawn (*Haliporoides sibogae*), School whiting (*Sillago findersi*), Silver trevally (*Pseudocaranx dentex*), Spotted warehou (*Seriola punctata*), Blue marlin (*Makaira mazara*), Black marlin (*Makaira indica*) and Black cod (*Epinephelus daemeli*).

The holder must also ensure they do not retain on board, trans-ship or land any Striped Marlin or Indo Pacific Sailfish smaller than 60 cm Lower-Jaw Fork Length (LJFL).

TAKING/CARRYING OF SHARK OBLIGATIONS

24. Retained and/or landed School Shark (*Galeorhinus galeus*) and Gummy Shark (*Mustelus antarcticus*) must exceed 450 millimetres when measured in a straight line from the middle of the posterior edge of the aftermost gill-slit to the ventral insertion of the caudal fin.
25. The holder must not land or retain any Thresher sharks (family *Alopiidae*) taken within the Convention Area as detailed in 1. (b) of the area of waters. Any Thresher sharks taken must be returned to the water in a live and vigorous state where practicable.
26. The holder must report any interaction with Thresher sharks in the relevant logbook.
27. The holder must not carry or possess any shark (*Class Chondrichthyes*) dorsal, pectoral, caudal, pelvic or anal fins on board the boat nominated to this concession that are not attached to the shark's carcass.

OTHER OBLIGATIONS

28. The holder must comply with the measures that would otherwise apply to foreign fishing boats as prescribed in Schedule 2 (prescribed measures Indian Ocean Tuna Commission) of the *Fisheries Management (International Agreements) Regulations 2009*. Any contravention of a measure contained within the *Fisheries Management (International Agreements) Regulations 2009* will be a contravention of this condition.
29. If a boat is nominated to this concession, at all times when the boat is being used under this concession, the holder must have provided to AFMA a current emergency contact facility for the nominated boat.

30. An emergency contact facility must enable AFMA to contact the boat immediately and directly at any time when the boat is at sea, including in the event of an emergency.
31. AFMA must be notified immediately of any change in contact details, by fax sent to (02) 6225 5426 or by email to licensing@afma.gov.au<<mailto:licensing@afma.gov.au>>; and the boat must not depart on a fishing trip unless AFMA has been so notified of the change in contact details.

Note: The emergency contact facility may take the form of a satellite phone number, or skipper or crew member's mobile phone number - any number that may be used by AFMA to contact the boat while it is at sea at any time, including in the event of an emergency.

AGENT OBLIGATIONS

32. The holder accepts concurrent liability for all conduct by its servants or agents infringing the *Fisheries Management Act 1991* (or the Regulations, Management Plans or concession conditions made by virtue of that Act) who may be engaged by the holder to conduct on the holder's behalf activity under this concession.

Liability for the conduct of the holder's servants or agents arises, even if the conduct may be, or actually is, beyond the scope of the servant or agent's actual or apparent authority where it is a breach that occurs during the conduct of activity authorised by this concession.

The holder may avoid concurrent liability for conduct whilst conducting activity under this concession if, but only if, the holder can establish that the infringing conduct could not possibly have been prevented by any action or precaution that the holder might have reasonably taken.

The giving of an indemnity by the servant or agent to the holder for any penalties incurred by the holder, for infringing conduct by the servant or agent is not, of itself, a reasonable precaution to prevent infringing conduct.

The giving of an indemnity by the holder to the servant or agent would be prohibited and unenforceable on public policy grounds as encouraging the offending conduct.

TEMPORARY ORDERS OBLIGATIONS

33. The holder must comply with any Temporary Order made under sub section 43(2) of the *Fisheries Management Act 1991* and to the extent that any provision herein is inconsistent with such Temporary Order sub section 43(9) provides that the provision herein is overridden by the Temporary Order until the Temporary Order ceases to have effect.

NAVIGATING IN CLOSED ZONES

34. AFMA may suspend this concession in accordance with this condition, pursuant to section 38(1)(c) of the *Fisheries Management Act 1991*, if it reasonably appears by VMS transmission from the nominated boat, that there is a failure by that boat while in a closed zone for the purposes of regulation 37B of the *Fisheries Management Regulations 1992*, to meet the exempting provisions of sub regulations 37C(2), or (3) or sub regulation 37D(2) or (3). Such suspension will then continue until the concession holder provides a full written explanation, to the satisfaction of the delegate responsible for issuing that suspension, of the lawful reason for the boat being in that closed zone at that time, or until the expiration of the suspension under sub section 38(2); whichever is the earlier.

OBSERVER/MONITORING OBLIGATIONS

35. When directed by AFMA the holder must:
- a) give the AFMA Observer Section at least 72 hours notice of an intention to depart on a fishing trip, by telephone (02 6225 5506, or 0427 016 859) or by email: observers@afma.gov.au <<mailto:observers@afma.gov.au>>; and
 - b) ensure that the boat does not leave port until:
 - i. AFMA has notified the holder, or a person acting on behalf of the holder, whether it directs that an observer is to be carried on the boat; and
 - ii. if the boat is equipped with electronic monitoring equipment, an electronic monitoring function test has been completed, AFMA has been notified of the result of the test, and AFMA has notified the holder, or a person acting on behalf of the holder, that it is satisfied that the equipment is working correctly.

Note 1: These conditions are in addition to the conditions concerning the taking of observers that are prescribed in the Fisheries Management Regulations 1992 (the Regulations). Those conditions are in Schedule 1, Division 3, regulations 9E to 9G

Note 2: AFMA may direct under the Regulations that an observer be carried, even if electronic monitoring equipment is installed and is to be operated.

INTERACTIONS WITH WILDLIFE OBLIGATIONS

36. When fishing by the purse seine method in the Convention Area as detailed in 1 (b) of the area of waters and a Whale Shark (*Rhincodon typus*) or cetacean is sighted by the holder prior to the setting of a purse seine net, the holder must not intentionally set a purse seine net around the Whale Shark or cetacean.
37. When fishing by the purse seine method in the Convention Area as detailed in 1 (b) of the area of waters and a Whale Shark (*Rhincodon typus*) or cetacean is unintentionally encircled in a purse seine net, the holder must:
- (a) Take all reasonable steps to ensure the safe release of the Whale Shark and/or cetacean(s); and
 - (b) Report the interaction to AFMA via the Wildlife and Other Protected Species Form attached to the Purse Seine Daily Fishing Logbook. The holder must ensure the following additional information is included in the comments section of the form:
 - a. A short description of the interaction including details of how and why the interaction occurred; and
 - b. The steps taken to ensure the safe release of the Whale Shark and/or cetacean(s).

