

Statement of reasons for approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

I, GREG HUNT, Minister for the Environment, provide the following statement of reasons for my decision of 14 of October 2015, under subsection 130(1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the **EPBC Act**), to approve the proposed action by Adani Mining Pty Ltd to construct and operate a rail corridor approximately 310 km in length, including standard gauge rail and associated infrastructure, from approximately 70 km east of the Carmichael Mine, to the Port of Abbot Point, Queensland (EPBC 2013/6885).

A copy of this decision is available on the Department of the Environment's (the **Department**) website at: <http://epbcnotices.environment.gov.au/referralslist/referral-details/?id=437b7a12-4c67-e511-b4b8-005056ba00ab>.

Legislation

1. Relevant legislation is set out in Annexure A¹.

Background

2. On 29 May 2013, the Department received a referral from Adani Mining Pty Ltd (the **proponent**), under section 68 of the EPBC Act, to construct and operate a rail corridor approximately 310 km in length, including standard gauge rail and associated infrastructure, from approximately 70 km east of the Carmichael Mine, to the Port of Abbot Point, Queensland (EPBC 2013/6885) (the **proposed action**).
3. The referral was available for public comment for 10 business days from 30 May 2013. One public submission was received regarding the potential environmental impacts of the proposed action.
4. On 14 June 2013, the Queensland Coordinator-General, Mr Barry Broe, declared the North Galilee Basin Rail Project to be a 'coordinated project' under section 26(1)(a) of the *State Development and Public Works Organisation Act 1971* (Qld). This declaration initiated the statutory environmental impact statement process under Part 4 of that Act, which required the proponent to prepare an environmental impact statement (**EIS**).
5. On 27 June 2013, the proposed action was determined by the delegate of the then Minister for Sustainability, Environment, Water, Population and Communities to be a controlled action under section 75 of the EPBC Act, subject to the following controlling provisions:
 - a) section 12 and section 15A (World Heritage properties);
 - b) section 15B and section 15C (National Heritage places);
 - c) section 18 and section 18A (listed threatened species and communities);
 - d) section 20 and section 20A (listed migratory species);

¹ This legislation does not form part of my reasons but is provided as contextual background to my decision.

- e) section 23 and section 24A (Commonwealth marine areas); and
 - f) section 24B and section 24C (Great Barrier Reef Marine Park).
6. On 3 July 2013, the proposed action was determined by the delegate of the then Minister for Sustainability, Environment, Water, Population and Communities to be assessed by EIS under Part 8 of the EPBC Act.
 7. On 1 August 2013, the *Final Guidelines for an Environmental Impact Statement* for the proposed action were issued.
 8. The EIS was published from 16 December 2013 until 11 February 2014 for public comment.
 9. On 15 April 2014, the proponent submitted the additional information to the EIS (the **final EIS**) to the Department.
 10. On 15 May 2014, my delegate agreed to a request from the proponent to vary the proposed action. The variation involved a realignment of approximately 70 km of the rail corridor. For the purposes of the assessment of the acceptability of its impacts, the varied proposed action was considered in my decision on approval.
 11. On 3 July 2014, my delegate extended the final decision due date under section 130(1A) of the EPBC Act to 30 September 2014 to await the Queensland Coordinator-General's Assessment Report of the North Galilee Basin Rail Project (the **QCG report**).
 12. The Queensland Coordinator-General released the QCG report on 12 August 2014, recommending the action proceed subject to conditions.
 13. On 23 September 2014, my delegate made a decision to approve the action, subject to conditions, under section 130(1) and section 133 of the EPBC Act for the purposes of section 12 and section 15A; section 15B and section 15C; section 18 and section 18A; section 20 and section 20A; section 23 and section 24A; and section 24B and section 24C of the EPBC Act.
 14. On 21 September 2015, I agreed to treat the approval decision of 23 September 2014 as being, in law, no decision at all, because:
 - a) my delegate did not have regard to the approved conservation advice for the Ornamental Snake, as required by section 139(2) of the EPBC Act, which would mean that the approval decision is affected by a jurisdictional error;
 - b) a court would be likely to grant relief on this basis were the matter to come before it for adjudication; and
 - c) this project is directly and closely linked to the Carmichael Coal Mine and Rail Project (EPBC 2010/5736), in which the failure to consider the same approved conservation advice led to the approval of that project being set aside by the Federal Court with agreement of all parties, and reconsidering the North Galilee Basin Rail Project will avoid uncertainty and potential delay.

15. On 21 September 2015, I proposed to approve the proposed action subject to conditions, having regard to relevant information.
16. In accordance with sections 131 and 131AA of the EPBC Act, I invited comments from:
- a) the proponent;
 - b) the Commonwealth Minister for Industry, Innovation and Science, the Hon Christopher Pyne MP;
 - c) the Commonwealth Minister for Resources, Energy and Northern Australia, the Hon Josh Frydenberg MP;
 - d) the Commonwealth Minister for Infrastructure and Regional Development, the Hon Warren Truss MP; and
 - e) the Commonwealth Minister for Agriculture and Water Resources, the Hon Barnaby Joyce MP.
17. On 14 of October 2015, I approved, subject to conditions, the taking of the action under section 130(1) and section 133 of the EPBC Act for the purposes of section 12 and section 15A; section 15B and section 15C; section 18 and section 18A; section 20 and section 20A; section 23 and section 24A; and section 24B and section 24C of the EPBC Act.

Evidence or other material on which my findings were based

18. My decision to approve the proposed action was based on consideration of the final approval decision brief prepared by the Assessments and Policy Implementation Branch of the Department (**briefing material**) dated 12 October 2015. The brief included the following attachments which I considered as part of that brief:
- a) Proposed approval decision brief
 - A. Recommendation report (September 2014)
 - B. Additional information to the recommendation report
 - C. Proposed approval decision
 - 1. Proposed approval decision notice
 - 2. Proposed approval decision notice showing tracked changes from previous approval decision (of 23 September 2014)
 - D. Letters to the proponent and relevant Commonwealth Ministers
 - E. Proponent's assessment documentation and additional information
 - 1. Environmental impact statement
 - 2. Additional information to the environmental impact statement
 - F. Queensland Coordinator-General's Assessment Report

- G. Submissions on environmental impact statement
 - H. Relevant recovery plans, threat abatement plans, approved conservation advices and Statement of Outstanding Universal Value for the Great Barrier Reef World Heritage Area
 - 1. Recovery plans
 - 2. Threat abatement plans
 - 3. Approved conservation advices
 - 4. Additional approved conservation advices
 - 5. Statement of Outstanding Universal Value for the Great Barrier Reef World Heritage Area
 - I. Line area advice – heritage advice from the Wildlife, Heritage and Marine Division
 - J. Timeline of the assessment process
 - K. Additional information received since previous approval
 - 1. Additional information from the proponent and environmental groups in relation to the Carmichael Coal Mine and Rail Project (EPBC 2010/5736)
 - 2. Plans provided to the Department to comply with previous approval
 - Draft Biodiversity Offset Strategy (dated 9 February 2015)
 - Draft Species Management Plan Carmichael Rail Network – NGBR (dated 29 May 2015)
 - L. Legislative provisions
- b) Addendum to proposed approval decision brief
- A. Letters to the proponent and Commonwealth Ministers
- c) Responses to invitation to comment
- 1. Response received on behalf of Minister Truss
 - 2. Response received on behalf of Minister Joyce
 - 3. Response received on behalf of Minister Pyne and Minister Frydenberg
 - 4. Response received from the proponent
- d) Approval decision notice

- e) Approval decision notice showing tracked changes from proposed approval decision of 21 September 2015
- f) Letters advising relevant parties of the decision
- g) Statement of reasons
- h) Approved conservation advice for Masked Owl (northern)

Findings on material questions of fact

Listed threatened species and ecological communities (section 18 and section 18A)

