

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

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528. Definitions

SCHEDULE 1 Provisions relating to detention of suspected foreign offenders

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- LONG TITLE

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 1

Short title

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 3

Objects of Act

(1) The objects of this Act are:

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

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

(c) to promote the conservation of biodiversity; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) protect ecosystems by means that include the establishment and management of reserves, the

recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and

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

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

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

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

(i) bilateral agreements with States and Territories; and

(ii) conservation agreements with land-holders; and

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 3A

Principles of ecologically sustainable development

The following principles are principles of ecologically sustainable development:

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

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

(c) the principle of inter-generational equity--that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

(d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 4

Act to bind Crown

This Act binds the Crown in each of its

capacities.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 5

Application of Act

Extension to external Territories

(1) This Act extends to each external Territory.

Limited extraterritorial application

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

Application limited to Australians outside exclusive economic zone

(3) A provision of this Act that has effect in relation to a place that is outside the outer limits of the exclusive economic zone and is not on or in the continental shelf applies only in relation to:

- (a) Australian citizens; and
- (b) persons who:
 - (i) are not Australian citizens; and
 - (ii) hold permanent visas under the Migration Act 1958; and
 - (iii) are domiciled in Australia or an external Territory; and
- (c) corporations incorporated in Australia or an external Territory; and
- (d) the Commonwealth; and
- (e) Commonwealth agencies; and
- (f) Australian aircraft; and
- (g) Australian vessels; and
- (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

Application to everyone in Australia and exclusive economic zone

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

- (a) all persons (including persons who are not Australian citizens); and
- (b) all aircraft (including aircraft that are not Australian aircraft); and
- (c) all vessels (including vessels that are not Australian vessels).

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

Definitions

(5) In this Act:

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

"Australian jurisdiction" means the land, waters, seabed and airspace in,
under or above:
(a) Australia; or
(b) an external Territory; or
(c) the exclusive economic zone; or
(d) the continental shelf.

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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).

(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.
ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 14

Declaring a property to be a declared World Heritage property

Making declarations

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

(a) the property is a property submitted by the Commonwealth to the World Heritage Committee under Article 11

of the World Heritage Convention as suitable for inclusion in the World Heritage List; or

(b) the Minister is satisfied that:

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

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

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

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

Consulting State or Territory before making declaration

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

Consultation not required if threat is imminent

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

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

(b) he or she is satisfied that the threat mentioned in subparagraph (1)(b)(ii) is imminent.
Failure to comply with subsection (2)

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

When a declaration is in force

(5) A declaration:

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

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

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

(ii) the revocation of the declaration;

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

Specified period for which declaration is in force

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

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

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

Declarations because of threat in force for a year or less

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

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 15A

Offences relating to declared World Heritage properties

(1) A person is guilty of an offence if:
(a) the person takes an action; and
(b) the action results or will result in a significant impact on the world heritage values of a 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 is guilty of an offence if:
(a) the person takes an action; and
(b) the action is likely to have a significant impact on the 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 be guilty of an offence

against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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;

(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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 15C

Offences relating to National Heritage places

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

- (a) the corporation or agency takes 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, is guilty of an offence if:

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

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

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

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

(3) A person is guilty of 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;

- (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 is guilty of 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 is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken in:
 - (i) a Commonwealth area;
 - (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 is guilty of an offence if:

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

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

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

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

(7) A person is guilty of an offence if:
(a) the person takes an action; and
(b) the action results or will result in a significant impact on the 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 is guilty of an offence if:
(a) the person takes an action; and
(b) the action is likely to have a significant impact on the 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 is guilty of an offence if:
(a) the person takes an action; and
(b) the action results or will result in a significant impact on the 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 is guilty of an offence if:

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

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

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

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

(13) An offence against any of subsections (1) to (10) (inclusive) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

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

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

Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 17A

Making and revoking declarations of wetlands

Declaring threatened wetlands of international importance

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

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

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

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

Consulting State or Territory before making declaration

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

Consultation not required if threat is imminent

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

Failure to comply with subsection (2)

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

When a declaration is in force

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

Specifying period for which declaration is in force

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

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

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

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

(b) 12 months.