MANDATORY AFMA SUPPLIED VMS

38. Direction to Fit

1. When directed by AFMA in writing, the concession holder (or a person acting on the holder's behalf) must;
 - a. make available, within 14 days of the date of the written direction, the boat nominated to this concession for the purposes of installation of an AFMA Vessel Monitoring System unit (AFMA VMS unit) by an AFMA approved technician, and
 - b. Provide all reasonable assistance to the AFMA approved technician including (but not limited to);
 - i. the provision of an un-interrupted connection to the boat's main power source, and
 - ii. an appropriate position for the mounting of the AFMA VMS unit.
2. When directed by AFMA in writing, the concession holder (or a person acting on the holder's behalf) must;
 - a. make available, within 14 days of the date of the direction, the boat nominated to this concession for the purposes of removal of the AFMA VMS unit by an AFMA approved technician, and
 - b. Provide all reasonable assistance to the AFMA approved technician.

Concession holder must not interfere with AFMA VMS Unit

3. The concession holder (or a person acting on the holder's behalf) must not interfere, or attempt to interfere, with the operation of the AFMA VMS Unit.

Definitions:

AFMA VMS Unit Means a Vessel Monitoring System (VMS) unit wholly owned by AFMA, marked with AFMA identifications and supplied by AFMA and fitted by an AFMA approved technician.

Interfere For the purposes of these conditions 'interfere' includes, but is not limited to;

- Physical obstruction or removal of the AFMA VMS unit, or
- Deliberately disconnecting or otherwise interfering with the power supply to the AFMA VMS unit, or
- Deliberate physical interference with the casing or any external or internal components of the AFMA VMS unit.

Notes

Must Make boat available - Where the boat is not made available in accordance condition 38 1 (a) or 38 2(a), AFMA may suspend this concession pursuant to section 38(1)(c) of the Fisheries Management Act 1991.

Must maintain VMS Unit - Regardless of AFMA's decision to fit an AFMA VMS unit, the holder must continue to maintain a VMS unit in accordance with regulation 9D of the Fisheries Management Regulations 1992.

Remains the property of AFMA - At all times the AFMA VMS unit remains the sole property of AFMA. The holder is liable for any costs incurred as a result of loss or damage to the unit.

39. **HANDLING AND TREATMENT OF BYCATCH**

1) The concession holder (or a person acting on the holder's behalf) must not mistreat bycatch.

Definitions:

Mistreat means taking, or failing to take, any reasonable action or actions, which results, or is likely to result, in the;

- i. death of, or
- ii. injury to, or
- iii. causing of physiological stress to any bycatch.

Bycatch means any species that physically interact with fishing vessels and/or fishing gear (including auxiliary equipment) and which are not usually kept by commercial fishers. (**Bycatch** species may include fish, crustaceans, sharks, molluscs, marine mammals, reptiles and birds. **Bycatch** includes listed protected species under the *Environment Protection and Biodiversity Conservation Act 1999*.)

Notes: For the purposes of this condition 'mistreat' does not include the taking, or failing to take, action where it is reasonably necessary to take, or not take, the action;

- to ensure the safety of the boat and or its crew, or
- to comply with the requirements of any AFMA approved bycatch management plan(s) (these may include Seabird Management Plans, Vessel Management Plans etc.).

WST GEAR LIMITATIONS CONDITION - 01/07/18 TO 30/06/23

ATTACHMENT A

GEAR LIMITATIONS

1. This concession authorises the use of the following gear only:

- (a) Purse Seine.

The size of the purse seine nets must not exceed 1482 metres x 280 metres.

The dimensions of the purse seine nets are determined as follows:

The hung length of a purse seine net must be measured between the last attached net mesh at each end of the headline. The depth of a purse seine net is the distance in the centre of the net between the headline and the footrope when they are at their maximum stretch distance apart.

WTBF Boat SFR Conditions 2022-23 season

AREA OF WATERS

1. This Statutory Fishing Right is granted for the area of waters described as:
 - (a) the areas specified in clauses 1 and 2 of Schedule 1 of the *Western Tuna and Billfish Fishery Management Plan 2005*; and
 - (b) those parts of the high seas that are within the area of competence of the Indian Ocean Tuna Commission (IOTC) (hereinafter referred to as "the Convention Area") and west of 141 degrees E as specified in clause 3 of Schedule 1 of the of the *Western Tuna and Billfish Fishery Management Plan 2005*.
2. The holder must not fish under this Statutory Fishing Right outside the area of waters described in paragraph 1 of these Statutory Fishing Right conditions.

CONDITIONS APPLYING TO THIS STATUTORY FISHING RIGHT

In addition to the conditions specified by subsection 22(3) of the *Fisheries Management Act 1991* (the Act), and the condition in subsection 42(2) to comply with any logbook determination, the condition to comply with any Direction under section 41A and the condition to comply with section 42A requiring facilitating boarding and cooperating with inspection by foreign officials outside the Australian Fishing Zone (AFZ) under the Fish Stocks Agreement, the following conditions are specified for the purposes of subsection 22(4) paragraph (a) of the Act.

Note: Under sub section 22(5) these conditions may be varied, revoked or a further condition specified by written notice from AFMA.

In addition to the above, the holder must comply with all the obligations prescribed in the *Western Tuna and Billfish Fishery Management Plan 2005* in particular:

Section 15 titled Who may engage in commercial fishing in the fishery; and
Section 38 titled Obligations of holders of SFRs.