19. The following listed threatened species and ecological communities were considered for assessment:
 - a) Black Ironbox (*Eucalyptus raveretiana*) – Vulnerable;
 - b) King Bluegrass (*Dichanthium queenslandicum*) – Endangered;
 - c) Bluegrass (*Dichanthium setosum*) – Vulnerable;
 - d) Australian Painted Snipe (*Rostratula australis*) – Endangered;
 - e) Black-throated Finch (southern) (*Poephila cincta cincta*) – Endangered;
 - f) Squatter Pigeon (southern) (*Geophaps scripta scripta*) – Vulnerable;
 - g) Koala (combined populations of Queensland, New South Wales and the Australian Capital Territory) (*Phascolarctos cinereus*) – Vulnerable;
 - h) Ornamental Snake (*Denisonia maculata*) – Vulnerable;
 - i) Brigalow (*Acacia harpophylla* dominant and co-dominant) – Endangered;
 - j) Natural Grasslands of the Queensland Central Highlands and the northern Fitzroy Basin – Endangered; and
 - k) Semi-evergreen vine thickets of the Brigalow Belt (North and South) and Nandewar Bioregions – Endangered.
20. Based on information provided in the proponent's EIS and final EIS, I found that the listed threatened species and ecological communities described at paragraph 19 were either found on site of the proposed action during surveys, or potential habitat for the species has been determined to occur on the site through habitat mapping undertaken by the proponent.
21. I found that the listed threatened species and ecological communities listed at paragraph 19 are the only listed threatened species and ecological communities likely to be significantly impacted by the proposed action.
22. I accepted the information provided by the proponent in the final EIS in relation to the modelling of areas of habitat for listed threatened species and ecological communities in paragraph 19 that would be cleared as a result of the proposed action.

23. I noted that the proponent had committed to 'whole of project' disturbance limits (impacts as a result of construction, operation and decommissioning of the proposed action). These limits are outlined in the table below:

Listed threatened species or ecological community	Disturbance limits
Black Ironbox	175.4 hectares
King Bluegrass	263.3 hectares
Bluegrass	354.2 hectares
Australian Painted Snipe	45.6 hectares
Black-throated Finch (southern)	1836.2 hectares
Squatter Pigeon (southern)	1361.8 hectares
Koala (combined populations of Queensland, New South Wales and the Australian Capital Territory)	2047.6 hectares
Ornamental Snake	421.6 hectares
Brigalow (<i>Acacia harpophylla</i> dominant and co-dominant)	195.2 hectares
Natural Grasslands of the Queensland Central Highlands and the northern Fitzroy Basin	133.2 hectares
Semi-evergreen vine thickets of the Brigalow Belt (North and South) and Nandewar Bioregions	55.7 hectares

24. The proponent has committed to the implementation of a number of avoidance, mitigation and management measures to reduce impacts to listed threatened species and ecological communities in paragraph 19. These measures include, but are not limited to:
- restricting the extent of habitat clearing to the minimum area necessary for the construction and operation of the proposed action;
 - exclusion of workers and machinery from key habitat areas not subjected to clearing;
 - implementation of plans to manage weeds and pests, fire, erosion and sedimentation, lighting, noise and dust emissions and rehabilitation works during construction and operation.

25. I noted that the proponent has committed to undertaking a comprehensive survey of ecological values of the rail corridor prior to commencement of construction. These surveys will further define impact areas and inform finalisation of environmental management measures, a final offset proposal, fauna crossing strategy and subsequent vegetation clearing applications required under state legislation. Under the conditions I imposed, the findings of these surveys will lead to certain steps being required to be taken – for example, if pre-clearance surveys required by the state identify individuals of, or habitat for, other EPBC Act listed threatened species and ecological communities not previously identified and reported to the Department, the proponent must notify the Department and detail how those listed threatened species or ecological communities will be managed.
26. I imposed conditions of approval to limit clearing of habitat for those listed threatened species and ecological communities in paragraph 19 to the areas outlined in paragraph 23.
27. I imposed conditions of approval to ensure that the proponent implements measures to minimise the impacts of the proposed action on those listed threatened species and ecological communities in paragraph 19. The conditions require the proponent to develop plans to mitigate and manage the direct and indirect impacts of the proposed action, including the implementation of specific criteria for assessing the success of management measures against goals, and triggers for implementing corrective measures if criteria are not met within specified timeframes.
28. I considered that the clearing of habitat outlined in paragraph 23 would be a significant residual impact on those listed threatened species and ecological communities. In order to compensate for significant residual impacts, I imposed conditions of approval requiring the proponent to offset the impacts to habitat outlined in paragraph 23 or the actual impacts defined after detailed design and pre-clearance surveys were undertaken as outlined in paragraph 25.
29. I considered that the following listed threatened species have been identified, or have habitat, near the rail corridor but are unlikely to incur a significant impact as a result of the proposed action:
- a) *Ozothamnus eriocephalus* – Vulnerable;
 - b) Siah's Backbone (*Streblus pendulinus*) – Endangered;
 - c) Red Goshawk (*Erythrorhynchus radiatus*) – Vulnerable;
 - d) Masked Owl (northern) (*Tyto novaehollandiae kimberli*) – Vulnerable;
 - e) Northern Quoll (*Dasyurus hallucatus*) – Endangered;
 - f) Dunmall's Snake (*Furina dunmalli*) – Vulnerable;
 - g) Allan's Lerista (*Lerista allanae*) – Endangered;
 - h) Yakka Skink (*Egernia rugosa*) – Vulnerable; and
 - i) Green Sawfish (*Pristis zijsron*) – Vulnerable.

30. I noted that the proponent has committed to undertaking a comprehensive survey of ecological values of the rail corridor prior to commencement of construction. To address the possibility that the further surveys indicate the presence of the species in paragraph 29, I imposed conditions of approval requiring the proponent to notify the Department and detail how they will be managed.
31. I accepted the Department's advice that the following listed threatened species were unlikely to be significantly impacted by the proposed action:
- a) White-bellied Storm-Petrel (Tasman Sea) (*Fregetta grallaria grallaria*) – Vulnerable;
 - b) Star Finch (eastern) (*Neochmia ruficauda ruficauda*) – Endangered;
 - c) Blue Whale (*Balaenoptera musculus*) – Endangered;
 - d) Grey-headed Flying-fox (*Pteropus poliocephalus*) – Vulnerable;
 - e) Greater Large-eared Horseshoe Bat (*Rhinolophus philippinensis* (large form)) – Endangered;
 - f) Bare-rumped Sheath-tail Bat (*Saccolaimus saccolaimus nudiclunatus*) – Critically Endangered;
 - g) Water Mouse (*Xeromys myoides*) – Vulnerable;
 - h) *Cycas ophiolitica* – Endangered;
 - i) *Aristida granitica* – Endangered;
 - j) *Omphalea celata* – Vulnerable;
 - k) Mount Cooper Striped Lerista (*Lerista vittata*) – Vulnerable;
 - l) Great White Shark (*Carcharodon carcharias*) – Vulnerable;
 - m) Whale Shark (*Rhincodon typus*) – Vulnerable;
 - n) Humpback Whale (*Megaptera novaeangliae*) – Vulnerable;
 - o) Leatherback Turtle (*Dermochelys coriacea*) – Endangered;
 - p) Loggerhead Turtle (*Caretta caretta*) – Endangered;
 - q) Green Turtle (*Chelonia mydas*) – Vulnerable;
 - r) Hawksbill Turtle (*Eretmochelys imbricata*) – Vulnerable;
 - s) Flatback Turtle (*Natator depressus*) – Vulnerable; and
 - t) Olive Ridley Turtle (*Lepidochelys olivacea*) – Endangered.
32. In making my decision I considered the proponent's EIS and final EIS, the Department's recommendation report and additional information to the recommendation report,

additional information provided by the proponent and other parties and the Department's briefing material.

33. Based on this information, I found that the proposed action would not have any unacceptable impacts on listed threatened species and ecological communities in view of all relevant avoidance, mitigation, management and compensation (offset) measures to be adopted.

Listed migratory species (section 20 and 20A)

34. I accepted the Department's advice that those species listed in paragraph 31 c, l, m, n, o, p, q, r, s and t are also listed migratory species. I also accepted the Department's advice that the Australian Painted Snipe (*Rostratula australis*) was removed from the list of migratory species effective 30 June 2015.

35. Based on information in the proponent's final EIS, the following listed migratory species were recorded from or considered likely to occur within the areas directly or indirectly impacted by the proposed action.