Revocation of declaration of threatened wetland

(7) The Minister must, by notice in the Gazette, revoke a declaration of a wetland if:

(a) the Minister is satisfied that the wetland is not of international significance because of its ecology, botany, zoology, limnology or hydrology; or

(b) the Minister is satisfied that there is no longer a threat to any part of the wetland.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 17B

Offences relating to declared Ramsar wetlands

(1) A person is guilty of an offence if:
(a) the person takes an action; and
(b) the action results or will result
in a significant impact on the 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 is guilty of an offence if:
(a) the person takes an action; and
(b) the action is likely to have a
significant impact on the ecological character of a 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 be guilty of an offence
against section 495.

Note 3: If a person takes an action on land that
contravenes this section, a landholder may be guilty of 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 18

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

Species that are extinct in the wild

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

(a) has or will have a significant impact on a listed threatened species included in the extinct in the wild category; or

(b) is likely to have a significant impact on a listed threatened species included in the extinct in the wild category.

Civil penalty:

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

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

Critically endangered species

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

(a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or

(b) is likely to have a significant impact on a listed threatened species included in the critically endangered category.

Civil penalty:

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

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

Endangered species

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

(a) has or will have a significant impact on a listed threatened species included in the endangered category; or

(b) is likely to have a significant impact on a listed threatened species included in the endangered category.

Civil penalty:

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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 18A

Offences relating to threatened species etc.

(1) A person is guilty of an offence if:

(a) the person takes an action; and

(b) the action results or will result

in a significant impact on:

(i) a species; or

(ii) an ecological

community; and

(c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Note: Chapter 2 of the Criminal Code

sets out the general principles of criminal responsibility.

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

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

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

(a) the person takes an action; and

(b) the action is likely to have a

significant impact on:

(i) a 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 be guilty of an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 - SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 20A

Offences relating to listed migratory species

(1) A person is guilty of an offence if:

(a) the person takes an action; and

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

(c) the species is a listed migratory species.

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

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

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

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

(a) the person takes an action; and

(b) the action is likely to have a

significant impact on a 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 be guilty of an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of 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.

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 22

What is a nuclear action?

(1) In this Act:

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

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

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

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

"spent nuclear fuel" means nuclear fuel that has been irradiated in a nuclear
reactor core and permanently removed from the core. (2) In this
Act:

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 22A

Offences relating to nuclear actions

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

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

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

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

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

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

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

- (a) the person takes a nuclear action; and
- (b) the nuclear action is taken for the purposes of trade or commerce:

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

and

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

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

(4) A person is guilty of an offence if:

- (a) the person takes a nuclear action; and
- (b) the nuclear action is taken for the purposes of trade or commerce:

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

and

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

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

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

- (a) the person takes a nuclear action;

and

(b) the nuclear action is taken in a Territory; and
(c) the nuclear action results or will result in a significant impact on the environment.

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

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

and

(b) the nuclear action is taken in a Territory; and
(c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

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

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

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

Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 23

Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the

environment

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

Civil penalty:

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

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

Actions outside Commonwealth marine areas affecting those areas

(2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:

(a) has or will have a significant impact on the environment in a Commonwealth marine area; or

(b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Civil penalty:

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

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

Fishing in State or Territory waters managed by Commonwealth

(3) A person must not take in the coastal waters (as defined in the Fisheries Management Act 1991) of a State or the Northern Territory an action:

(a) that:
(i) is fishing (as defined in the Fisheries Management Act 1991); and
(ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and

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

Civil penalty:

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

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

Exceptions to prohibitions

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

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

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

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

controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice

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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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

the Criminal Code.

Actions likely to affect environment in Commonwealth marine areas

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

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

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

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

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

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

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 be guilty of an offence against section 495.

Note 3: If a person takes an action on land that

contravenes this section, a landholder may be guilty of an offence against section 496C.

Defences--general

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

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

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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

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;
 - (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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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
(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:
development; or
development; and
(i) coal seam gas
(ii) large coal mining
(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.

- SECT 25

Requirement for approval of prescribed actions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the action to be prescribed; and

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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 Legislative Instruments Act 2003.

