

Whale Protection Act 1980

Act No. 92 of 1980 as amended

Consolidated as in force on 19 August 1999

(includes amendments up to Act No. 92 of 1999)

This Act has uncommenced amendments
For uncommenced amendments, see the endnotes
[Note: This Act is to be repealed by No. 92 of 1999]

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An Act to provide for the preservation, conservation and protection of whales and other cetacea

Part I—Preliminary

1 Short title *[see Note 1]*

This Act may be cited as the *Whale Protection Act 1980*.

2 Commencement *[see Note 1]*

This Act shall come into operation on a date to be fixed by Proclamation.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

agreement includes a treaty or convention.

aircraft means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy, but does not include a hovercraft.

Australia includes all the Territories.

Australian aircraft means an aircraft that is in Australian control or is registered in accordance with the Air Navigation Regulations as an Australian aircraft.

Australian vessel means a vessel that is in Australian control or:

- (a) not being a hovercraft—is an Australian boat within the meaning of the *Fisheries Management Act 1991*; or

- (b) being a hovercraft—would be an Australian boat within the meaning of that Act if it were a boat within the meaning of that Act.

contravention, in relation to this Act, a provision of this Act, or a condition of a permit, includes a failure to comply with this Act, that provision or that condition.

exclusive economic zone means the exclusive economic zone, within the meaning of the *Seas and Submerged Lands Act 1973*, adjacent to the coast of Australia or the coast of an external Territory.

foreign aircraft means an aircraft other than an Australian aircraft.

foreign country means a country other than Australia.

foreign person means a person other than an Australian citizen.

foreign vessel means a vessel other than an Australian vessel.

in Australian control means in the control or possession of one or more of any of the following:

- (a) the Commonwealth (including an arm of the Defence Force) or a State or Territory;
- (b) a corporation established for a public purpose by or under a law of the Commonwealth or of a State or Territory;
- (c) a company or other body corporate incorporated under a law of a State or Territory, being a company or other body corporate in which the Commonwealth has a controlling interest.

inspector means:

- (a) a person appointed as an inspector under section 21; or
- (b) a person referred to in section 22.

interfere, in relation to a whale, includes harass, chase, herd, tag, mark or brand.

licensed commercial fishing operations means fishing operations conducted for profit or gain in accordance with a licence or permit in force under a law of the Commonwealth or of a State or Territory.

permit means a permit in force under this Act.

prescribed waters means waters in respect of which regulations made by virtue of section 7 are in force.

scientific body means a person, body or association specified in a notice in force under section 8.

take, in relation to a whale, means take, catch or capture.

this Act includes the regulations.

treat, in relation to a whale, means any operation of dividing or cutting up, or of extracting any product from, the whale.

vessel means a vessel or boat of any description, and includes:

- (a) a hovercraft; and
- (b) any floating structure.

waters to which this Act applies means:

- (a) any waters of the sea other than the coastal waters of a State or internal Territory; and
- (b) so much of the coastal waters of a State or internal Territory as are prescribed waters.

whale means any member of the sub-order *Mysticeti* or *Odontoceti* of the order *Cetacea*, and, except in subsection 9(2), includes a part of a whale or any product derived from a whale.

(2) A reference in this Act to the unlawful importation of a whale shall be read as a reference to the importation of a whale in contravention of regulations made under the *Customs Act 1901*.

(3) Where a provision of this Act requires a notice to be served on a person by or on behalf of the Minister, the notice may be served on that person personally, by post or as prescribed.

(4) A reference in this Act to an offence against this or any other Act, to an offence against a provision of this Act or to a contravention of this Act shall be read as including a reference to an offence created by section 6, 7 or 7A of the *Crimes Act 1914* in relation to this Act or that other Act, as the case may be.

(5) Section 15B of the *Acts Interpretation Act 1901* does not apply in relation to this Act.