- a) Great Egret (*Ardea alba*) - wetland;
- b) Cattle Egret (*Ardea ibis*) - wetland;
- c) Caspian Tern (*Hydroprogne caspia*) - marine;
- d) Latham's Snipe (*Gallinago hardwickii*) - wetland;
- e) White-bellied Sea-Eagle (*Haliaeetus leucogaster*) - terrestrial;
- f) White-throated Needletail (*Hirundapus caudacutus*) - terrestrial;
- g) Rainbow Bee-eater (*Merops ornatus*) - terrestrial;
- h) Glossy Ibis (*Plegadis falcinellus*) - wetland;
- i) Rufous Fantail (*Rhipidura rufifrons*) - terrestrial;
- j) Fork-tailed Swift (*Apus pacificus*) - marine;
- k) Little Tern (*Sternula albifrons*) - marine;
- l) Barn Swallow (*Hirundo rustica*) - terrestrial;
- m) Black-faced Monarch (*Monarcha melanopsis*) - terrestrial;
- n) Spectacled Monarch (*Symposiachrus trivirgatus*) - terrestrial;
- o) Satin Flycatcher (*Myiagra cyanoleuca*) - terrestrial;
- p) Common Sandpiper (*Actitis hypoleucos*) - wetland;
- q) Sharp-tailed Sandpiper (*Calidris acuminata*) - wetland;
- r) Red-necked Stint (*Calidris ruficollis*) - wetland;

- s) Greater Sand Plover (*Charadrius leschenaultii*) - wetland;
 - t) Lesser Sand Plover (*Charadrius mongolus*) - wetland;
 - u) Grey-tailed Tattler (*Heteroscelus brevipes*) - wetland;
 - v) Bar-tailed Godwit (*Limosa lapponica*) - wetland;
 - w) Eastern Curlew (*Numenius madagascariensis*) - wetland;
 - x) Little Curlew (*Numenius minutus*) - wetland;
 - y) Whimbrel (*Numenius phaeopus*) - wetland;
 - z) Grey Plover (*Pluvialis squatarola*) - wetland;
 - aa) Marsh Sandpiper (*Tringa stagnatilis*) - wetland;
 - bb) Terek Sandpiper (*Xenus cinereus*) - wetland;
 - cc) Dugong (*Dugong dugon*) - marine;
 - dd) Estuarine Crocodile (*Crocodylus porosus*) - marine;
 - ee) Indo-Pacific Humpback Dolphin (*Sousa chinensis*) - marine; and
 - ff) Australian Snubfin Dolphin (*Orcaella heinsohni*) – marine
36. I accepted the Department's advice that the White-bellied Sea-eagle (*Haliaeetus leucogaster*) was removed from the list of migratory species effective 30 June 2015.
37. The proponent's final EIS identifies that migratory species are likely to be directly impacted by the proposed action as a result of habitat loss and degradation, disturbance to lifecycles and introduced species, or indirectly impacted as a result of impacts to water quality, sedimentation and pollution and the facilitated impacts of port development and shipping.
38. The proponent has committed to the implementation of a number of avoidance, mitigation and management measures to reduce impacts to listed migratory species in paragraph 35, including but not limited to:
- a) avoiding construction works during the breeding season and wet season where possible; and
 - b) implementation of plans to manage weeds and pests, fire, erosion and sedimentation, lighting, noise and dust emissions and rehabilitation works during construction and operation.
39. I accepted the Department's advice that the proposed action is unlikely to significantly impact any listed migratory species through substantially modifying, destroying or isolating areas of important habitat, result in invasive species that are harmful to the migratory species becoming established in an area of important habitat, or seriously

disrupting the lifecycle of an ecologically significant proportion of a population of a species.

40. In making my decision I considered the proponent's EIS and final EIS, the Department's recommendation report and additional information to the recommendation report, additional information provided by the proponent and other parties and the Department's briefing material.
41. Based on this information, I found that the proposed action would not have a significant impact on listed migratory species.

World Heritage properties (section 12 and section 15A)

Great Barrier Reef World Heritage Area

42. The Great Barrier Reef World Heritage Area (**GBRWHA**) was inscribed on the World Heritage List in 1981 for all four of the natural heritage criteria specified in the United Nations Educational, Scientific and Cultural Organisation's 2012 *Operational Guidelines for the Implementation of the World Heritage Convention*; criteria (vii), (viii), (ix) and (x).
43. The current natural heritage criteria for World Heritage properties are that they:
 - vii) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;
 - viii) be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;
 - ix) be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals; and
 - x) contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.
44. I noted the Statement of Outstanding Universal Value (**OUV**) for the Great Barrier Reef, as appended to the Department's briefing material.
45. The port component of the proponent's mine, rail and port development was referred and approved separately as the Abbot Point Terminal 0 Project (EPBC 2011/6194). As such, the proposed action does not directly impact the GBRWHA.
46. I considered that there is potential for indirect impacts on the GBRWHA associated with construction impacts in the catchment of the GBRWHA, including through the removal and degradation of riparian vegetation with the potential to disturb bed and bank substrates, leading to localised erosion, increased turbidity and sediment transport to downstream habitats affecting water quality in the GBRWHA.
47. I considered that the introduction of contaminants from construction machinery, chemicals such as oils, fuels and lubricants, and wastes entering waterways and being

transported downstream may impact water quality within the GBRWHA. Changes to vegetation cover and the introduction of hard surfaces may increase runoff from the construction footprint. Increasing flows in waterways could potentially lead to scouring, bank erosion and changes to the geomorphology of surrounding waterways. These erosive processes also lead to increased sediment loads in waterways and the potential for sedimentation downstream.

48. In addition to water quality impacts, I considered that the construction and operation of the proposed action may impact the world heritage values of the GBRWHA through impacts to visual amenity, migratory birds and marine mammals. Potential impacts to migratory birds and marine mammals are discussed at paragraph 39.
49. The proponent has committed to the implementation of measures to manage erosion and sedimentation, and the introduction of weeds, during construction within the rail corridor. In addition, I noted that the proponent has proposed the implementation of an Acid Sulphate Soils Management Plan and Water Quality Management Plan.
50. The proponent has concluded that, with the implementation of the proposed management measures and management plans, it is unlikely that loss, degradation or other impact on the world heritage values of the GBRWHA would result from the construction or operation of the proposed action.
51. I considered it necessary and convenient to impose conditions of approval requiring the development of management plan/s detailing how the world heritage values of the GBRWHA will be managed.
52. I made the following findings against the natural heritage criteria for World Heritage properties:
 - vii) the criterion states: *contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;*

with the conditions of approval I imposed, I found that the proposed action will not unacceptably impact on the world heritage values of the GBRWHA as it is unlikely to substantially impact on visual amenity (both above and below the ocean surface), seabirds, dugongs, whales, dolphins or marine turtles;
 - viii) the criterion states: *be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;*

given the proposed action does not include shipping or anchoring of vessels or dredging, and with the proposed mitigation measures to limit sediment movement, I found the proposed action is unlikely to unacceptably impact on the world heritage values of the GBRMHA as it is unlikely to substantially impact on coral or marine hydrodynamic processes;
 - ix) the criterion states: *be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of*

terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals;

given the proposed action does not include shipping or anchoring of vessels or dredging, and with the proposed mitigation measures to limit downstream sediment movement, I found the proposed action is unlikely to unacceptably impact on the world heritage values of the GBRWHA as it is unlikely to substantially impact on coral reef diversity, seagrass meadows or migratory species;

- x) the criterion states: *contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation;*

based on the assessment of impacts to listed threatened species and listed migratory species, I found that the proposed action is unlikely to unacceptably impact on the world heritage values of the GBRWHA through impacts on threatened species from the point of view of science and conservation.

53. I accepted the Department's advice that the proposed action would not be inconsistent with the comprehensive strategic assessment of the Great Barrier Reef World Heritage Area and adjacent coastal zone conducted under Part 10 of the EPBC Act or the Reef 2050 Long-Term Sustainability Plan.
54. In making my decision I considered the proponent's EIS and final EIS, the Department's recommendation report and additional information to the recommendation report, additional information provided by the proponent and other parties and the Department's briefing material.
55. Based on this information, I found that the proposed action would not have any unacceptable impacts on the world heritage values of the GBRWHA in view of all relevant avoidance, mitigation and management measures to be adopted.