By section 42B(1) of the Act, regulations may prescribe conditions that apply to fishing concessions. Regulations have been prescribed in the *Fisheries Management Regulations 2019* providing conditions that apply to this fishing concession in particular:

Regulation 33:	Nominated boat must be used on trip.
Regulation 37:	Concession holder to ensure that vessel monitoring system is fitted and operating.
Regulation 39:	Requirement to carry observer.
Regulation 40:	Concession holder to ensure provision for observer and equipment.
Regulation 41:	Concession holder to ensure observer is able to perform functions.
Regulation 43:	Fish to be disposed of to fish receiver permit holder. *
Regulation 44-65:	Catch limits. *
Regulation 67:	Prohibited ways of processing fish.
Regulation 68:	Removal of shark liver.
Regulation 70:	No interaction with protected organism.
Regulation 71:	Reporting interaction with protected organism.
Regulation 72:	Requirements if protected organism is injured by interaction.
Regulation 73:	Requirements if protected organism killed by interaction.
Regulation 86:	Navigating in area that is a closed zone.

* not applicable to some concessions

MOVEMENT LIMITATIONS

3. While the holder is fishing in the Convention Area as detailed in 1(b) of the area of waters, the holder must not intentionally fish within 1 nautical mile of a data buoy or intentionally interact with a data buoy.
4. Interacting with a data buoy includes, but is not limited to, encircling the buoy with fishing gear; tying up to or attaching the boat, or any fishing gear, part or portion of the boat, to a data buoy or its mooring; or cutting a data buoy anchor line.
5. If the holder unintentionally comes into contact with a data buoy while fishing they must remove any entangled fishing gear with as little damage to the data buoy as possible.
6. While the holder is fishing in the Convention Area, the holder must not take on board a data buoy while engaged in fishing for tuna and tuna-like species in the IOTC area of competence, unless specifically authorised or requested to do so by the IOTC Member or owner responsible for that buoy.
7. The holder must report any data buoys observed to be damaged to AFMA. The report must be sent by fax (02 6225 5440) or email (monitoring@afma.gov.au <<mailto:monitoring@afma.gov.au>>) and include:
 - i. The date of observation;
 - ii. The buoy location; and
 - iii. Any discernable identifying information contained on the data buoy.

Note: Data buoys are defined as floating devices, either drifting or anchored, that are deployed by governmental or recognised scientific organisations or entities for the purpose of collecting and measuring environmental data, and not for the purposes of fishing activities.

8. If the holder is using the pelagic longline method and is intending on entering the area of the Western Tuna and Billfish Fishery (WTBF) East of Longitude 129°00' the holder must:
 - (a) before leaving port, hold at least 2000kg of uncaught Southern Bluefin Tuna quota nominated to the same boat which is nominated to this Statutory Fishing Right.

APPLICABLE BOAT

9. The holder must not use a boat to fish on the high seas unless:
 - (a) The boat nominated to this concession is legibly marked with the international radio call sign of the boat;
 - (b) The boat nominated to this concession has the call sign shown:
 - i.
 - a. by white characters on a black background; or
 - b. by black characters on a white background; or
 - c. by black characters on a background of international safety yellow;
 - ii. the characters are in Roman capital letters, or Arabic numerals, without ornamentation; and

- iii. where the boat is less than 20 metres long the characters:
 - a. are at least 50 centimetres high; and
 - b. consist of strokes at least 6.25 centimetres wide;
 - iv. where the boat is at least 20 metres long, the characters:
 - a. are at least 1 metre high; and
 - b. consist of strokes at least 12.5 centimetres wide
- (c) Prior to unloading in a foreign port, the holder must seek approval from AFMA to unload any fish in that foreign port. The approval may be sought by contacting AFMA Licensing by fax on (02) 6225 5440 or by email to licensing@afma.gov.au <<mailto:licensing@afma.gov.au>>;
- (d) At least 48 hours prior to entering a foreign port for the purposes of unloading, provide AFMA with the following information via email to VMSreporting@afma.gov.au or fax (02) 6225 5440:
 - i. the name and international distinguishing symbol of the boat;
 - ii. the proposed foreign port or ports of unloading;
 - iii. the estimated time and date the boat will arrive at that foreign port; and
 - iv. quantities (weight) of all species on board the boat.
- (e) The holder must comply with the following:
 - i. ensure all fishing gear remains stowed and secured when transiting any other country's Exclusive Economic Zone;
 - ii. where the boat has entered any foreign fishing jurisdiction from the high seas for the intention of mooring in port, the boat must travel to port by the most direct route possible, unless approval for fishing within that jurisdiction has been obtained from that country in respect of the boat;
 - iii. where the boat leaves any foreign port, the boat must travel directly to the high seas by the most direct route possible unless approval for fishing within that jurisdiction has been obtained from that country in respect of the boat;
 - iv. not to partake in fishing activity within any foreign fishing jurisdiction during a trip unless approval for fishing within that jurisdiction has been obtained from that country in respect of the boat; and
 - v. not to partake in any unloading activity within any foreign port unless an approval for unloading within that foreign port has been obtained from that country in respect of the boat;

CONCURRENT CONDITIONS

10. This Statutory Fishing Right must only be used in conjunction with another concession held by the same holder namely a Western Tuna and Billfish Fishery Quota Statutory Fishing Right (“that other concession”) such that:
 - (a) The conditions of that other concession apply (to the extent those conditions are not inconsistent and are capable of doing so) as conditions of this Statutory Fishing Right.
 - (b) A breach, suspension or cancellation of that other concession is a breach, suspension or cancellation of this Statutory Fishing Right.
 - (c) The conditions of this Statutory Fishing Right apply (to the extent these conditions are not inconsistent and are capable of doing so) as conditions of that other concession while it is being used in conjunction with this Statutory Fishing Right.

- (d) A breach, suspension or cancellation of this Statutory Fishing Right is a breach, suspension or cancellation of that other concession.

TRANSHIPPING LIMITATION

11. The holder must not tranship fish taken with the use of the nominated boat to another boat.
12. The holder must not carry fish taken by another boat on the nominated boat.