(6) For the purposes of this Act, the coastal waters of a State or internal Territory are:

- (a) the part or parts of the territorial sea of Australia that is or are adjacent to that State or Territory, other than any part referred to in subsection (7); and

- (b) any marine or tidal waters that are on the landward side of any part of the territorial sea of Australia and are adjacent to that State or Territory but are not within the limits of a State or Territory.

(7) If at any time the breadth of the territorial sea of Australia is determined or declared to be greater than 3 nautical miles, the coastal waters of a State or internal Territory do not include, for the purposes of this Act, any part of the territorial sea of Australia that would not be within the limits of that territorial sea if the breadth of that territorial sea had continued to be 3 nautical miles.

(8) Any part of the territorial sea of Australia that is adjacent to the Jervis Bay Territory shall, for the purposes of subsection (6), be deemed to be adjacent to New South Wales.

(9) A reference in this Act to a member of the Australian Federal Police or to a member of a police force shall be read as including a reference to a special member of the Australian Federal Police.

4 Repeal of Whaling Act

The *Whaling Act 1960* is repealed.

5 Crown to be bound

This Act binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

6 Application of Act

(1) This Act extends to every external Territory and, except so far as the contrary intention appears, to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

(2) Subject to subsection (3):

- (a) to the extent that a provision of this Act has effect in and in relation to any waters or place beyond the outer limits of the exclusive economic zone, that provision applies only in relation to Australian citizens domiciled in Australia, Australian aircraft and Australian vessels and the members of the crew (including persons in charge) of Australian aircraft and Australian vessels; and
- (b) to the extent that a provision of this Act has effect in and in relation to Australia or any waters other than waters referred to in paragraph (a), that provision applies in relation to all persons, aircraft and vessels, including foreign persons, foreign aircraft and foreign vessels.

(3) This Act has effect subject to the obligations of Australia under international law, including obligations under any agreement between Australia and another country or countries.

7 Prescribed waters

With the agreement of the Governor of a State or of the Administrator of the Northern Territory, the regulations may declare the whole or a specified part of the coastal waters of that State or Territory, as the case may be, to be prescribed waters for the purposes of this Act.

8 Scientific bodies

The Minister may, by notice published in the *Gazette*, declare that a specified person, or a specified body or association of persons, corporate or unincorporate, is a scientific body for the purposes of this Act.

Part II—Preservation, conservation and protection of whales

9 Killing, taking etc. of whales prohibited

(1) A person shall not:

- (a) in waters to which this Act applies, kill, injure, take or interfere with any whale; or
- (b) treat any whale that has been killed or taken in contravention of this Act or has been unlawfully imported.

Penalty:

- (a) on summary conviction—\$5,000; or
- (b) on conviction on indictment—\$100,000.

(2) A person who has in his or her possession a whale or part of a whale, or a product derived from a whale, where the whale has been killed or taken in contravention of this Act or has been unlawfully imported, is guilty of an offence punishable on conviction:

- (a) on summary conviction—by a fine not exceeding \$5,000; or
- (b) on conviction on indictment—by a fine not exceeding \$100,000.

(3) A person who, in waters to which this Act applies, takes a live whale otherwise than in accordance with a permit and otherwise than in contravention of this Act shall release the whale forthwith.

Penalty:

- (a) on summary conviction—\$5,000; or
- (b) on conviction on indictment—\$10,000.

(4) Subsection (3) does not apply where, after the whale in question was taken, it was killed in circumstances of a kind referred to in subsection (5).

(5) Subsections (1) and (2) do not apply in relation to any action by a person if:

- (a) the action in question was done in accordance with a permit;
- (b) the action in question was reasonably necessary to avoid loss of human life, injury to any person or damage to any vessel or aircraft or to any structure affixed to or resting on the sea-bed;
- (c) in the case of killing, injuring, taking or interfering with a whale—the action in question was done while the person was engaged in licensed commercial fishing operations and was:
 - (i) unavoidable in the course of those operations; or
 - (ii) reasonably necessary to avoid damage to a vessel or equipment used in those operations;or the action in question was done in a humane manner and was reasonably necessary to relieve or prevent suffering by that or any other whale; or
- (d) in the case of treating a whale—the action in question was reasonably necessary to prevent a risk to human health.