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

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

(a) taken in a Territory; or
(b) taken in a Commonwealth marine area; or

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

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

Territory; or

(iv) between 2 Territories;

or

(d) taken by a constitutional corporation; or

(e) whose regulation is appropriate

and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

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

(5) In this section:

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 25F

Revocation of certificate

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 26

Requirement for approval of activities involving Commonwealth land

Actions on Commonwealth land

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

Civil penalty:

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

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

Actions outside Commonwealth land affecting that land

(2) A person must not take outside Commonwealth land an action that:

(a) has or will have a significant impact on the environment on Commonwealth land; or

(b) is likely to have a significant impact on the environment on Commonwealth land.

Civil penalty:

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

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

Exceptions to prohibitions

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

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

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

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

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

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

Note 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 27

What is Commonwealth land?

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 27A

Offences relating to Commonwealth land

(1) A person is guilty of an offence if:

(a) the person takes an action; and

(b) the action is taken on

Commonwealth land; and

(c) the action results or will result

in a significant impact on the environment.

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

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

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

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

(a) the person takes an action; and

(b) the action is taken on

Commonwealth land; and

(c) the action is likely to have a

significant impact on the environment.

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

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

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

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

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

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

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

Note 3: If a person takes an action on land that contravenes this section, a landholder may be guilty of 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 27C

Offences relating to Commonwealth Heritage places overseas

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

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

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

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

(2) A person is guilty of 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 be guilty of 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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 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.

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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 Legislative Instruments 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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:

(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

(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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 34

What is matter protected by a provision of Part 3?

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

Matter protected by provisions of Part 3

Item

Provision

Matter protected

1

section 12

the world heritage values of a declared World Heritage property

1A

section 15A

the world heritage values of a declared World Heritage property

1B

section 15B

the National Heritage values of a National Heritage place

1C

section 15C

the National Heritage values of a National Heritage place

2

section 16

the ecological character of a declared Ramsar wetland

2A

section 17B

the ecological character of a declared Ramsar wetland

3

subsection 18(1)

a listed threatened species in the extinct in the wild category

4

subsection 18(2)

a listed threatened species in the critically endangered category

5

subsection 18(3)

a listed threatened species in the endangered category

6

subsection 18(4)

a listed threatened species in the vulnerable category

7

subsection 18(5)

a listed threatened ecological community in the critically endangered category

8

subsection 18(6)

a listed threatened ecological community in the endangered category

8A

subsection 18A(1) or (2)

a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species) and a listed threatened ecological community
(except an ecological community included in the vulnerable category of the list referred to in section 181)

9

section 20

a listed migratory species

9A

section 20A

a listed migratory species

10

section 21

the environment

10A

section 22A

the environment

11

subsection 23(1)

the environment

12

subsection 23(2)

the environment in a Commonwealth marine area

13

subsection 23(3)

the environment in the coastal waters (as defined in the Fisheries Management Act 1991) in which the action is taken of the State or Territory

13A

subsection 24A(1) or (2)

the environment

13B

subsection 24A(3) or (4)

the environment in a Commonwealth marine area

13C

subsection 24A(5) or (6)

the environment in the coastal waters (as defined in the Fisheries Management Act 1991) in which the action is taken of the State or Territory

13D

subsection 24B(1)

the environment

13E

subsection 24B(2)

the environment in the Great Barrier Reef Marine Park

13F

subsections 24C(1) and (3)

the environment

13G

subsections 24C(5) and (7)

the environment in the Great Barrier Reef Marine Park

13H

section 24D

a water resource

13J

section 24E

a water resource

14

section 25

a thing prescribed by the regulations for the purposes of
this item in relation to an action to which section 25 applies

15

subsection 26(1)

the environment

16

subsection 26(2)

the environment on Commonwealth land

16A

subsection 27A(1) or (2)

the environment

16B

subsection 27A(3) or (4)

the environment on Commonwealth land

16C

section 27B

the environment in a Commonwealth Heritage place outside
the Australian jurisdiction

16D

subsections 27C(1) and (2)

the environment in a Commonwealth Heritage place outside
the Australian jurisdiction

17

section 28

the environment

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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:

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 40

Forestry operations in regions not yet covered by regional forest agreements

(1) A person may undertake forestry operations in an RFA region in a State or Territory without approval under Part 9

for the purposes of a provision of Part 3 if there is not a regional forest agreement in force for any of the region.

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

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

(2) In this Division:

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

(a) the planting of trees;
(b) the managing of trees before they are harvested;

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

"RFA region" has the meaning given by section 41. (3) Subsection

(1) does not operate in relation to an RFA region that is the subject of a declaration in force under this section.