GEAR LIMITATION

13. A person must not discharge offal from the boat while the crew are setting the lines.
14. This concession authorises the use of the following gear only:
 - (a) Gear specified in subsection 15(1) of the *Western Tuna and Billfish Fishery Management Plan 2005*.
15. At all times the holder must ensure:
 - (a) The boat nominated to this Statutory Fishing Right carries on board two or more assembled tori lines. Each tori line must be constructed and used in accordance with the following specifications:
 - i. must be a minimum of 100 metres in length;
 - ii. must be deployed from a position on board the boat and utilise a towed line, material or object so that it remains above the water surface for a minimum of 75 metres from the stern of the boat (for vessels less than 35m in length) or 100m from the stern (for vessels 35m or greater in length);
 - iii. must have streamers attached to it with a maximum interval between the streamers of 3.5 metres;
 - iv. all streamers must be maintained to ensure their lengths are as close to the water surface as possible;
 - (b) When fishing south of the parallel of latitude 25 degrees South:
 - i. non-frozen baits are attached to the hooks; and
 - ii. prior to longlines entering the water he/she deploys a separate tori line at each point at which hooks enter the water. All tori lines must comply with part (a) above.
 - iii. a tori line is not required to be deployed when performing fishing operations between the hours of nautical dusk and nautical dawn, providing the vessel uses minimum deck lighting (where minimum deck lighting is a lighting level which does not pose a risk to safety and navigation); and
 - iv. branchlines are weighted with either a minimum of:
 - a. 60 gram swivels at a distance of no more than 3.5 metres from each hook; or
 - b. 98 gram swivels at a distance of no more than 4 metres from each hook; or
 - c. 40 gram weights immediately adjacent the hook, or at no more than 0.5 metres from each hook, with dead non-frozen baits attached to the hooks; or
 - d. ACAP approved “hook-shielding device” weighing at least 40 grams may be deployed directly at the hook as an alternative.

- (c) The boat nominated to this Statutory Fishing Right carries on board a minimum of one dehooking device, the purpose of which is to enable hooks embedded in bycatch species to be removed with minimum damage to the fish or protected species. The device must be constructed and used in accordance with the following specifications:
 - i. the device must enable the hook to be secured and the barb shielded so that the barb does not re-engage with the fish or protected species while the hook is being removed;
 - ii. the device must be blunt with all edges rounded;
 - iii. where more than one size of hook is to be carried, a dehooking device (or devices) must be carried that can be used with all hooks on the boat; and
 - iv. the shaft of the device must be a minimum of 1.5 metres in length.

- (d) The boat nominated to this concession carries on board a minimum of one line cutting device. The line cutting device must be constructed and used in accordance with the following specifications:
 - i. the device must be constructed to allow the line to be cut as close to the hook as possible;
 - ii. the blade of the device must be enclosed in a blunt rounded (arc-shaped) cover with the hook exposed on the inside of the arc;
 - iii. the shaft of the device must be a minimum of 1.5 metres in length.

Note: the purpose of (d) ii) is to protect the user of the knife from injury.

The boat nominated to this Statutory Fishing Right may use an alternative line weighting mechanism not described in part (b)(iv) in conjunction with meeting parts (a) - (c) of this condition, if the device or system has been approved by AFMA in writing. Written approval from AFMA must be kept aboard the boat nominated to this concession.

- 16. The holder must not connect hooks to longline gear by using wire or wire traces.

TUNA PROCESSING REQUIREMENTS

- 17. The holder must comply with the following processing requirements:

Tuna other than northern bluefin tuna or billfish

- (a) The caudal keel must not be removed from the carcass before the fish is landed and received by a fish receiver permit holder

Billfish other than broadbill swordfish (Xiphias gladius)

- (b) None of the following may be removed from the carcass before the fish is landed and received by a fish receiver permit holder:
 - i. the caudal keel;
 - ii. a dorsal, pectoral or anal fin

CATCH HANDLING

- 18. The holder must bring all catch that is intended to be released or discarded as close as practical to the fish door and within view of the electronic monitoring cameras before it is released or discarded unless doing so would impact the safety of the boat and or its crew.

SEABIRD INTERACTION OBLIGATIONS

Feather samples and photos

19. In the event of a seabird interaction that results in a mortality and where the bird is brought to the boat, the holder must:
- (a) collect feathers using the feather sample kits developed by the Department of Agriculture, Water and the Environment.
 - (b) hold the seabird in view of and in close proximity to the closest or most convenient electronic monitoring camera. Show first the head and bill (for 3 seconds), then underside (with one wing outstretched, for 3 seconds), then the back of the bird (with one wing outstretched, for 3 seconds).

This condition **does not** apply to live seabirds which should be released carefully and in a manner that maximises post release survival.

20. Feather samples must be collected in line with the following requirements:
- (a) the collection and provision of feathers from dead seabirds must be undertaken using the feather kits developed by the Department of Agriculture, Water and the Environment
 - (b) feathers must be pulled out, not cut, with feathers collected from both the belly side and back side of the seabird;
 - (c) samples must be marked with an ID label which includes:
 - i. Date of interaction;
 - ii. Time of interaction;
 - iii. Latitude and Longitude of interaction;
 - iv. Fishing method; and
 - v. ID number
 - (d) the bagged feather samples must be placed inside a second zip lock bag with absorbent material and sealed;
 - (e) the completed samples must be posted to Australian Antarctic Division using the supplied replied paid envelope.
21. The holder must have at least three feather kits on board the nominated boat at all times.

Additional mitigation requirements for notified boats

22. The holder must apply additional seabird mitigation (additional to that specified in condition 15 above) on the nominated boat immediately upon notification by AFMA of a requirement to do so. The circumstances under which the nominated boat will be required to implement additional mitigation, and the additional mitigation that must then be applied, are specified in sections 23-27 below.
23. If the holder using the nominated boat has:
- (a) interacted with more than one seabird and exceeded the seabird bycatch rate (0.05 birds per 1,000 hooks set) in any 5 degree zone during:
 - i. any two (2) of the last three (3) consecutive Threat Abatement Plan (TAP) seasons, or;
 - ii. during the current TAP season and any of the last three (3) consecutive seasons, or;
 - iii. taken more than 10 seabirds within the current or previous TAP season, or;

iv. been found to have an unreported seabird interaction.

AFMA will notify the holder in writing that the above condition in 23 (a) (i), 23 (a) (ii), 23 (a) (iii) or 23 (a) (iv) has been breached and condition 24 will then immediately apply.