10 Action to be taken on killing, injuring, taking or treating whales

- (1) Subject to this section, where a person, otherwise than in contravention of this Act:
- (a) treats a whale that has been killed or taken in contravention of this Act;
 - (b) in waters to which this Act applies, kills, injures or takes a whale; or
 - (c) in waters to which this Act applies, treats a whale other than a whale that has been killed or taken in contravention of this Act;

the person shall:

- (d) as soon as practicable after the killing, injuring, taking or treatment, notify the Minister of the killing, injuring, taking or treatment;
- (e) within the time and in the manner prescribed, supply the Minister with the prescribed particulars of the killing, injuring, taking or treatment; and
- (f) in the case of the killing or treatment of a whale otherwise than in accordance with a permit—as soon as practicable after the killing or treatment, notify a scientific body of the killing or treatment and offer to enter into an arrangement with that body to make the whale or part or parts of the whale, as required by that body, available to that body for purposes of scientific research.

(2) Paragraph (1)(f) does not apply in relation to the killing or treatment of a whale in accordance with a permit.

(3) Subsection (1) does not apply in relation to the treatment of a whale if that subsection has been complied with in relation to the killing, injuring or taking of the whale.

(4) In this section, *notify* means notify by telephone, telegraph or radio.

Penalty: \$2,000.

11 Permits

(1) Subject to section 18, upon application made to the Minister in accordance with the appropriate form approved by the Minister, the Minister may, in his or her discretion, grant to a person a permit in writing authorizing the person to do any or all of the following acts in circumstances in which, but for the permit, they would constitute offences against this Act:

- (a) take whales for live display or kill or take whales for scientific or educational purposes;
- (b) kill or take whales in the course of and incidentally to licensed commercial fishing operations specified in the permit, being licensed commercial operations of a kind specified by the Minister for the purposes of this paragraph by notice published in the *Gazette*;
- (c) do, for specified scientific purposes, a specified act or acts constituting interference with whales;
- (d) have whales in his or her possession, or treat or otherwise deal with whales in a specified manner and for specified purposes connected with the preservation, conservation and protection of whales.

(2) A permit shall specify the class or classes of whales, and the number of whales, or the respective numbers of whales of each class, in relation to which it applies.

(3) A permit comes into force on a specified day or, if no day is specified, on the day on which it is granted, and remains in force, subject to this Act, until:

(a) in the case of a permit to do an act or acts included in a prescribed class of acts, the expiration of the prescribed period; or

(b) in any other case—the expiration of the day specified under subsection (4).

(4) A permit, other than a permit to which paragraph (3)(a) applies, shall specify as the day of the expiration of the permit a day within the period of 12 months commencing on the day on which the permit comes into force or, in the case of a permit that comes into force during the month of December in any year, a day not later than 31 December in the next succeeding year.

(5) The Minister shall cause registers showing particulars of permits in force from time to time to be kept at such places as the Minister directs.

(6) Nothing in this Act prevents a permit and an instrument of a like nature under a law of a State or Territory from being issued in the one instrument.

12 Conditions of permits

(1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).

(2) Subject to section 18, the Minister, may, by notice in writing served on the holder of a permit, vary or revoke a condition of the permit or impose further conditions.

(3) Without limiting the generality of subsections (1) and (2), conditions of a permit may include conditions relating to:

(a) the times between which, and the areas in which, a whale to which the permit relates may be killed or taken or interfered or dealt with; and

(b) the method of dealing with a whale to which the permit relates.

(4) The conditions of a permit may make different provision in relation to different whales or classes of whales.

13 Contravening conditions of permits

Where a condition of a permit is applicable to a person and the person contravenes that condition, he or she is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

14 Authorities under permits

(1) The holder of a permit may, either generally or as otherwise provided by the instrument of authority, give to a person written authority to do for him or her and on his or her behalf anything that may lawfully be done in accordance with the permit.