(4) The Minister may declare in writing that subsection (1) does not apply to an RFA region.

(5) A declaration is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(6) The Minister must not make a declaration that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State, in relation to the taking of the action:

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

(b) by a constitutional corporation.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 41

What is an RFA region?

Regions that are RFA regions

(1) Each of the following is an RFA region:

(a) the area delineated as the Eden RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;

(b) the area delineated as the Lower North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;

(c) the area delineated as the Upper

North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;

(d) the area delineated as the South Region on the map of the Comprehensive Regional Assessment South CRA Region dated August 1997 and published by the State Forests GIS Branch of the organisation known as State Forests of New South Wales;

(e) the area delineated as the Gippsland Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;

(f) the area delineated as the North East RFA Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;

(g) the area delineated as the West Region in the map of that Region dated 3 March 1999 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;

(h) the area delineated as the South East Queensland RFA Region on the map of that Region dated 21 August 1998 and published by the Bureau of Resource Sciences.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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;
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.
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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 48A

Mandatory provisions

Application

(1) A bilateral agreement with a State or self-governing Territory including a declaration that is described in section 46

or 47 and covers actions described in subsection (2) or (3) does not have effect for the purposes of this Act unless the agreement also includes the undertaking required by subsection (2) or (3) (as appropriate).

Agreements including declarations about approvals

(2) A bilateral agreement including a declaration described in section 46 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following

actions covered by the declaration have, will have or are likely to have on a thing that is not a matter protected by a provision of Part 3 for which the declaration has effect will be assessed to the greatest extent practicable:

(a) actions taken in the State or Territory by a constitutional corporation;

(b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;

(c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more

other countries;

(d) actions taken in the Territory (if applicable).

Agreements including declarations about assessment

(3) A bilateral agreement including a declaration described in section 47 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:

(a) actions taken in the State or Territory by a constitutional corporation;

(b) actions taken in the State or Territory by a person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories;

(c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;

(d) actions taken in the Territory (if applicable).

Auditing

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 49A

Consultation on draft agreement

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

(a) has published in accordance with the regulations:

(i) a draft of the agreement; and

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

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 54

Agreements relating to migratory species

(1) The Minister may enter into a bilateral agreement containing a provision relating to a listed migratory species only if:

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

(i) the Bonn Convention;
(ii) CAMBA;
(iii) JAMBA;
(iv) an international

agreement approved under subsection 209(4); and

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

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

(2) The Minister may accredit a management 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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 publishing the amending agreement under paragraph 45(4) (a).
(3) A determination made under paragraph (1) (c) is not a legislative instrument.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 59

Suspension or cancellation

Minister may give notice of suspension or cancellation

(1) If, after the consultation, the Environment Minister is not satisfied that the State or Territory:

(a) has complied with, and will comply with, the agreement; and

(b) has given effect, and will give effect, to the agreement in a way that:

(i) accords with the objects of this Act and the objects of this Part; and

(ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant

to a matter covered by the agreement;

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

Example 1: The Minister could give notice if the agreement declared that certain actions affecting the world heritage values of a declared

world heritage property did not require approval under Part 9 if approved by the State, and the State approved an action that was not consistent with the protection, conservation and presentation of those values.

Example 2: The Minister could

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

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

Notice of suspension

(2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:

(a) starting on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given; and

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

Notice of cancellation

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

Effect suspended or cancelled in accordance with notice

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

has effect subject to sections 61 and 62.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 62

Revocation of notice of suspension or cancellation

(1) This section applies if the Minister:

(a) has given a notice under section 59 or 60 to suspend or cancel the effect of a bilateral agreement (either generally or in relation to actions in a specified class); and

(b) is later satisfied that the State

or Territory that is party to the agreement will comply with the agreement and give effect to it in a way that:

(i) accords with the objects of this Act and the objects of this Part; and
(ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement.

(2) The Minister must revoke the notice of suspension or cancellation by another written notice:

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

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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, this Act continues to operate in relation to the action as if the suspension or cancellation had not occurred.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 70

Minister may request referral of proposal

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

(a) the person; or

(b) a State, self-governing Territory

or agency of a State or self-governing Territory that the Minister believes has

administrative responsibilities relating to the action;

to refer the proposal to the Minister within 15 business

days or a longer period agreed by the Minister and the requested person,

State,

Territory or agency (as appropriate).