National Heritage places (section 15B and 15C)

Great Barrier Reef National Heritage Place

56. In May 2007, the Great Barrier Reef was placed on the National Heritage List. This list comprises natural and cultural places that contribute to our national identity, providing a tangible link to past events, processes and people.
57. The Great Barrier Reef was one of 15 World Heritage properties included in the National Heritage List in 2007. The Great Barrier Reef National Heritage place has national heritage values in respect of the following national heritage criteria, which are prescribed in Regulation 10.01A of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) for the purposes of section 324D of the EPBC Act:
- i. the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;

- ii. the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
- iii. the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
- iv. the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
 - i. a class of Australia's natural or cultural places; or
 - ii. a class of Australia's natural or cultural environments;
- v. the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group.

58. The heritage values that cause the Great Barrier Reef National Heritage place to meet the above criteria (its national heritage values), are the same heritage values which cause it to meet the world heritage criteria set out above.

59. Therefore, I considered that the impacts to the Great Barrier Reef National Heritage place are commensurate to the impacts from the proposed action on the GBRWHA. Mitigation and management measures equally apply to the Great Barrier Reef National Heritage place.

60. Consistent with the discussion on World Heritage properties above, I found that the proposed action would not have any unacceptable impacts on the the national heritage values of the Great Barrier Reef National Heritage place.

Commonwealth marine areas (section 23 and section 24A)

61. The Commonwealth marine area is any part of the sea, including the waters, seabed, and airspace, within Australia's exclusive economic zone and/or over the continental shelf of Australia, that are not State or Northern Territory waters.

62. The Commonwealth marine area generally stretches from 3 to 200 nautical miles from the coast. Marine protected areas are marine areas that are recognised to have high conservation value.

63. As discussed above, the proposed action does not include the construction and operation of the associated port infrastructure at the Port of Abbot Point.

64. At its closest point, the Commonwealth marine area is approximately 6 km offshore from the proposed action. As such, I considered that potential impacts are limited to potential reductions in water quality and the facilitated impacts of increased shipping through the Commonwealth marine area.

65. I considered that the construction and operation of the proposed action may indirectly impact the Commonwealth marine area through the removal and degradation of riparian

vegetation with the potential to disturb bed and bank substrates, leading to localised erosion, increased turbidity and sediment transport to downstream habitats.

66. I noted that the proponent has committed to the development and implementation of an Erosion and Sediment Control Plan. In addition, construction adjacent to the coast will be designed to occur outside of the wet season, reducing the risk of additional sedimentation from flooding events.
67. I noted that facilitated impacts of the proposed action within the Commonwealth marine area, such as shipping impacts, have been assessed as part of the associated Abbot Point Terminal 0 Project (EPBC 2011/6194). I approved that project on 10 December 2013.
68. Based on the distance from the proposed action and the likely magnitude of potential impacts, I found that the proposed action would not have any unacceptable impacts on the Commonwealth marine environment.

Great Barrier Reef Marine Park (section 24B and section 24C)

69. Areas of the Great Barrier Reef have been progressively included in the Commonwealth Great Barrier Reef Marine Park (GBRMP) since the late 1970s. Today, almost the entire Great Barrier Reef ecosystem is included within the GBRMP, which extends over 2300 km along the coast of Queensland and covers approximately 344 400 km².
70. The GBRMP is a multiple use marine park, supporting a wide range of uses, including: commercial marine tourism; fishing; ports and shipping; recreation; scientific research; and Indigenous traditional use.
71. I considered that potential impacts to the GBRMP are commensurate to the impacts to the GBRWHA. Consistent with the discussion on World Heritage properties above, I found that the proposed action would not have any unacceptable impacts on the GBRMP.

Cumulative impacts

72. I noted the proponent's cumulative impact assessment that considered the potential environmental, social and economic cumulative and consequential impacts of four rail proposals, three Abbot Point terminal proposals and seven coal mines. The proponent considered that the loss of habitat for listed threatened species and ecological communities and listed migratory species, and increased levels of noise on migratory birds in the Caley Valley Wetland as a result of the proposed action to be of relevance cumulatively with other projects considered.
73. As discussed in the relevant sections above, I found that the proposed action would not have any unacceptable impacts on listed threatened species and ecological communities, in view of all relevant avoidance, mitigation and compensation (offset) measures to be adopted. I also found that the proposed action would not have a significant impact on listed migratory species.

Greenhouse gas emissions

74. The proponent provided information on greenhouse gas (GHG) emissions in Volume 1, Chapter 11 of the EIS and Volume 1, Section 12 of the final EIS. The proponent conducted an assessment of Scope 1 emissions and Scope 2 emissions as a result of the proposed action for both construction and operation phases
75. Scope 1 (direct) emissions—includes the release of GHG emissions as a direct result of activities undertaken at a facility. They are emissions over which the entity has a high level of control. The proponent considered that the combustion of fuels such as diesel by vehicles and plant and equipment which they own or have operational control over (for both construction and operation) and vegetation removal during construction to be Scope 1 emissions. This was estimated to be 1,335,228 tonnes of carbon dioxide equivalent (t CO₂-e) during construction and 57,524,382 t CO₂-e over the life of operations.
76. Scope 2 (energy direct) emissions—includes the release of GHG emissions from the generation of purchased electricity, steam, heating or cooling consumed by a facility, but do not form part of the facility. Scope 2 emissions are indirect emissions that entities can easily measure and significantly influence through energy efficiency measures. The proponent considered that consumption of electricity sourced from the grid during operations to be Scope 2 emissions. This was estimated to be 12,929,760 t CO₂-e over the life of operations.
77. The *National Greenhouse and Energy Reporting Act 2008* (Cth) (**NGER Act**) prescribes a single, national framework for corporations to report on GHG emissions, energy consumption and energy production data. The *NGER Measurement Determination 2008* made under subsection 10(3) of the NGER Act sets out the principles, methods and criteria for the estimation of GHG emissions reported by corporations that meet specific legislative emissions and/or energy thresholds. For each facility under its operational control, the NGER Act requires a corporation to identify whether its emissions are Scope 1 or Scope 2 emissions. The proponent identified that GHG emissions associated with the project may need to be reported under the NGER Act.
78. The NGER Act does not require reporting of Scope 3 (indirect) emissions. The proponent characterised Scope 3 emissions as emissions from waste disposal, transporting coal overseas and burning of coal.
79. I found that Scope 1 and Scope 2 emissions are likely to occur in Australia if the proposed action is approved. Australia has set targets to reduce GHG emissions through a climate change policy framework that includes the Emission Reduction Fund. In addition, the proponent has outlined a range of mitigation measures and commitments to address potential impacts of Scope 1 and Scope 2 emissions in the EIS and final EIS. The QCG report considered the proponent's mitigation measures and commitments were appropriate to manage potential impacts. Therefore, while the proposed action will likely have Scope 1 and Scope 2 GHG emissions, I considered this will occur within a national framework of modelled reductions in net GHG emissions.

80. I considered that the quantity of overseas GHG emissions, from the related Carmichael Coal Mine and Rail Project (EPBC 2010/5736) proceeding, is subject to a range of variables. They include whether the coal transported by the proposed action replaces coal currently provided by other suppliers, whether the coal is used as a substitute for other energy sources, and the efficiency of the coal burning power plants. The international multilateral environment agreements, the United Nations Framework Convention on Climate Change and its Kyoto Protocol, provide mechanisms to address climate change globally. Under these agreements, the nations responsible for burning the coal transported by the proposed action would be expected to address the emissions from transport by rail, shipping and combustion of the coal in their own countries.
81. I found that direct and consequential GHG emissions associated with the project will be managed and mitigated/offset through national and international emissions control frameworks operating in Australia and within countries that are the import market for coal transported by the proposed action.

Additional considerations

82. In making my decision to approve the proposed action subject to conditions, I considered economic and social matters in accordance with section 136(1)(b) of the EPBC Act.
83. The proponent undertook a social impact assessment for the proposed action. I noted that matters considered included community and stakeholder engagement, workforce management, housing and accommodation, local business and industry content and community health and wellbeing.
84. The social impact assessment identified potential impacts relating to the:
- a. anti-social behaviour from non-resident, single male workforce;
 - b. shortage in housing supply and decreased housing affordability;
 - c. opportunities for local and regional businesses to supply goods and services to the project;
 - d. increased employment opportunities;
 - e. increased demand on regional services from non-resident population;
 - f. gradual increase in permanent population; and
 - g. potential increased demand on regional and local health and emergency services.
85. The proponent has proposed a range of measures to manage social impacts of the proposed action. I noted that the Queensland Coordinator-General has imposed conditions in his approval of the project that the proponent must report on community engagement during and immediately after construction.