(2) Where the doing of any thing by a person is authorized by an authority given by the holder of a permit in accordance with subsection (1), the permit shall, for the purposes of this Act, be deemed to authorize the doing of that thing by that person.

(3) The giving of an authority under subsection (1) does not prevent the doing of any thing by the holder of the permit.

(4) Except as provided in this section, a permit does not authorize the doing of any thing by a person for or on behalf of the holder of the permit.

(5) A person who gives an authority in accordance with subsection (1) shall give to the Minister written notice of that fact within 14 days after giving the authority.

Penalty: \$1,000.

15 Transfer of permits

(1) The Minister may, in his or her discretion, on the application, in accordance with the appropriate form approved by the Minister, of the holder of a permit and of another person as proposed transferee, transfer the permit to that other person.

(2) Notice of the transfer of a permit under subsection (1) shall be published in the *Gazette*.

16 Suspension of permits

(1) The Minister may, in his or her discretion, by notice in writing served on the holder of a permit, suspend the permit for a specified period if he or she has reasonable grounds to suspect that circumstances exist by reason of which he or she would be empowered to cancel the permit.

(2) The Minister may at any time, in his or her discretion, by notice in writing served on the holder, revoke the suspension of a permit.

(3) The suspension of a permit, unless it sooner expires or is revoked, ceases:

(a) if proceedings for an offence against this Act are instituted against the holder within 4 months after the suspension:

(i) if the holder is convicted of that offence—on the expiration of 2 months after the date of the conviction; or

(ii) in any other case—on the completion of the proceedings; or

(b) in any other case—on the expiration of 4 months after the suspension.

(4) In subsection (3), *proceedings* does not include proceedings by way of appeal or review.

17 Cancellation of permits

Subject to section 18, the Minister may, in his or her discretion, by notice in writing served on the holder of a permit, cancel the permit if:

- (a) he or she is satisfied that there has been a contravention of a condition of the permit;
- (b) he or she is satisfied that the act or acts authorized by the permit may adversely affect a population of a particular species of whale; or
- (c) the holder of the permit, or the holder of an authority given under section 14 by the holder of the permit, has been convicted of an offence against:

(i) this Act, the *Fisheries Act 1952*, the *Continental Shelf (Living Natural Resources) Act 1968*, the *Fisheries Management Act 1991* or regulations made under this Act or either of those Acts; or

(ii) a law of a State or Territory relating to fisheries, to the preservation, conservation and protection of whales or to the living natural resources of the continental shelf of Australia.

18 Public notices in relation to permits

(1) A person making an application for the grant of a permit, for the variation or revocation of a condition of a permit or for the imposition of a further condition of a permit shall publish, in accordance with subsection (7), a notice:

- (a) setting out particulars of the application in accordance with the directions of the Minister; and
- (b) inviting interested persons to lodge with the Minister, not later than a specified date (not being earlier than 30 days after the date of publication of the notice), at a place approved by the Minister for the purposes of this paragraph, written comments in respect of the application.

(2) The Minister shall cause to be served on the applicant copies of any comments received in respect of the application under subsection (1) and afford the applicant a reasonable opportunity to submit to the Minister a reply in writing.

(3) Before deciding whether or not to grant the application, the Minister shall give due consideration to any comments received in respect of the application under subsection (1) and any reply received under subsection (2).

(4) Where the Minister proposes to cancel a permit or, otherwise than in pursuance of an application, to vary or revoke a condition of a permit or impose a further condition of a permit, the Minister shall:

(a) cause the publication, in accordance with subsection (7), of a notice:

(i) setting out particulars of the permit and the grounds for the proposal; and

(ii) inviting interested persons to lodge with the Minister, not later than a specified date (not being earlier than 30 days after the date of publication of the notice), at a specified place, written comments in respect of the proposal; and

(b) cause a copy of the notice to be served on the holder of the permit and invite him or her to submit to the Minister his or her comments in writing.