Note 1: If the proposal to take the action is not

referred, the person cannot get an approval under Part 9 to take the

action. If taking the action without approval contravenes Part 3, an

injunction could be sought to prevent or stop the action, or the person could

be ordered to pay a pecuniary penalty.

Note 2: Section 156 sets out rules about time

limits.

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

Deemed referral of proposal

(3) If:

(a) the Minister has made a request

under subsection (1); and

(b) the period for compliance with the

request has ended; and

(c) the requested person has not

referred the proposal to the Minister in accordance with the request;

the Minister may, within 20 business days after the end of

that period, determine in writing that this Act has effect as if:

(d) if paragraph (1)(a)

applies--the requested person had referred the proposal to the Minister under subsection 68(1) at the time the determination was made; or

(e) if paragraph (1)(b)

applies--the requested person had referred the proposal to the Minister under subsection 69(1) at the time the determination was made.

(4) A determination under subsection (3) has effect accordingly.

(5) A copy of a determination under subsection (3) is to be given to the requested person.

(6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.

(8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 74A

Minister may request referral of a larger action

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

(2) If the Minister decides to not accept a referral under subsection (1), the Minister:

(a) must give written notice of the decision to the person who referred the proposal to the Minister; and
(b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and
(c) may, under section 70, request of the person proposing to take the action that was the subject of the referral, that they refer the proposal, to take the larger action, to the Minister.

(3) To avoid doubt, sections 73 and 74 do not apply to a referral that has not been accepted in accordance with subsection (1).

(4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:

(a) give written notice of the decision to the person who referred the proposal to the Minister;
(b) publish in accordance with the regulations (if any), a copy or summary of the decision.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 75

Does the proposed action need approval?

Is the action a controlled action?

(1) The Minister must decide:

(a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and

(b) which provisions of Part 3 (if any) are controlling provisions for the action.

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

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was

the subject of a referral that was not accepted under subsection 74A(1).
Minister must consider public comment

(1A) In making a decision under subsection (1)
about the action, the Minister must consider the comments (if any) received:

(a) in response to the invitation
under subsection 74(3) for anyone to give the Minister comments on whether
the action is a controlled action; and

(b) within the period specified in the
invitation.

Considerations in decision

(2) If, when the Minister makes a decision
under subsection (1), it is relevant for the Minister to consider the
impacts of an action:

(a) the Minister must consider all adverse
impacts (if any) the action:

(i) has or will have; or
(ii) is likely to have;
on the matter protected by each
provision of Part 3; and

(b) must not consider any beneficial
impacts the action:

(i) has or will have; or
(ii) is likely to have;
on the matter protected by each
provision of Part 3.

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.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 77

Notice and reasons for decision

Giving notice

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

(a) give written notice of the decision to:

(i) the person proposing to take the action; and

(ii) if the Minister has designated as proponent of the action a person who does not propose to take the action--that person; and

(iii) if the Minister decided that the action is a controlled action because of Division 1 of Part 3 (which deals with matters of national environmental significance)--the appropriate Minister of each State or self-governing Territory in which the action is to be taken; and

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

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

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

See section 157.

Notice must identify any applicable controlling provisions

(2) If the decision is that the action is a

controlled action, the notice must identify each of the controlling provisions.

Reasons for decision

(4) The Minister must give reasons for the decision to a person who:

(a) has been given the notice; and
(b) within 28 days of being given the notice, has requested the Minister to provide reasons. The Minister must do so as soon as practicable, and in any case within 28 days of receiving the request.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 79

Reconsideration of decision on request by a State or Territory

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

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

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

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

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

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

Note: Section 156 sets out rules about time limits.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 83

This Part does not apply if action covered by bilateral agreement

(1) This Part does not apply in relation to an action if:

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

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

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

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

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 84

This Part does not apply if action covered by declaration

When this Part does not apply

(1) This Part does not apply in relation to an action if:

- (a) the Minister has declared in writing that actions in a class that includes the action need not be assessed under this Part; and
- (b) the

declaration is in operation.