86. Economic assessments undertaken by the proponent estimate that at a regional level, the proposed action is expected to generate a significant and positive economic impact in the Mackay, Isaac and Whitsunday region (**MIW region**) and Queensland.
87. The proposed action will involve a capital investment of approximately \$2.2 billion which includes capital expenditure on earthworks, drainage, bridges, road works, rail track and signalling, communications and construction management costs. Economic modelling estimates that the project will generate approximately 6,150 jobs (1,700 direct and 4,452 indirect) in the MIW region and just under 7,000 jobs (2,017 direct and 4,981 indirect) in total across Queensland during the peak of construction.
88. During the peak of construction modelling estimates that the project will contribute \$791 million to Gross Regional Product in the MIW region and \$909 million to Queensland's Gross State Product. Once fully operational, modelling estimates that the project will contribute \$209 million to Gross Regional Product in the MIW region per annum and \$369 million per annum to Queensland's Gross State Product.
89. I noted that the operation of the project action is also estimated to generate 1,097 (277 direct and 820 indirect) full time equivalent positions each year in the MIW region and 1,940 (369 direct and 1,571 indirect) full time equivalent positions each year across Queensland over the life of the project.
90. I noted that the Queensland Coordinator-General's report included an assessment of economic impacts, also based on the final EIS.

Precautionary principle – section 391

91. In making my decision whether to approve the proposed action, I considered the precautionary principle in accordance with section 391 of the EPBC Act - "that lack of full scientific certainty should be not used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage." My findings on the precautionary principle are outlined at paragraph 93b.

Principles of ecologically sustainable development and precautionary principle

92. The principles of ecologically sustainable development, as defined in section 3A of the EPBC Act are:
- 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; and
 - e) improved valuation, pricing and incentive mechanisms should be promoted.
93. In making my decision, I took into account the principles of ecologically sustainable development in accordance with section 136(2)(a) of the EPBC Act. In particular:
- a) I considered the likely impacts on the environment as a result of the proposed action are satisfactory in terms of their long-term and short-term economic, social and equitable impacts;
 - b) I considered that there was sufficient scientific information to conclude that the proposed action will be unlikely to result in unacceptable impacts to the relevant protected matters. The conditions of approval include measures to confirm potential impacts to listed threatened species and ecological communities through pre-clearance surveys and detail how impacts will be mitigated, managed and offset;
 - c) I imposed conditions of approval to allow for the proposed action to be delivered and operated in a sustainable way to protect matters of national environmental significance, and the environment for future generations;
 - d) I addressed the conservation of biological diversity and ecological integrity in relation to all of the controlling provisions for the proposed action through conditions that will avoid, mitigate and offset impacts to matters of national environmental significance;
 - e) I imposed conditions of approval that included measures to address improved valuation through requirements for offsets for any unavoidable residual significant impacts.

Person's environmental history

94. In deciding to approve the taking of the action with attached conditions, in accordance with section 136(4) of the EPBC Act, I considered whether the proponent is a suitable person to be granted an approval, having regard to:
- a) the person's history in relation to environmental matters;
 - b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
 - c) if the person is a body corporate that is a subsidiary of another body or company (the **parent body**)—the history in relation to environmental matters of the parent body and its executive officers.
95. The proponent advised the Department that its parent bodies (according to the definition in section 46 of the *Corporations Act 2001* (Cth)) are Adani Global Pte Ltd, Adani Global Limited and Adani Enterprises Ltd.

96. The Department conducted a search of its compliance database to see whether the proponent had an adverse compliance history in respect of the EPBC Act and advised me that no adverse environmental history was uncovered.
97. The proponent advised in its referral of May 2013 that it has never been the subject of proceedings under a Commonwealth, State or Territory environmental law. The proponent's environmental management system is certified to the relevant ISO standard (ISO 14001:2004).
98. I found that the proponent for the proposed action is the same proponent for the related Carmichael Coal Mine and Rail Project (EPBC 2010/5736). I was aware that in relation to the Carmichael Coal Mine and Rail Project, a number of submissions were provided to the Department, both during the public comment process, and subsequent to the Federal Court decision of 4 August 2015 to set aside the original approval decision, contained allegations about the environmental record of companies in the Adani Group and, in particular, Adani Ports and Special Economic Zone Limited (**Adani Ports**).
99. I was advised that in light of the matters raised in those submissions, the Department decided to write to the proponent on 24 August 2015 seeking further information about its history in relation to environmental matters, as well as that of its executive officers, parent bodies and their executive officers.
100. I considered the material provided to the Department, both from the proponent and other parties, and concluded that it does not establish any adverse environmental history for the proponent, its parent bodies, or, with a couple of exceptions, the executive officers of the proponent and its parent bodies. In relation to the matters raised in the public submissions for the related Carmichael Coal Mine and Rail Project (EPBC 2010/5736), the information provided by the proponent establishes that the company concerned in those allegations – Adani Ports – is not a parent body of the proponent.
101. I noted there has been a degree of commonality between the board membership of Adani Enterprises Ltd, which is a parent body of the proponent and is the global holding company for the Adani Group, and Adani Ports. I also noted that at least two of the current directors of Adani Enterprises were Directors of Adani Ports at the time of the allegations in question. I took this information into account when making my decision to grant approval to the proponent.
102. In considering the weight I attached to the Adani Ports matters, I had regard to the following factors:
- a) the nature of the allegations;
 - b) that the allegations have been or are in the process of being investigated and have been found either not to be substantiated or are yet to be resolved. No positive finding has yet to be made against Adani Ports, although a show cause notice has been issued in respect of one of the outstanding matters;
 - c) in respect of the matters yet to be finalised, Adani Ports denies the allegations.
103. I concluded that the proponent is a suitable person to be granted an approval.

Requirements for decisions about World Heritage Properties and National Heritage places – section 137 and 137A of the EPBC Act

104. In accordance with section 137 of the EPBC Act, I was satisfied that granting the approval, and the conditions of the approval, were not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles. A plan of management for the GBRWHA has not been prepared under section 316 or section 321 of the EPBC Act. Further detail on my deliberations in this respect is provided at paragraphs 42 to 55 and based on that information I concluded that approval of the action would not be inconsistent with the World Heritage Convention or the Australian World Heritage management principles.
105. In accordance with section 137A of the EPBC Act, I was satisfied that granting the approval, and the conditions of the approval, were not inconsistent with National Heritage Management principles. The Commonwealth has not reached agreement with any party in relation to the management of the National Heritage values of the Great Barrier Reef National Heritage place. A management plan for the Great Barrier Reef National Heritage place has not been prepared under section 324S or section 324X of the EPBC Act. Further detail on my deliberations in this respect is provided at paragraphs 56 to 60.

Listed threatened species and ecological communities considerations – section 139 of the EPBC Act

106. Section 139(1) of the EPBC Act requires that in deciding whether to approve a proposed action for which listed threatened species and ecological communities is a controlling provision, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the Convention on Biological Diversity (CBD), the Convention on Conservation of Nature in the South Pacific (**Apia Convention**) or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

CBD

107. The objectives of the CBD, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.
108. I considered the CBD's ultimate aim of conservation of listed threatened species in the wild when attaching the specific conditions for listed threatened species requiring mitigation, management and compensation (offset) measures.
109. I was briefed by the Department on Australia's obligations under the CBD and their implementation through the EPBC Act. As noted in paragraphs 19 to 33, I concluded that the proposed action will not have any unacceptable impacts on listed threatened species and ecological communities, and on that basis I am satisfied that my decision is therefore not inconsistent with Australia's obligations under the CBD.

110. Condition 23 requires the proponent to make the management plans for listed threatened species and ecological communities publically available to ensure equitable sharing of information and improved knowledge relating to biodiversity.
111. I was satisfied that my decision to approve the proposed action subject to conditions is not inconsistent with Australia's obligations under the CBD.