(5) The Minister shall cause to be served on the holder of the permit copies of any comments received under paragraph (4)(a) and afford him or her a reasonable opportunity to submit to the Minister a reply in writing.

(6) Before deciding whether or not to take action with respect to the proposal referred to in subsection (4), the Minister shall give due consideration to any comments received under that subsection and any reply received under subsection (5).

(7) For the purposes of this section, a notice shall be published:

(a) in each State and internal Territory in a newspaper circulating generally in that State or Territory; and

(b) if the Minister thinks fit—in an external Territory in such manner as the Minister determines.

19 Fees

The following fees are payable:

(a) in respect of the grant or the transfer of a permit to take a whale for live display—\$1,000 or such other amount as is prescribed;

(b) in respect of the grant or the transfer of any other permit—\$25 or such other amount as is prescribed;

- (c) in respect of the variation or revocation of a condition of a permit, or the imposition of a further condition of a permit, where the variation, revocation or imposition is as a result of an application made by the holder of the permit—\$25 or such other amount as is prescribed.

Part III—Administration

20 Delegation

(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to the Director of National Parks and Wildlife or any other person any of his or her powers under this Act, other than this power of delegation and the power under section 16 or 17 to suspend or cancel a permit.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

21 Appointment of inspectors

The Minister may, by instrument in writing, appoint a person as an inspector.

22 Inspectors *ex officio*

By force of this section, any member of the Australian Federal Police or of the police force of a Territory is an inspector.

23 Identity cards

(1) The Minister may cause to be issued to an inspector, other than a member of a police force, an identity card in a form approved by the Minister.

(2) A person who ceases to be an inspector shall forthwith return his or her identity card to the Minister.

(3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding \$100.

24 Powers of arrest

(1) An inspector may, without warrant, arrest any person, if the inspector believes on reasonable grounds:

- (a) that the person is committing or has committed an offence against this Act; and

(b) that proceedings against the person by summons would not be effective.

(2) Where an inspector (other than a member of a police force who is in uniform) arrests a person under subsection (1), he or she shall:

- (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of a police force; or
- (b) in any other case—produce his or her identity card for inspection by that person.

(3) Where a person is arrested under subsection (1), an inspector shall forthwith bring the person, or cause him or her to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.

(4) Nothing in this section prevents the arrest of a person in accordance with any other law.

25 General powers of inspectors

(1) An inspector may search any aircraft or vessel if he or she believes on reasonable grounds that there is in or on that aircraft or vessel:

- (a) a whale in respect of which an offence against this Act has been committed; or
- (b) anything that will afford evidence as to the commission of an offence against this Act;

and for that purpose stop or detain that aircraft or vessel.

(2) An inspector may:

- (a) require any person whom he or she finds committing or whom he or she suspects on reasonable grounds of having committed an offence against this Act to state his or her full name and usual place of residence; and
- (b) require any person whom he or she suspects on reasonable grounds of having done an act in respect of which the person is required to hold a permit to produce such a permit or evidence of the existence and contents of such a permit.

(3) Where an inspector believes on reasonable grounds that a vessel has been used or otherwise involved in the commission of an offence against this Act, he or she may bring, or require the person in charge of the vessel to bring, the vessel to a place in Australia (whether or

not the vessel has previously been brought to another place or places in Australia in accordance with this section).

(4) An inspector may, for the purposes of this Act, require the person in charge of a vessel to give information concerning the vessel and her crew and any person on board the vessel.

(5) Where an inspector (other than a member of a police force who is in uniform) stops, or proposes to search or detain, an aircraft or vessel, he or she shall:

- (a) in the case of a member of a police force—produce, for inspection by the person in charge of that aircraft or vessel, written evidence of the fact that he or she is a member of a police force; or
- (b) in any other case—produce his or her identity card for inspection by that person;

and, if he or she fails to do so, he or she is not authorized to search or detain that aircraft or vessel.