24. If the holder has been notified by AFMA they have breached condition 23, the holder must immediately implement on the nominated boat at least one of the following mitigation options:
- i. a daylight setting ban - ensure that all longline hooks are deployed only during the hours between nautical dusk and nautical dawn;
 - ii. implement amended line weighting of either:
 - a. 40g or greater attached within 0.5 metre of the hook; or
 - b. 60g or greater attached within 1 metre of the hook; or
 - c. 80 g or greater attached within 2 m of the hook.
 - iii. ACAP approved hook shielding devices on all hooks; or
 - iv. a northern shift in the area of operation (to at least 5 degrees north of the most northerly seabird interaction with the nominated boat, as verified and notified by AFMA).
25. If the holder, after implementing the additional mitigation specified in condition 24 on the nominated boat, subsequently catches one additional albatross (dead) or two other seabirds (dead), the nominated boat must implement:
- (a) an additional mitigation measure from 24 (i-iv); or
 - (b) cease the use of live bait (if using) and only use dead bait; or
 - (c) relocate fishing activities to north of latitude 25 degrees south; or
 - (d) cease fishing using longline for the remainder of the TAP season.
26. The period of additional mitigation application for condition 24 and condition 25 ceases when the holder using the nominated boat achieves a seabird bycatch rate less than 0.05 birds per 1,000 hooks from the time they were notified by AFMA.
27. The additional mitigation measures in condition 24 and condition 25 reapply if the holder using the nominated boat, after achieving a reduced seabird bycatch rate in condition 23, exceeds the seabird bycatch rate in any 5 degree zone within the TAP season.

Definitions:

Threat Abatement Plan (TAP) Season:

TAP seasons is defined as summer 1 September- 30 April, and winter 1 May-31 August in any year.

Seabird Bycatch Rate

The Seabird Bycatch rate is 0.05 birds per 1,000 hooks set.

ACAP approved

ACAP approved is defined as in line with the mitigation outlined in the *ACAP Review and Best Practice Advice for Reducing the Impact of Pelagic Longline Fisheries on Seabirds 2019**.

* In 2022 this document can be found on the website of the Agreement on the Conservation of Albatrosses and Petrels (www.acap.aq/bycatch-mitigation/mitigation-advice <<http://www.acap.aq/bycatch-mitigation/mitigation-advice>>)

BUOYS AND RADIO BEACONS

28. The holder must ensure that the distinguishing symbol of the boat is displayed above the water line of each radio beacon and every tenth buoy attached to the boat's pelagic longline.

SPECIES LIMITATIONS

29. If the holder takes a Northern Pacific Bluefin Tuna or Southern Bluefin Tuna then they must:
 - (a) report to AFMA at email northernbluefin@afma.gov.au (or to fax 02 6225 5440 if email is not possible) at least one hour prior to the boat mooring or anchoring at port the following information:
 - i. NBT/SBT report;
 - ii. the name of the boat;
 - iii. distinguishing symbol of the boat;
 - iv. port of landing;
 - v. date and time of landing;
 - vi. number and weight of Northern Pacific Bluefin Tuna on board;
 - vii. number and weight of Southern Bluefin Tuna on board.
 - (b) determine whether the fish is a Northern Bluefin Tuna or Southern Bluefin Tuna:
 - i. if the Bluefin Tuna was taken north of 28 degrees south or was greater than 220cm fork length, it may be deemed to be a Northern Bluefin Tuna; or
 - ii. if the Bluefin Tuna was taken south of 28 degrees south, between 1 January and 1 May and was greater than 200cm, it may be deemed to be a Northern Bluefin Tuna; or
 - iii. if the Bluefin cannot be deemed a Northern Bluefin in part b(i) or b(ii) the concession holder must:
 - a. obtain genetic testing showing that the fish in question is a Northern Bluefin (AFMA will then deem the fish a Northern Bluefin); or
 - b. for fish exported to the Tokyo Metropolitan Central Wholesale Market (Toyosu market), document the fish as a Bluefin Tuna on the relevant Catch Disposal Record (CDR) and provide the documentation from the Tokyo Metropolitan Central Wholesale Market (Toyosu market) showing the fish was sold as a Northern Bluefin Tuna (AFMA will then deem the fish as a Northern Bluefin).
 - (c) should the landed tuna be deemed a Southern Bluefin Tuna (either by the holder or through identification) the holder must comply with all requirements of the Southern Bluefin Tuna Management Plan 1995.
30. Once AFMA publishes a notice stating that 35 tonnes of longtail tuna (*Thunnus tonggol*) has been taken in the WTBF and/or the Eastern Tuna and Billfish Fishery (ETBF), the holder must not take more than 10 longtail tuna on any subsequent trip until the notice is revoked by AFMA.
31. If the holder is fishing under this concession using the purse seine method, the holder must retain and land any Bigeye tuna (*Thunnus obesus*), Skipjack tuna (*Katsuwonus pelamis*) and/or Yellowfin tuna (*Thunnus albacares*) unless the fish is considered unfit for human consumption.
32. The holder must not retain or land any specimen smaller than 60 cm Lower Jaw Fork Length (LJFL) of Striped Marlin (*Kajikia audax* (formerly *Tetrapturus audax*)) and Indo-Pacific Sailfish (*Istiophorus platypterus*), and shall return them immediately to the sea in a manner that maximizes post-release survival potential but without compromising the safety of crew.

33. Fishing for bait is subject to the following limitations:

(a) QUEENSLAND, WESTERN AUSTRALIA AND NORTHERN TERRITORY

If this Statutory Fishing Right allows access to waters adjacent to the States of Queensland and Western Australia, and the Northern Territory, the holder may fish for bait in those waters.

(b) SOUTH AUSTRALIA

If this concession allows access to waters adjacent to the State of South Australia the holder while operating in those waters may use a lampara net, lift net and/or small scale purse seine to fish for:

- i. unlimited amounts of Emmelichthyes, Trachurus, Sardinops, Clupea, Engaulis and Scomber australasicus for use as live bait; and up to three tonnes per trip in total comprising Emmelichthyes, Trachurus, Sardinops, Clupea, Engaulis and Scomber australasicus for use as dead bait.

Any bait taken must only be used by the holder for fishing under this Statutory Fishing Right.

BYCATCH LIMITATIONS

34.