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

Declaration

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

Prerequisites for making a declaration

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

(a) assessment of an action in the specified manner will include assessment of the impacts the action:

(i) has or will have; or

(ii) is likely to have;

on each matter protected by a

provision of Part 3; and

(b) the specified manner of assessment meets the standards (if any) prescribed by the regulations; and

(c) if the taking of an action assessed in the specified manner must be approved under Part 9, he or she will receive a report including, or accompanied by, enough information about the relevant impacts of the action to let him or her make an informed decision

whether or not to approve under Part 9 (for the purpose of each controlling provision) the taking of the action.

Further requirements for making a declaration

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

(4) The manner of assessment that may be specified in a declaration includes assessment by a Commonwealth agency under a

law of the Commonwealth. This does not limit subsection (2).

Publishing declaration

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

Revoking declaration

(6) The Minister may, by instrument in writing published in accordance with the regulations, revoke a declaration. Minister must not give preference

(7) In making or revoking a declaration relating to an action taken:

(a) by a person for the purposes of trade between Australia and another country or between 2 States; or

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

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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;

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 88

Timing of decision on assessment approach

Initial decision

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

Note: Section 156 sets out rules about time limits.

When initial decision must be made

(2) The Minister must make the decision under subsection (1) on the same day as the Minister has decided, under subsection 75(1), that the action is a controlled action, unless the Minister has requested more information under subsection 76(3) or section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.

Time does not run while further information sought

(4) If the Minister has requested more information in relation to the action under subsection 76(1), (2) or (3) or section 89, a day is not to be counted as a business day for the purposes of subsection (1) if it is:

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

(b) on or before the day on which the Minister receives the last of the information requested.
Running of time may be suspended by agreement

(5) The Minister and the designated proponent of the action 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

(2) Within 10 business days after the designated proponent has given the Minister the documents referred to in paragraph (1)(b), the designated proponent must publish, in accordance with the regulations, a copy of the document prepared under paragraph (1)(a).

Procedure if no comments are received

(3) If no comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as practicable after the end of that period, give the Minister a

written statement to that effect.

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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:

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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

- (ii) if no comments were received within that period--a written statement to that effect.

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 101A

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

(1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft environmental impact statement about the relevant impacts of the action. The guidelines so given are referred to as the EIS guidelines.

(2) The EIS guidelines must be:

- (a) one or more sets of standard guidelines prepared under section 101B that the Minister decides are appropriate for the preparation of the draft statement in relation to the action; or

- (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft

statement in relation to the action--tailored guidelines prepared under section 102.

(3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft statement

in relation to the action, the Minister must seek to ensure that the draft statement, if prepared in accordance with those guidelines, will:

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

(b) address the matters (if any) prescribed by the regulations.

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

(4) The Minister must give the EIS guidelines to the designated proponent:

(a) within 20 business days after the assessment approach decision was made under section 87; or

(b) if the Minister, under section 102, invites a person to comment on a draft of tailored guidelines for the preparation of the draft statement within a specified period--within 20 business

days after:

(i) the end of that period; or

(ii) if there is more than one such period, the end of the later or latest of those periods.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 102
Tailored guidelines

(1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft environmental impact

statement about the relevant impacts of an action if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to that action.

(1A) Tailored guidelines must set out requirements for the content and presentation of the draft statement in relation to the action.

(2) In preparing tailored guidelines, the Minister must seek to ensure that the draft statement will:

(a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and

(b) address any matters specified by the regulations.

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

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

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft statement includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

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

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

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

(a) the referral of the proposal to take the action is, because of section 37AB of the Great Barrier Reef Marine Park Act 1975, taken to be an application for a permission for the purposes of that Act; and

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft statement includes information about those other impacts for the purposes of deciding whether to grant the permission.

(4) Division 2 does not limit:
(a) subsection (3) or (3A); or
(b) section 103 so far as it relates to tailored guidelines prepared in reliance on that subsection.

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

(a) invite anyone to comment on a

draft of tailored guidelines within a period specified by the Minister; and
(b) take account of the comments (if any) received.

(6) Tailored guidelines made under this section are not a legislative instrument.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 104

Finalising environmental impact statement

(1) After the end of the period specified in the invitation to comment under section 103, the designated proponent must finalise the draft environmental impact statement.

(2) The finalised statement must:
(a) take account of any comments received within the period for comment; and

(b) contain a summary of any such comments and how those comments have been addressed.