(6) Where an inspector (other than a member of a police force who is in uniform) makes a requirement of a person under this section, he or she shall:

- (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of a police force; or
- (b) in any other case—produce his or her identity card for inspection by that person;

and, if he or she fails to do so, that person is not obliged to comply with the requirement.

(7) A person who, without reasonable excuse, fails to comply with a requirement made of him or her by an inspector under this section is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

26 Seizure and forfeiture

(1) Where a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of any vehicle, aircraft, vessel or article used or otherwise involved in the commission of the offence.

(2) An inspector may seize any vehicle, aircraft, vessel or article that he or she believes on reasonable grounds to have been used or otherwise involved in the commission of an offence against this Act and may retain it until the expiration of a period of 60 days after the seizure, or,

if proceedings for an offence against this Act in the commission of which it may have been used or otherwise involved are instituted within that period, until the proceedings are terminated.

(3) The Minister may authorize a vehicle, aircraft, vessel or article seized under subsection (2) or anything on, in or attached to such a vehicle, aircraft or vessel to be released to its owner, or to the person from whose possession it was seized, either unconditionally or on such conditions as he or she thinks fit, including conditions as to the giving of security for payment of its value if it is forfeited.

(4) A vehicle, aircraft, vessel or article forfeited under this section may be sold or otherwise disposed of as the Minister thinks fit.

(5) An inspector may seize any whale in respect of which he or she believes on reasonable grounds that an offence against this Act has been committed.

(6) Where a whale has been seized under subsection (5), the Minister may cause it to be retained or disposed of.

27 Assaulting etc. inspectors

A person who assaults or threatens an inspector acting in the performance of his or her duties under this Act is guilty of an offence and is punishable:

- (a) on summary conviction—by a fine not exceeding \$1,000, or imprisonment for a period not exceeding 6 months, or both; or
- (b) on conviction on indictment—by a fine not exceeding \$5,000, or imprisonment for a period not exceeding 2 years, or both.

28 Personation of inspectors

A person who, by words or conduct, falsely represents that he or she is an inspector is guilty of an offence and is punishable:

- (a) on summary conviction—by a fine not exceeding \$1,000, or imprisonment for a period not exceeding 6 months, or both; or
- (b) on conviction on indictment—by a fine not exceeding \$5,000, or imprisonment for a period not exceeding 2 years, or both.

29 Officers and employees of governments and authorities

The Governor-General may make arrangements with the Governor of a State, the Administrator of the Northern Territory or the Administration of an external Territory for the performance of functions and the exercise of powers under this Act by officers or employees of that State or Territory or of an authority of that State or Territory, as the case may be.

30 Programs etc. relating to whales

The Minister may cause, make arrangements for, or co-operate with any government, organization or person in:

- (a) the formulation and implementation of programs;
- (b) the carrying out of research; and
- (c) the dissemination of information;

relating to the preservation, conservation and protection of whales, including the disposal of, and the carrying out of research relating to, whales that are stranded, killed accidentally or taken incidentally to licensed commercial fishing operations.

Part IV—Miscellaneous

31 Foreign whaling vessels not to enter Australian ports

(1) A person in charge of a foreign whaling vessel who, without having obtained the written permission of the Minister, brings the vessel into a port in Australia or in an external Territory is guilty of an offence punishable:

- (a) on summary conviction—by a fine not exceeding \$5,000; or
- (b) on conviction on indictment—by a fine not exceeding \$50,000.