(a) WESTERN AUSTRALIA

The holder must not take more than the following amounts of fish per trip while operating in Commonwealth waters off Western Australia:

- i. Two fish in total consisting of either yellowtail kingfish (*Seriola lalandi*); or Amberjack (*Seriola dumerili*);
- ii. Ten fish in total consisting of one or more of Spanish mackerel (*Scomberomorus commerson*), Australian spotted mackerel (*Scomberomorus munroi*), Mackerel tuna (*Euthynnus affinis*), Frigate mackerel (*Auxis thazard*), Shark mackerel (*Grammatorcynus bicarinatus*), Rake Gilled mackerel (*Rastrelliger kanagurta*), Australian bonito (*Sarda australis*), Oriental bonito (*Sarda orientalis*), Leaping bonito (*Cybiosarda elegans*), Rainbow runner (*Elagatis bipinnulata*), Dog Toothed tuna (*Gymnosarda unicolor*), Emperors, Tropical snappers (family Lutjanidae), Emperors (family Lethrinidae), Cods, Groupers (family Serranidae), Wrasses, Tuskfishes (family Labridae), Trevallies (family Carangidae except for Genus *Seriola*), Snapper (*Pagrus auratus*), Hapuku (*Polyprion oxygeneios*) and Bar cod (*Polyprion moeone*);
- iii. Twenty fish in total consisting of one or more of Butterfly mackerel (*Gasterochisma melampus*), Slender tuna (*Allothunnus fallai*) and Wahoo (*Acanthocybium solandri*).
- iv. Two hundred (200) fish in total consisting of Mahi Mahi (*Coryphaena hippurus*).

(b) NORTHERN TERRITORY

The holder must not take more than the following amounts of fish per trip while operating in Commonwealth waters off the Northern Territory:

- i. Ten (10) fish per trip in total consisting of Mahi Mahi (*Coryphaena hippurus*).

(c) SOUTH AUSTRALIA

The holder must not take more than the following amounts of fish per trip while operating in Commonwealth waters off South Australia:

- i. Twenty kilograms of fish consisting of Bastard Trumpeter (*Latridopsis forsteri*) and Striped Trumpeter (*Latris lineata*);
- ii. Fifty kilograms fish consisting of Blue Groper (*Achoerodus gouldii*) and Snapper (*Pagrus auratus*);
- iii. One hundred kilograms of fish consisting of Mulloway (*Argyrosomus hololepidotus*);
- iv. Ten fish in total consisting of Yellowtail Kingfish (*Seriola lalandi*); and
- v. Two hundred kilograms of fish consisting of Black Reef Leatherjacket (*Eubalichthys bucephalus*), Chinaman Leatherjacket (*Nelusetta ayraudi*), Parrotfish (or knifejaw) (*Oplegnathus woodwardi*) or Rough Leatherjacket (*Monacanthus chinensis*).

Note: there is a two hundred kilogram total trip limit for all species combined listed in i) - v) above.

(d) ALL WATERS

- i. The holder must not take more than the following amounts of fish per trip while operating in Commonwealth waters:
 - a. 20 sharks, excluding Silky Shark, Oceanic Whitetip sharks, School shark, Gummy shark, Elephant fish of the Families Callorhynchidae, Chimaeridae and Rhinochimaeridae and Sawshark;
- ii. The holder must not take any of the following species:
 - a. Blue Eye trevalla (*Hyperoglyphe antarctica*), Blue grenadier (*Macruronus novaezelandiae*), Blue warehou (*Seriolella brama*), Flathead (*Platycephalus* sp., *eoplatycephalus* sp.), Gemfish (*Rexea solandri*), Jackass morwong (*Nemadactylus macropterus*), John dory (*Zeus faber*), Ling (*Genypterus blacodes*), Mirror dory (*Zenopsis nebulosus*), Ocean perch (*Helicolenus* sp.), Orange roughy (*Hoplostethus atlanticus*), Redfish (*Centroberyx affinis*), Royal red prawn (*Haliporoides sibogae*), School whiting (*Sillago findersi*), Silver trevally (*Pseudocaranx dentex*), Spotted warehou (*Seriolella punctata*), Blue marlin (*Makaira mazara*), Black marlin (*Makaira indica*) and Black cod (*Epinephelus daemeli*).
- iii. The holder must not:
 - a. retain any live Longfin Mako (*Isurus paucus*), Shortfin Mako (*Isurus oxyrinchus*) or Porbeagle sharks (*Lamna nasus*). Only dead sharks of these species may be retained. Mako and porbeagle sharks released alive must be recorded in e-logs or in the ALO6 logbook with the Discard/Retained Code field as "RA".
- iv. Any shark species mentioned in condition di, ii, iii above taken alive must be returned to the water.

35. For single jurisdiction high seas trips, the holder must not take:

- (a) more than 100 pelagic sharks per trip comprised of a maximum of 80 Blue whaler shark (*Prionace glauca*); and
- (b) more than 20 sharks or rays from the following list:
 - i. Crocodile shark (*Pseudocarcharias kamoharai*);

- ii. Shortfin mako shark (*Isurus oxyrinchus*);
- iii. Porbeagle shark (*Lamna nasus*);
- iv. Smooth hammerhead shark (*Sphyrna zygaena*); and
- v. Pelagic stingray (*Dasyatis violacea*).

The holder must not retain any other shark and/or ray species of subclass Elasmobranchii.

36. MOBULID RAYS (family Mobulidae - including mantas and mobula rays)
- (a) The holder must not fish for or target mobulid rays or retain on board any part of the carcass of a mobulid ray.
 - (b) The holder must ensure any mobulid ray caught during fishing operations is released alive and unharmed, to the extent practicable, as soon as they are seen in the net, on the hook, or on the deck, and do it in a manner that will result in the least possible harm to the individuals captured.
 - (c) in the case of mobulid rays that are unintentionally caught by and frozen as part of a purse seine vessel's operation, the vessel must surrender the whole mobulid ray to AFMA, or discard them (not sold) at the point of landing.
 - (d) The holder will ensure the following handling procedures, while taking into consideration the safety of the crew, shall be implemented and followed:
 - i. Mobulid rays must not be gaffed, lifted by the gill slits or spiracles, or have holes punched through the rays body
 - ii. Rays too large to be lifted safely by hand shall be, to the extent possible, brailed out of the net (if using purse seine) using the best available method such as those recommended in document IOTC-2012-WPEB08-INF07.
 - iii. Large rays that cannot be released safely before being landed on deck, shall be returned to the water as soon as possible, preferably utilizing a ramp from the deck connecting to an opening on the side of the boat, or if no such ramp is available, lowered with a sling or net.