Apia Convention

112. The Apia Convention was suspended with effect from 13 September 2006, however, I considered that my decision to approve the proposed action, and the decisions I attached to the condition, would not be inconsistent with the convention which has the general aim of conserving biodiversity.

CITES

113. The proposed action has no implications for CITES as it does not involve international trade in endangered species of wild fauna and flora.

Approved conservation advices

114. I found that the following approved conservation advices were relevant to the proposed action:
- a) Threatened Species Scientific Committee (2008). *Approved Conservation Advice for Eucalyptus raveretiana (Black Ironbox)*. Commonwealth of Australia, Canberra;
 - b) Threatened Species Scientific Committee (2013). *Approved Conservation Advice for Dichanthium queenslandicum (King Bluegrass)*. Commonwealth of Australia, Canberra;
 - c) Threatened Species Scientific Committee (2008). *Approved Conservation Advice for Dichanthium setosum*. Commonwealth of Australia, Canberra;
 - d) Threatened Species Scientific Committee (2013). *Approved Conservation Advice for Rostratula australis (Australian Painted Snipe)*. Commonwealth of Australia, Canberra;
 - e) Threatened Species Scientific Committee (2008). *Approved Conservation Advice for Geophaps scripta scripta (Squatter Pigeon (southern))*. Commonwealth of Australia, Canberra; and the revised draft Conservation Advice for *Geophaps scripta scripta (Squatter Pigeon (southern))*;
 - f) Threatened Species Scientific Committee (2012). *Approved Conservation Advice for Phascolarctos cinereus (combined population in Queensland, New South Wales and the Australian Capital Territory) (koala Northern Designatable Unit)*. Commonwealth of Australia, Canberra;
 - g) Threatened Species Scientific Committee (2014). *Approved Conservation Advice for Denisonia maculata (Ornamental Snake)*. Commonwealth of Australia, Canberra;

- h) Threatened Species Scientific Committee (2013). *Approved Conservation Advice for the Brigalow (Acacia harpophylla dominant and co-dominant) ecological community*. Commonwealth of Australia, Canberra; and
 - i) Threatened Species Scientific Committee (2008). *Approved Conservation Advice for Natural Grasslands of the Queensland Central Highlands and the northern Fitzroy Basin*. Commonwealth of Australia, Canberra.
115. In accordance with section 139(2) of the EPBC Act I had regard to those approved conservation advices in approving the proposed action.
116. I noted that the following approved conservation advices were attached to the relevant briefing material provided to me by the Department:
- a) Threatened Species Scientific Committee (2008). *Approved Conservation Advice for Ozothamnus eriocephalus*. Commonwealth of Australia, Canberra;
 - b) Threatened Species Scientific Committee (2014). *Approved Conservation Advice for Furina dunmallii (Dunmall's Snake)*. Commonwealth of Australia, Canberra;
 - c) Threatened Species Scientific Committee (2008). *Approved Conservation Advice for Lerista allanae (Allan's Lerista)*. Commonwealth of Australia, Canberra;
 - d) Threatened Species Scientific Committee (2014). *Approved Conservation Advice for Egernia rugosa (Yakka Skink)*. Commonwealth of Australia, Canberra;
 - e) Threatened Species Scientific Committee (2008). *Approved Conservation Advice for Pristis zijsron (Green Sawfish)*. Commonwealth of Australia, Canberra; and
 - f) Threatened Species Scientific Committee (2015). *Approved Conservation Advice for Tyto novaehollandiae kimberli (Masked Owl (northern))*. Commonwealth of Australia, Canberra.
117. Whilst I was not required to under section 139(2) of the EPBC Act, I had regard to those approved conservation advices in approving the proposed action.

Recovery plans

118. I found that the following recovery plans were relevant to the proposed action.
- a) Black-throated Finch Recovery Team, Department of Environment and Climate Change (NSW) and Queensland Parks and Wildlife Service. (2007). *National recovery plan for the black-throated finch southern subspecies Poephila cincta cincta*. Report to the Department of the Environment and Water Resources, Canberra. Department of Environment and Climate Change (NSW), Hurstville and Queensland Parks and Wildlife Service, Brisbane;
 - b) McDonald, W.J.F. (2010). *National recovery plan for the "Semi-evergreen vine thickets of the Brigalow Belt (North and South) and Nandewar Bioregions" ecological community*. Report to the Department of the Environment, Water, Heritage and the Arts, Canberra. Queensland Department of Environment and Resource Management, Brisbane;

- c) Director of National Parks 2010. *Norfolk Island Region Threatened Species Recovery Plan*. Department of the Environment, Water, Heritage and the Arts, Canberra;
- d) Department of Environment and Resource Management 2012. National recovery plan for the red goshawk *Erythrotriorchis radiatus*. Report to the Department of Sustainability, Environment, Water, Population and Communities, Canberra. Queensland Department of Environment and Resource Management, Brisbane;
- e) Woinarski, J.C.Z. (2004). National Multi-species Recovery plan for the Partridge Pigeon [eastern subspecies] *Geophaps smithii smithii*, Crested Shrike-tit [northern (sub)species] *Falcunculus (frontatus) whitei*, Masked Owl [north Australian mainland subspecies] *Tyto novaehollandiae kimberli*; and Masked Owl [Tiwi Islands subspecies] *Tyto novaehollandiae melvillensis*, 2004 - 2009. Northern Territory Department of Infrastructure Planning and Environment, Darwin; and
- f) Hill B.M. and Ward S.J. (2010). National Recovery Plan for the Northern Quoll *Dasyurus hallucatus*. Department of Natural Resources, Environment, The Arts and Sport, Darwin.

119. In accordance with section 139(1)(b) of the EPBC Act, I found that approval of the proposed action, and the conditions of the approval, would not be inconsistent with those recovery plans.

Threat abatement plan

120. I found that the following threat abatement plans were relevant to the proposed action:

- a) Department of the Environment, Water, Heritage and the Arts (2008). *Threat abatement plan for competition and land degradation by rabbits*. Commonwealth of Australia, Canberra;
- b) Department of the Environment and Heritage (2005). *Threat Abatement Plan for Predation, Habitat Degradation, Competition and Disease Transmission by Feral Pigs*. Commonwealth of Australia, Canberra;
- c) Department of the Environment, Water, Heritage and the Arts (2008). *Threat abatement plan for predation by the European red fox*. Commonwealth of Australia, Canberra;
- d) Department of the Environment (2015). *Threat abatement plan for predation by feral cats*. Commonwealth of Australia, Canberra;
- e) Department of the Environment and Heritage (2006). *Threat abatement plan to reduce the impacts of tramp ants on biodiversity in Australia and its territories*. Commonwealth of Australia, Canberra;
- f) Department of Sustainability, Environment, Water, Population and Communities (2012). *Threat abatement plan to reduce the impacts on northern Australia's biodiversity by the five listed grasses*. Commonwealth of Australia, Canberra; and

- g) Department of Sustainability, Environment, Water, Population and Communities (2011). *Threat abatement plan for the biological effects, including lethal toxic ingestion, caused by cane toads*. Commonwealth of Australia, Canberra.

121. In accordance with section 139(1)(b) of the EPBC Act, I found that approval of the proposed action, and the conditions of the approval, would not be inconsistent with those threat abatement plans.

Listed migratory species considerations – section 140 of the EPBC Act

122. Section 140 of the EPBC Act requires that in deciding whether to approve a proposed action for which listed migratory species is a controlling provision, and what conditions to attach to such an approval, the Minister must not act inconsistently with the Convention on Migratory Species (Bonn Convention), the Agreement between the Government of Japan and the Government of Australia for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (JAMBA), the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (CAMBA) or the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds (ROKAMBA); or an international agreement approved under subsection 209(4) of the EPBC Act.

123. I found that the proposed action is unlikely to have significant impacts on migratory species, and that the approval the proposed action, and the conditions of the approval, would therefore not be inconsistent with any of these conventions.

Bioregional plans – section 176(5) of the EPBC Act

124. I accepted the Department's advice that no bioregional plans are relevant to the proposed action.

Considerations in deciding on conditions – section 134 of the EPBC Act

125. In deciding on conditions, I took into consideration the information provided by the proponent, and whether the conditions are a cost effective means of achieving the object of the conditions.