(2) Subsection (1) does not apply where:

- (a) the vessel was brought into the port at a time when the vessel was engaged in operations that included the carrying of cargo, in the ordinary course of trade, between Australia and another country, between Australia and an external Territory, between an external Territory and a country other than Australia, among the States, between a State and a Territory or between two external Territories;
- (b) the vessel was brought into the port in accordance with the provisions of a prescribed agreement between Australia and another country or countries;
- (c) the vessel was brought into the port under the direction of a person exercising powers under a law of the Commonwealth or of a State or Territory;
- (d) the vessel was being lawfully imported into Australia or an external Territory, as the case may be, by or on behalf of a person who was, or persons each of whom was, at the time when the vessel was brought into the port:

- (i) a resident of Australia or of an external Territory; or
- (ii) a company incorporated in Australia or in an external Territory; or
- (e) an unforeseen emergency rendered it necessary to bring the vessel into a port in Australia or in an external Territory in order to secure the safety of the vessel or of human life.

(3) In this section:

Australia does not include an external Territory.

foreign whaling vessel means a foreign vessel designed, equipped or used for any or all of the following:

- (a) killing, taking, treating or carrying whales;
- (b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying whales.

32 Liability of person in charge of vessel or aircraft

(1) The person in charge of a vessel or aircraft, or any plant or equipment, used or otherwise involved in the commission of an offence against this Act (in this section referred to as the *primary offence*) is guilty of an offence against this section punishable upon conviction as if it were the primary offence.

(2) A person may be convicted of an offence against this section, whether or not the identity of the person who committed the primary offence appears, or has appeared, from the evidence in the proceedings in respect of the offence against this section or in any other proceedings, but a person shall not be convicted both of an offence against this section and of the primary offence.

(3) The provisions of section 26 relating to forfeiture apply where a person is convicted of an offence against this section in like manner as they would apply if that person had been convicted of the primary offence.

33 Prosecution of offences

(1) An offence against this Act, other than an offence referred to in subsection (2), shall be prosecuted summarily.

(2) Where proceedings for an offence against section 9, section 27, section 28 or subsection 31(1), or an offence against subsection 32(1) in relation to such an offence, are brought in a court of summary jurisdiction, the court may commit the defendant for trial or to be otherwise dealt with in accordance with law or, with the consent of the defendant and of the

prosecutor, may, if the court is satisfied that it is proper to do so, determine the proceedings summarily.

34 Averments in relation to offences

In any proceedings for an offence against this Act, an averment of the prosecutor, contained in the information or complaint, that, at a specified time:

- (a) the defendant was in waters to which this Act applies; or
- (b) a whale, vessel, aircraft or article referred to in the information or complaint was in waters to which this Act applies;

is *prima facie* evidence of the matter averred.

35 Applications for review

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions by the Minister under section 11 (other than decisions to specify kinds of commercial operations under paragraph (1)(b)) and under sections 12, 15, 16 and 17.

(2) In subsection (1), *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

36 Vesting of whales in Commonwealth

A whale that is killed or taken by a person in waters to which this Act applies, whether or not in contravention of this Act, vests, by force of this section, in the Commonwealth, but the Commonwealth is not liable in any action, suit or proceedings in respect of any matter relating to a whale at any time before the taking of possession of the whale by the Commonwealth or by an agent of the Commonwealth.

37 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act or an agreement between Australia and another country or countries relating to whales.

(2) Without limiting the generality of subsection (1), regulations may be made:

- (a) providing for functions and powers to be conferred, and duties to be imposed, upon inspectors;
- (b) regulating in a Territory (other than the Northern Territory) trade and commerce in whales;

- (c) providing for the transportation, treatment and disposal of whales taken in waters to which this Act applies or unlawfully imported;
- (d) providing for the methods or equipment by which whales may be killed, taken or interfered with otherwise than in contravention of this Act;
- (e) providing for the gathering and dissemination of information relating to whales; and
- (f) providing for any matter incidental or connected with any of the foregoing.

(3) The regulations may provide, in respect of an offence against the regulations, for the imposition of:

- (a) a fine not exceeding \$2,000; or
- (b) a fine not exceeding \$200 for each day during which the offence continues.

(4) The limitation imposed by subsection (3) on the penalties that may be prescribed by the regulations does not prevent the regulations from requiring a person to make a statutory declaration.