HIGH SEAS FISHING TRIPS

37. The holder must notify AFMA prior to departure and again prior to landing if a high seas only trip will be made. Notify AFMA by facsimile (02) 6225 5440 or email VMSreporting@afma.gov.au and provide:
- i. boat's name;
 - ii. boat's distinguishing symbol
 - iii. port at which it is intended the boat will depart; and
 - iv. date and time of departure.
38. On nominating a high seas fishing trip the holder is not permitted to conduct fishing operations in the AFZ at any time while undertaking the high seas fishing trip.
39. On nominating a high seas fishing trip the holder must transit the AFZ via the most direct means or seek prior approval for an alternative route by telephoning the AFMA Duty officer on (02) 6275 5818.

TAKING/CARRYING OF SHARK OBLIGATIONS

40. Retained and/or landed School shark (*Galeorhinus galeus*) and Gummy shark (*Mustelus antarcticus*) must exceed 450 millimetres when measured in a straight line from the middle of the posterior edge of the aftermost gill-slit to the ventral insertion of the caudal fin.
41. The holder must not take deepwater dogfishes of the following species - Harrissons Dogfish

(*Centrophorus harrissoni*), Endeavour Dogfish (*C. moluccensis*), Southern Dogfish (*C. zeehaani*) and Greeneye Spurdog (*Squalus chloroculus*) - unless:

- (a) for trips under 6 days the combined amount of these species taken does not exceed 15kg whole weight per day; or
- (b) for trips over 6 days the combined amount of these species taken does not exceed 90kg whole weight per trip.

In this condition;

- one day is a 24 hour period that commences at 00.01 hours UTC + 8.
- the weights in clauses (a) and (b) apply to all deepwater dogfish of the species specified, including those returned to the water whether alive or dead.

Deepwater dogfishes of the species specified in this condition that are taken alive, must be returned to the water carefully and quickly.

42. The holder must not land or retain any Thresher sharks (family *Alopiidae*) taken within the Convention Area as detailed in 1. (b) of the Area of Waters. Any Thresher sharks taken must be returned to the water in a manner that maximizes post-release survival potential without compromising the safety of crew.
43. The holder must report any interaction with Thresher sharks in the relevant logbook.
44. The holder must not take or retain any Oceanic Whitetip sharks (*Carcharhinus longimanus*).
45. The holder must not take or retain any Silky sharks (*Carcharhinus falciformis*).
46. The holder must not carry or possess any shark (Class *Chondrichthyes*) dorsal, pectoral, caudal, pelvic or anal fins on board the boat nominated to this concession that are not attached to the shark's carcass.
47. The holder must not intentionally set a purse seine net around any species of cetacean, mobulid ray, or Whale sharks.
48. If a cetacean or Whale shark is encircled within a purse seine net, the holder must:
 - (a) take all practicable steps to ensure the safe release of the cetacean or Whale shark, while taking into account the safety of the crew;
 - (b) Report the incident to the AFMA at licensing@afma.gov.au <<mailto:licensing@afma.gov.au>> with the following details:
 - i. the species (if known);
 - ii. the number of individuals;
 - iii. a short description of the interaction, including details of how and why the interaction occurred, if possible;
 - iv. the location of the encirclement;
 - v. the steps taken to ensure safe release;
 - vi. an assessment of the life status of the animal on release, including whether the cetacean, mobulid ray or Whale shark was released alive but subsequently died.

QUOTA BALANCING OBLIGATIONS

49.

- (a) The holder must not be in an over quota position for any quota species.
- (b) If the holder is over quota for any quota species or has not provided to AFMA a written explanation detailing any exceptional circumstances within a 28-day period, AFMA may suspend this concession in accordance with this condition, pursuant to section 38(1)(c) of the *Fisheries Management Act 1991*.
- (c) The holder is not considered to be over quota if the holder:
 - i. lands an amount of quota species in excess of the available uncaught amount recorded for that species in the holder's name on the Register of Statutory Fishing Rights kept by AFMA pursuant to section 44 of the *Fisheries Management Act 1991*; and
 - ii. acquires a further amount of quota species equal to or greater than the total quantity (by weight) landed in excess of that total amount recorded within 28 days of landing.
- (d) Any dealing in a quota Statutory Fishing Right by the holder of a boat Statutory Fishing Right or Fishing Permit for the purpose of complying with this condition must be lodged with AFMA duly executed and in the form approved by AFMA, on or before the 28th day from which the excess quota species was landed. For the purpose of determining if the holder is over quota under this condition, any acquisition of a quota species may only be deemed to have been acquired up to 28 days prior to the date of registration of that acquisition of that quota species.
- (e) If this concession is suspended, unless the holder has acquired and AFMA has then recorded (but may not deem) an amount of uncaught quota for each quota species in the fishery, this concession may, under this condition, again be suspended upon expiration of the earlier suspension.
- (f) It is the obligation of the holder to record and determine when any quota species amount exceeds the total amount recorded by AFMA.

In these conditions:

Acquire means receiving statutory fishing rights by registering a dealing by which an amount of statutory fishing rights are permanently or seasonally transferred to the holder; and **acquisition** has a comparable meaning.

Quota species has the same meaning as quota species in the applicable management plan for which this concession has been granted and established under the *Fisheries Management Act 1991*.

Landed means the date any quota species was disposed of to an AFMA licensed fish receiver permit holder as recorded on the relevant catch disposal record; and landing has a comparable meaning.

OTHER OBLIGATIONS

- 50. All nominated boats twelve (12) metres or above must have an International Maritime Organization (IMO) number.

51. If a boat is nominated to this concession, at all times when the boat is being used under this concession, the holder must have provided to AFMA a current emergency contact facility for the nominated boat.
52. An emergency contact facility must enable AFMA to contact the boat immediately and directly at any time when the boat is at sea, including in the event of an emergency.
53. AFMA must be notified immediately of any change in contact details, by fax sent to (02) 6225 5440 or by email to licensing@afma.gov.au and the boat must not depart on a fishing trip unless AFMA has been so notified of the change in contact details.

Note: The emergency contact facility may take the form of a satellite phone number, or skipper or crew member's mobile phone number - any number that may be used by AFMA to contact the boat while it is at sea at any time, including in the event of an emergency.