(3) As soon as practicable after finalising the draft statement, the designated proponent must give the Minister:

- (a) the finalised statement; and
- (b) either:
 - (i) a copy of any comments

received within the period for comment; or

- (ii) if no comments were received within that period--a written statement to that effect.

(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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 107

Appointing commissioners and setting terms of reference

(1) If the Minister decides that the relevant impacts of an action must be assessed by inquiry under this Division, the Minister must:

- (a) appoint in writing one or more persons (the commissioners) as a commission to conduct the inquiry and report to the Minister in relation to the action; and

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

(i) the matters relating to the action that are to be the subject of the inquiry and report; and
(ii) the period within which the commission must report to the Minister.

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

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

(2) If the Minister appoints 2 or more commissioners for an inquiry, the Minister must appoint one of them to preside at the inquiry.

(3) In specifying in the terms of reference the matters relating to the action that are to be the subject of the inquiry and report, the Minister:

(a) must specify the relevant impacts of the action; and

(b) if subsection (4) or (4A) applies--may specify other certain or likely impacts of the action.

(4) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:

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

(b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the inquiry reports on those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and

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

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

Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

(4A) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:

(a) the referral of the proposal to take the action is, because of section 37AB of the Great Barrier Reef Marine Park Act 1975, taken to be an application for a permission for the purposes of that Act; and

(b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the report includes information about those other impacts for the purposes of deciding whether to grant the permission.

(5) The Minister may also specify in the terms of reference the manner in which the commission is to carry out the inquiry.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 109
Procedure of inquiries

(1) A commission must comply with the terms of reference in conducting its inquiry.

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 111

Calling witnesses

Summoning witnesses

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

Failure of witness to attend

(2) A person served with a summons to appear as a witness at an inquiry by a commission must not:

(a) fail to attend as required by the summons; or

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

Note: A defendant bears an evidential burden in relation to the excuse or release from further attendance mentioned in paragraph (2)(b).

See subsection 13.3(3) of the Criminal Code.

Offence

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

Allowances for witnesses

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 112

Dealing with witnesses

Power to administer oath or affirmation

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

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

Refusal to be sworn or to answer questions

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

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

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

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

person.
Offence

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

Note: Subsection 4B(3) of the Crimes Act 1914 lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.
No privilege against self-incrimination

(4) An individual is not excused from answering a question or producing a document on the ground that answering the question or producing the document would tend to incriminate the individual or to expose the individual to a penalty.
Answers and documents cannot be used in criminal proceedings

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

- (a) the answer to the question;
- (b) the production of the document;
- (c) any information, document or thing

obtained as a direct or indirect consequence of answering the question or producing the document.

Sworn witnesses may also give written evidence on oath

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months if:

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

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

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 116

Entering premises under warrant

(1) A commissioner may apply to a magistrate for a warrant authorising the commissioner or a person authorised by the commissioner to enter any land, building or place if the commissioner has

reason to believe that it is necessary or desirable for the purposes of an inquiry for the commissioner or person to enter the land, building or place for

the purposes of the inquiry.

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

(2) If the magistrate is satisfied by information on oath or affirmation that the issue of the warrant is reasonably

required for the purposes of the inquiry, he or she may grant a warrant authorising the person named in the warrant to enter the land, building or place for the purposes specified in the warrant.

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

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

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 117

Warrants by telephone or other electronic means

Application

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

(a) in an urgent case; or

(b) if the delay that would occur if

an application were made in person would frustrate the effective execution of the warrant.

Voice communication

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

Information

(3) An application under this section must include all information required to be provided in an ordinary application for

a warrant, but the application may, if necessary, be made before the information is sworn or affirmed.

Issue of warrant

(4) The magistrate may complete and sign the same form of warrant that would be issued under section 116 if, after considering the information and having received and considered any further information he or she required, the magistrate is satisfied that:

(a) a warrant in the terms of the application should be issued urgently; or

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

Notification

(5) If the magistrate decides to issue the

warrant, the magistrate must inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on

which and the time at which it was signed.

Form of warrant

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

and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

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

(a) the form of warrant completed by the applicant; and

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

Attachment

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

Presumption

(9) If:
(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and

(b) the form of warrant signed by the magistrate is not produced in evidence; the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 119

Contempt

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

(a) the person insults, disturbs or uses insulting language towards another person; and
(b) the person knows the other person is a commissioner exercising the powers or performing the functions or duties of a commissioner.