126. I considered the conditions of approval are necessary or convenient to protect, repair and/or mitigate the impacts on matters protected by Part 3 of the EPBC Act for which the approval has effect.

127. In deciding on conditions, I considered the conditions which the Queensland Coordinator-General imposed in the QCG report of August 2014, and those which the Queensland Coordinator-General (in that report) recommended to be imposed.

Conclusion

128. In deciding whether or not to approve the taking of the proposed action, I took into account (among other matters) the principles of ecologically sustainable development as required under section 136(2)(a) of the EPBC Act, and the precautionary principle as required under section 391 of the EPBC Act.

129. In light of my findings in paragraphs 19 to 127, I decided to approve, subject to conditions, the taking of the proposed action for the purposes of section 12 and section 15A; section 15B and section 15C; section 18 and section 18A; section 20 and section 20A; section 23 and section 24A; and section 24B and section 24C of the EPBC Act.

Signed

A handwritten signature in blue ink, appearing to read 'Greg Hunt', is written over a horizontal dotted line. The signature is fluid and stylized.

The Hon Greg Hunt MP

Minister for the Environment

14 October 2015

Annexure A

Legislative extracts relevant to decisions under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)

The following relevant legislative provisions of the EPBC Act were taken into account when making my decision.

Legislative Considerations

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.

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.

Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

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

- (1) A person must not take an action that:
 - (a) has or will have a significant impact on the world heritage values of a declared World Heritage property; or
 - (b) is likely to have a significant impact on the world heritage values of a declared World Heritage property.
- Civil penalty:
 - (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
 - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (3) A property has **world heritage values** only if it contains natural heritage or cultural heritage. The **world heritage values** of the property are the natural heritage and cultural heritage contained in the property.
- (4) In this section:

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

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

13 What is a **declared World Heritage property**?

Properties on World Heritage List

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

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*.

Subdivision AA—National Heritage

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

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

Civil Penalty:

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

(2) A person must not, for the purposes of trade or commerce:

- (a) between Australia and another country; or
- (b) between 2 States; or
- (c) between a State and Territory; or
- (d) between 2 Territories;

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

Civil Penalty:

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

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

- (a) a Commonwealth area; or
- (b) a Territory;

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

Civil Penalty:

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

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

Civil Penalty:

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

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

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

Civil Penalty:

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

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

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

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

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

15C Offences relating to National Heritage places

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

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

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

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

(4) A person 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; or
 - (ii) a Territory; and
- (c) the action results or will result in a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place; and
- (e) the place is a National Heritage place.

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

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

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

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

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



Subdivision C—Listed threatened species and communities

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

Species that are extinct in the wild

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

Civil penalty:

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

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

Critically endangered species

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

Civil penalty:

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

Endangered species

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

Civil penalty:

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

Vulnerable species

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

Civil penalty:

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

Critically endangered communities

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

Civil penalty:

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

Endangered communities

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

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

Civil penalty:

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

18A Offences relating to threatened species etc.

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

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

- (1) A subsection of section 18 or 18A relating to a listed threatened species does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of any subsection of that section that relates to a listed threatened species.
- (2) A subsection of section 18 or 18A relating to a listed threatened ecological community does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of either subsection of that section that relates to a listed threatened ecological community.
- (3) A subsection of section 18 or 18A does not apply to an action if:
 - (a) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (b) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (c) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (4) A subsection of section 18 or 18A does not apply to an action, to the extent that it is covered by subsection 517A(7).

Subdivision D—Listed migratory species

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

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

Civil penalty:

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

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

- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

20A Offences relating to listed migratory species

- (1) A person 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*.

20B Certain actions relating to listed migratory species not prohibited

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



Subdivision F—Marine environment

23 Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the environment

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

Civil penalty:

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

Actions outside Commonwealth marine areas affecting those areas

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

- (a) has or will have a significant impact on the environment in a Commonwealth marine area; or
- (b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Civil penalty:

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

Fishing in State or Territory waters managed by Commonwealth

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

(a) that:

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

(b) that:

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

Civil penalty:

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

Exceptions to prohibitions

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

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

Exception—fishing in Commonwealth waters managed by State

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

Exception—fishing outside Commonwealth marine areas

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

24 What is a *Commonwealth marine area*?

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

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

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

24A Offences relating to marine areas

Actions in Commonwealth marine areas affecting the environment

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

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

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

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

Actions in Commonwealth marine areas likely to affect the environment

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

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

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

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

Actions outside Commonwealth marine areas affecting those areas

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

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

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

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

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.

Subdivision FA—Great Barrier Reef Marine Park

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

Actions in Great Barrier Reef Marine Park affecting the environment

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

Civil penalty:

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

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

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

Civil penalty:

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

Exceptions to prohibition

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

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

24C Offences relating to Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Part 9—Approval of actions

Division 1—Decisions on approval and conditions

Subdivision A—General

130 Timing of decision on approval

Basic rule

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

- day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;
- (d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public environment report or the finalised environmental impact statement, as the case requires;
 - (e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

*What is an **assessment report**?*

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

Notice of extension of time

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

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

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

Time does not run while further information is sought

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

131 Inviting comments from other Ministers before decision

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

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

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

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

131A Inviting public comment before decision

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

- (a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and

- (b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.

132 Requesting further information for approval decision

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

- (a) the person proposing to take the action;
- (b) the designated proponent of the action;
- (c) if a commission has conducted an inquiry under Division 7 of Part 8 relating to the action—the commission;
- (d) if:
 - (i) the action is to be taken in a State or self-governing Territory; and
 - (ii) a controlling provision for the action is in Division 1 of Part 3 (about matters of national environmental significance); and
 - (iii) the relevant impacts of the action have been assessed under a law of the State or Territory;the appropriate Minister of that State or Territory;
- (e) any other person the Minister considers appropriate.

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.



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.

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) if an election has been made, or is taken to have been made, under section 132B in respect of the approval—conditions requiring:
 - (i) an action management plan to be submitted to the Minister for approval, accompanied by the fee (if any) prescribed by the regulations; and
 - (ii) implementation of the plan so approved; and
- (f) conditions requiring specified environmental monitoring or testing to be carried out; and
- (g) conditions requiring compliance with a specified industry standard or code of practice; and
- (h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

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

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.



135 Certain approvals and conditions must not give preference

- (1) This section deals with the approval:
- (a) for the purposes of section 21 or 22A of a nuclear action:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation; or
 - (b) for the purposes of section 25 of an action that is prescribed for the purposes of subsection 25(1) and is taken:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or

- (ii) by a constitutional corporation.
- (2) The Minister must not grant the approval, or attach a condition to the approval, that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Subdivision B—Considerations for approvals and conditions

136 General considerations

Mandatory considerations

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

Factors to be taken into account

- (2) In considering those matters, the Minister must take into account:
 - (a) the principles of ecologically sustainable development; and
 - (b) the assessment report (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 information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and

- (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
- (g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice.

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

Person's environmental history

- (4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:
 - (a) the person's history in relation to environmental matters; and
 - (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
 - (c) if the person is a body corporate that is a subsidiary of another body or company (the **parent body**)—the history in relation to environmental matters of the parent body and its executive officers.

Minister not to consider other matters

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

137 Requirements for decisions about World Heritage

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

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

137A Requirements for decisions about National Heritage places

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

- (a) the National Heritage management principles; or
- (b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or
- (c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

139 Requirements for decisions about threatened species and endangered communities

- (1) In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:
 - (a) Australia's obligations under:

- (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (b) a recovery plan or threat abatement plan.
- (2) If:
- (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
 - (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;
- the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.

140 Requirements for decisions about migratory species

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

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

Division 2—Requirement to comply with conditions

142 Compliance with conditions on approval

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

Civil penalty:

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

- (1A) Subsection (1) does not apply to a person who is not the holder of the approval if:

- (a) the person was not informed of the condition; and
- (b) the person could not reasonably have been expected to be aware of the condition.

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

- (2) A contravention of a condition attached to an approval under this Part does not invalidate the approval.

142A Offence of breaching conditions on approval

- (1) A person whose taking of an action has been approved under this Part is guilty of an offence if:

- (a) the person takes an action or omits to take an action; and
- (b) the action or omission contravenes a condition attached to the approval and the person is reckless as to that fact; and
- (c) the action or omission results or will result in a significant impact on a matter protected by a provision of Part 3.