AGENT OBLIGATIONS

54. The holder accepts concurrent liability for all conduct by its servants or agents infringing the *Fisheries Management Act 1991* (or the Regulations, Management Plans or concession conditions made by virtue of that Act) who may be engaged by the holder to conduct on the holder's behalf activity under this concession.
55. Liability for the conduct of the holder's servants or agents arises, even if the conduct may be, or actually is, beyond the scope of the servant or agent's actual or apparent authority where it is a breach that occurs during the conduct of activity authorised by this concession.
56. The holder may avoid concurrent liability for conduct whilst conducting activity under this concession if, but only if, the holder can establish that the infringing conduct could not possibly have been prevented by any action or precaution that the holder might have reasonably taken.
57. The giving of an indemnity by the servant or agent to the holder for any penalties incurred by the holder, for infringing conduct by the servant or agent is not, of itself, a reasonable precaution to prevent infringing conduct.
58. The holder must ensure the master of the boat fishing under the authority of this concession is nominated as an authorised agent for the holder **before** any fishing operation may take place.
59. The holder must ensure the authorised agent signing the determined *Daily Fishing logbook page was the master of the boat (skipper) at the time the recorded fishing operation took place.
60. The holder may sign the determined *Daily Fishing logbook page if they were the master of the boat (skipper) when the recorded fishing operation took place.
61. If more than one master of the boat is on board the boat during the fishing trip, each master must complete and sign a separate determined *Daily Fishing logbook page for each of the fishing operations for which they had control over.

**These instructions are for all determined Daily Fishing Logs including e-Logs.*

TEMPORARY ORDER OBLIGATIONS

62. The holder must comply with any Temporary Order made under sub section 43(2) of the *Fisheries Management Act 1991* and to the extent that any provision herein is inconsistent with such Temporary Order sub section 43(9) provides that the provision herein is overridden by the Temporary Order until the Temporary Order ceases to have effect.

DIRECTION OBLIGATIONS

63. The holder must comply with any lawful Direction (including a lawful Direction given to the holder by an AFMA staff member, consultant or other person engaged under contract to assist AFMA) under section 40A, 40B or 41A of the *Fisheries Management Act 1991* relating to the use of e-monitoring equipment and the partial or total closure of a fishery or part of a fishery.

NAVIGATING IN CLOSED ZONES

64. AFMA may suspend this concession in accordance with this condition, pursuant to section 38(1)(c) of the *Fisheries Management Act 1991*, if it reasonably appears by VMS transmission from the nominated boat, that there is a failure by that boat while in a closed zone for the purposes of regulation 85 of the *Fisheries Management Regulations 2019*, to meet the exempting provisions of sub regulations 86 (2), or (3). Such suspension will then continue until the concession holder provides a full written explanation, to the satisfaction of the delegate responsible for issuing that suspension, of the lawful reason for the boat being in that closed zone at that time, or until the expiration of the suspension under sub section 38(2) of the *Fisheries Management Act 1991*; whichever is the earlier.

MANDATORY AFMA SUPPLIED VMS

65. Direction to Fit
- (a) When directed by AFMA in writing, the concession holder (or a person acting on the holder's behalf) must;
 - i. make available, within 14 days of the date of the written direction, the boat nominated to this concession for the purposes of installation of an AFMA Vessel Monitoring System unit (AFMA VMS unit) by an AFMA approved technician, and
 - ii. Provide all reasonable assistance to the AFMA approved technician including (but not limited to);
 - iii. the provision of an un-interrupted connection to the boat's main power source, and
 - iv. an appropriate position for the mounting of the AFMA VMS unit.
 - (b) When directed by AFMA in writing, the concession holder (or a person acting on the holder's behalf) must;
 - i. make available, within 14 days of the date of the direction, the boat nominated to this concession for the purposes of removal of the AFMA VMS unit by an AFMA approved technician, and
 - ii. Provide all reasonable assistance to the AFMA approved technician.
 - (c) Concession holder must not interfere with AFMA VMS Unit
 - i. The concession holder (or a person acting on the holder's behalf) must not interfere, or attempt to interfere, with the operation of the AFMA VMS Unit.

Definitions:

AFMA VMS Unit

Means a Vessel Monitoring System (VMS) unit wholly owned by

AFMA, marked with AFMA identifications and supplied by AFMA and fitted by an AFMA approved technician.

Interfere

For the purposes of these conditions 'interfere' includes, but is not limited to;

- Physical obstruction or removal of the AFMA VMS unit, or
- Deliberately disconnecting or otherwise interfering with the power supply to the AFMA VMS unit, or
- Deliberate physical interference with the casing or any external or internal components of the AFMA VMS unit.

Notes

Must Make boat available

Where the boat is not made available in accordance with condition 65(a)(i) or 65(b)(i), AFMA may suspend this concession pursuant to section 38(1)(c) of the Fisheries Management Act 1991.

Must maintain VMS Unit

Regardless of AFMA's decision to fit an AFMA VMS unit, the holder must continue to maintain a VMS unit in accordance with regulation 37 of the Fisheries Management Regulations 2019.

Remains the property of AFMA

At all times the AFMA VMS unit remains the sole property of AFMA. The holder is liable for any costs incurred as a result of loss or damage to the unit.

HANDLING AND TREATMENT OF BYCATCH

66. The concession holder (or a person acting on the holder's behalf) must not mistreat bycatch.

Definitions:

Mistreat means taking, or failing to take, any reasonable action or actions, which results, or is likely to result, in the;

- i. death of, or
- ii. injury to, or
- iii. causing of physiological stress to any bycatch.

Bycatch means any species that physically interact with fishing vessels and/or fishing gear (including auxiliary equipment) and which are not usually kept by commercial fishers. (**Bycatch** species may include fish, crustaceans, sharks, molluscs, marine mammals, reptiles and birds. **Bycatch** includes listed protected species under the *Environment Protection and Biodiversity Conservation Act 1999*.)

Notes

For the purposes of this condition 'mistreat' does not include the taking, or failing to take, action where it is reasonably necessary to take, or not take, the action;

- a) to ensure the safety of the boat and or its crew, or
- b) to comply with the requirements of any AFMA approved bycatch management plan(s) (these may include Seabird Management Plans, Vessel Management Plans etc.).