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

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

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

(3) A person must not:

(a) interrupt an inquiry by a commission; or

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

Penalty: 30 penalty units.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 120

Protection of commissioners and witnesses

Protection of commissioners

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

Rights and obligations of witnesses

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

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

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

Interfering with witness is an offence

(3) A person must not:

(a) use violence to or inflict injury on; or

(b) cause or procure violence, damage, loss or disadvantage to; or

(c) cause or procure the punishment of;

another person (the witness) because the witness will appear or did appear as a witness at an inquiry or because of any submission or evidence the witness gave to a commission.

Interference with a witness' employment

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

Interference with employee who proposes to give evidence

(5) An employer must not dismiss or threaten to dismiss an employee or prejudice, or threaten to prejudice, an employee in

his or her employment, because the employee proposes to appear as a witness or to give a submission or evidence at an inquiry by a commission.
Offences

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

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

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

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

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

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

(8) In any proceedings arising out of subsection (5), the employer has the burden of proving that the employee was not dismissed, prejudiced

in his or her employment or threatened with dismissal or prejudice because the

employee proposed to appear as a witness or give evidence at an inquiry by a commission, if it is established that:

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

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

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

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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).

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 126

Resignation

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

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 131AA

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

(1) Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an

action, and what conditions (if any) to attach to an approval, he or she must:

(a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:

(i) the decision the Minister proposes to make; and

(ii) if the Minister proposes to approve the taking of the action--any conditions the Minister proposes to attach to the approval; and

(b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

(2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):

(a) a copy of whichever of the following documents applies to the action:

(i) an assessment report;
(ii) a 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

(c) in the case of information referred to in paragraph (2)(b) or (c)--any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.

(4) The Minister must not provide under subsection (2):

(a) a copy of so much of a document as:

(i) is an exempt document under subparagraph 33(a)(i) of the Freedom of Information Act 1982 (documents affecting national security, defence or international relations); or

(ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(ii) the Minister is

satisfied contains information that is commercial-in-confidence; or

(b) information that:

(i) is of such a nature

that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a) (i); or

(ii) the Minister is

satisfied is commercial-in-confidence.

(5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:

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

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

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

(d) the information is not readily discoverable.

(6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1) (b).

(7) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to:

(a) the Minister's decision under section 133 whether or not to approve, for the purposes of a controlling provision, the taking of the action; and

(b) if the decision is to approve, for the purposes of a controlling provision, the taking of the action, and the Minister decides, under section 134, to attach conditions to the approval--the Minister's decision under section 134 to attach those conditions to the approval.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999
- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 133

Grant of approval

Approval

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

(1A) If the referral of the proposal to take the action included alternative proposals relating to any of the matters referred to in subsection 72(3), the Minister may approve, for the purposes of subsection (1), one or more of the alternative proposals in relation to the taking of the action.

Content of approval

(2) An approval must:

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

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

Persons who may take action covered by approval

(2A) An approval granted under this section is an approval of the taking of the action specified in the approval by any of the following persons:

- (a) the holder of the approval;
- (b) a person who is authorised, permitted or requested by the holder of the approval, or by another person with the consent or agreement of the holder of the approval, to take the action.

Notice of approval

(3) The Minister must:

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

Limit on publication of approval

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

- (a) is:

- (i) an exempt document under section 47 of the Freedom of Information Act 1982 (trade secrets etc.); or
- (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

(b) the Minister believes it is in the national interest not to provide.

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

Notice of refusal of approval

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

Note: Under section 13 of the Administrative Decisions (Judicial Review) Act 1977, the person may request reasons for

the refusal, and the Minister must give them.

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

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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

(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) conditions requiring the preparation, submission for approval by the Minister, and implementation of a plan for managing the impacts of the approved action on a matter protected by a

provision of Part 3 for which the approval has effect such as a plan for conserving habitat of a species or ecological community; and

(f) conditions requiring specified environmental monitoring or testing to be carried out; and

(g) conditions requiring compliance with a specified industry standard or code of practice; 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.

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.

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.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

- SECT 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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- SECT 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.

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- SECT 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

(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 infor