Notes to the **Ошибка! Текст указанного стиля в документе отсутствует.**

Note 1

The *Whale Protection Act 1980* as shown in this consolidation comprises Act No. 92, 1980 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Whale Protection Act 1980	92, 1980	6 June 1980	1 Oct 1981 (<i>see Gazette</i> 1981, No. G39)	
Fisheries Legislation (Consequential Provisions) Act 1991	163, 1991	10 Nov 1991	Ss. 1 and 2: Royal Assent Remainder: 3 Feb 1992 (<i>see Gazette</i> 1992, No. GN1)	—

Maritime Legislation Amendment Act 1994	20, 1994	15 Feb 1994	S. 15: 1 Aug 1994 (<i>see</i> <i>Gazette</i> 1994, No. S289)	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 5 (items 154- 156): Royal Assent (<i>a</i>)	—
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Schedule 5 (items 1-4): [<i>see (b)</i> and Note 2]	Sch. 1 (item 12) [<i>see</i> Note 2], Sch. 5 (items 2-4) [<i>see</i> Note 2]

(a) The *Whale Protection Act 1980* was amended by Schedule 5 (items 154-156) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(b) The *Whale Protection Act 1980* was amended by Schedule 5 (item 1) only of the *Environmental Reform (Consequential Provisions) Act 1999*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences when the *Environment Protection and Biodiversity Conservation Act 1999* commences. [see Note 2]

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S.	am. No. 163, 1991; No. 20, 1994
3.....	
S.	am. No. 20, 1994
6.....	
S.	am. No. 43, 1996
9.....	
S.	am. No. 43, 1996
11.....	
Ss. 13-	am. No. 43, 1996
16.....	
S.	am. No. 163, 1991; No. 43, 1996
17.....	
S.	am. No. 43, 1996
18.....	
S.	am. No. 43, 1996
20.....	
Ss. 23-	am. No. 43, 1996
28.....	

Note 2

Environmental Reform (Consequential Provisions) Act 1999 (No. 92, 1999)

The following amendments commence when No. 91 of 1999 comes into operation (16 July 2000 if not proclaimed earlier):

Schedule 1

12 Parts 3 and 13 of the new Act do not apply to acts allowed by permit under the Whale Protection Act

If a permit in force under the *Whale Protection Act 1980* immediately before the commencement of the new Act allowed a person to do an act, Parts 3 and 13 of the new Act do not apply to the doing of the act by the person during the period for which the permit continues in force because of Part 2 of Schedule 5 to this Act.

Schedule 5

Part 1—Repeal

1 The whole of the Act

Repeal the Act.

Part 2—Saving and transitional provisions

2 Definitions

In this Part:

new Act means the *Environment Protection and Biodiversity Conservation Act 1999*.

Whale Act means the *Whale Protection Act 1980*.

3 Continued operation of permits

(1) Despite the repeal of the Whale Act:

- (a) a permit that was issued under that Act and was in force immediately before the repeal of that Act continues in force for the period for which it would have been in force if that Act had not been repealed; and

(b) that Act, and instruments (including regulations and authorities) made under that Act, as in force immediately before the repeal of that Act, continue to operate in relation to the permit and the action covered by the permit as if references in that Act to the Minister were references to the Minister administering Division 3 of Part 13 of the new Act.

(2) However, paragraph (1)(b) does not allow the transfer of the permit.

4 Continued appointment of inspectors

Inspectors

(1) An instrument appointing a person as an inspector that was in force under section 21 of the Whale Act immediately before the commencement of the new Act continues in force for the purposes of the new Act as if it had been made under section 396 of the new Act (so the person is appointed as an inspector under section 396 of the new Act).

Termination of appointments

(2) This item does not prevent the revocation of an instrument of appointment.

Identity cards for inspectors

(3) An identity card issued under section 23 of the Whale Act to a person who is appointed as an inspector for the purposes of the new Act because of this item continues in force for the purposes of the new Act as if it had been issued to the person under section 399 of the new Act.