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

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

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

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

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

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

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

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

142B Strict liability offence for breach of approval condition

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

Penalty: 60 penalty units.

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

Note 2: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 3: 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 4: If a person takes an action on land that contravenes this section, a landholder may be guilty of an offence against section 496C.

- (2) Subsection (1) does not apply to a person who is not the holder of the approval if:
 - (a) the person was not informed of the condition; and
 - (b) the person could not reasonably have been expected to be aware of the condition.

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

(3) Subsection (1) is an offence of strict liability.

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



Division 3A—Approval process decisions not affected by listing events that happen after section 75 decision made

158A Approval process decisions not affected by listing events that happen after section 75 decision made

(1) In this section:

approval process decision means any of the following decisions:

- (a) a decision under section 75 whether an action is a controlled action;
- (b) a decision under section 75 whether a provision of Part 3 is a controlling provision for an action;
- (c) a decision under section 78 in relation to a decision referred to in paragraph (a) or (b) of this definition;
- (d) a decision under section 87 on the approach for the assessment of the impacts of an action;
- (e) a decision under section 133 whether to approve an action;
- (f) a decision under section 134 to attach conditions to an approval of an action;
- (g) a decision under section 143 to revoke, vary or add to conditions attached to an approval of an action;
- (h) any other decision made under a provision of this Chapter that is specified in the regulations.

listing event means any of the following events:

- (a) a property becoming a declared World Heritage property;
- (b) a change in the world heritage values of a declared World Heritage property;
- (c) a place becoming a National Heritage place;
- (d) a change in the National Heritage values included in the National Heritage List for a National Heritage place;
- (e) a place becoming a Commonwealth Heritage place;
- (f) a change in the Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place;
- (g) a wetland becoming a declared Ramsar wetland;
- (h) a change in the boundaries of any of the following:
 - (i) a World Heritage property;
 - (ii) a National Heritage place;
 - (iii) a Commonwealth Heritage place;
 - (iv) a declared Ramsar wetland;
 - (v) the Great Barrier Reef Marine Park;
- (i) a species becoming a listed threatened species;
- (j) an ecological community becoming a listed threatened ecological community;

- (k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment;
 - (l) a species becoming a listed migratory species;
 - (m) any other event of a kind specified in the regulations.
- (2) This section applies if:
- (a) the Minister has, before or after the commencement of this section, decided under section 75 (the **primary decision**) whether an action (the **relevant action**) is a controlled action (whether the decision is that the action is a controlled action, or that the action is not a controlled action); and
 - (b) at a time that is after the commencement of this section and after the primary decision was made, a listing event occurs.
- (3) The validity of the primary decision, or any other approval process decision made in relation to the relevant action before the listing event occurred, is not affected by the listing event, nor can it be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the listing event.
- (4) After the listing event occurs, the listing event is to be disregarded:
- (a) in making any further approval process decision in relation to the relevant action; and
 - (b) in doing anything under this Chapter, in relation to the relevant action, because of the making of an approval process decision in relation to the relevant action (whether that approval process decision is or was made before or after the listing event occurred).
- (5) This section has effect despite any other provision of this Act and despite any other law.

Part 11A—Interpretation

170D References to business days are references to Canberra business days

A reference in this Chapter to a business day is a reference to a day that is a business day in Canberra.

Division 2—Bioregional plans

176 Bioregional plans

- (1) The Minister may prepare a bioregional plan for a bioregion that is within a Commonwealth area. In preparing the plan, the Minister must carry out public consultation on a draft of the plan in accordance with the regulations.
- (2) The Minister may, on behalf of the Commonwealth, co-operate with a State or a self-governing Territory, an agency of a State or of a self-governing Territory, or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within a Commonwealth area.
- (3) The co-operation may include giving financial or other assistance.
- (4) A bioregional plan may include provisions about all or any of the following:
 - (a) the components of biodiversity, their distribution and conservation status;
 - (b) important economic and social values;

- (ba) heritage values of places;
 - (c) objectives relating to biodiversity and other values;
 - (d) priorities, strategies and actions to achieve the objectives;
 - (e) mechanisms for community involvement in implementing the plan;
 - (f) measures for monitoring and reviewing the plan.
- (4A) A bioregional plan prepared under subsection (1) or (2) is not a legislative instrument.
- (5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

Subdivision AA—Approved conservation advice

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

Minister to ensure there is approved conservation advice

- (1) The Minister must ensure that there is approved conservation advice for each listed threatened species (except one that is extinct or that is a conservation dependent species), and each listed threatened ecological community, at all times while the species or community continues to be listed.
- (2) For this purpose, **approved conservation advice** is a document, approved in writing by the Minister (and as changed from time to time in accordance with subsection (3)), that contains:
 - (a) a statement that sets out:
 - (i) the grounds on which the species or community is eligible to be included in the category in which it is listed; and
 - (ii) the main factors that are the cause of it being so eligible; and
 - (b) either:
 - (i) information about what could appropriately be done to stop the decline of, or support the recovery of, the species or community; or
 - (ii) a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community.

Changing approved conservation advice

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

Consultation with Scientific Committee

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

Publication requirements

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

Instruments of approval are not legislative instruments

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

269A Making or adopting a recovery plan

Application

- (1) This section applies only if the Minister's most recent decision under section 269AA in relation to a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community is to have a recovery plan for the species or community.

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

Making a plan

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

Making a plan jointly with a State or Territory

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

Content of a plan

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

Prerequisites to making a plan

- (5) Before making a recovery plan under subsection (2) or (3) for a listed threatened species or listed threatened ecological community, the Minister must:
 - (a) consult the appropriate Minister of each State and self-governing Territory in which the species or community occurs, and in which actions that the plan would provide for would occur, with a view to:
 - (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
 - (ii) making the plan jointly under subsection (3);unless the species or community occurs only in a Commonwealth area; and
 - (b) consider the advice of the Scientific Committee given under section 274; and
 - (c) consult about the plan and consider comments in accordance with sections 275 and 276.

Limits on making a plan

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

Adopting a State or Territory plan

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

Note: Section 277 requires that:

- (a) an adopted plan have the content required for a recovery plan by section 270; and
- (b) there has been adequate consultation in making the plan adopted; and
- (c) the Minister consult the Scientific Committee about the content of the plan.

Effect of adopting a plan

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

270 Content of recovery plans

- (1) A recovery plan must provide for the research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened species or listed threatened ecological community concerned so that its chances of long-term survival in nature are maximised.

- (2) In particular, a recovery plan must (subject to subsection (2A)):
- (a) state the objectives to be achieved (for example, removing a species or community from a list, or indefinite protection of existing populations of a species or community); and
 - (b) state criteria against which achievement of the objectives is to be measured (for example, a specified number and distribution of viable populations of a species or community, or the abatement of threats to a species or community); and
 - (c) specify the actions needed to achieve the objectives; and
 - (ca) identify threats to the species or community; and
 - (d) identify the habitats that are critical to the survival of the species or community concerned and the actions needed to protect those habitats; and
 - (e) identify any populations of the species or community concerned that are under particular pressure of survival and the actions needed to protect those populations; and
 - (f) state the estimated duration and cost of the recovery process; and
 - (g) identify:
 - (i) interests that will be affected by the plan's implementation; and
 - (ii) organisations or persons who will be involved in evaluating the performance of the recovery plan; and
 - (h) specify any major benefits to native species or ecological communities (other than those to which the plan relates) that will be affected by the plan's implementation; and
 - (j) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).

(2A) A recovery plan need only address the matters mentioned in paragraphs (2)(d), (e), (f), (g) and (h) to the extent to which it is practicable to do so.

- (3) In making a recovery plan, regard must be had to:
- (a) the objects of this Act; and
 - (b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and
 - (c) minimising any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development; and
 - (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community to which the plan relates; and
 - (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

270A Decision whether to have a threat abatement plan

Decision

- (1) The Minister may at any time decide whether to have a threat abatement plan for a threatening process in the list of key threatening processes established under section 183. The Minister must do so:
- (a) within 90 days of the threatening process being included in the list; and

- (b) within 5 years of the last decision whether to have a threat abatement plan for the process, if that decision was not to have a threat abatement plan for the process.

Basis for decision

- (2) The Minister must decide to have a threat abatement plan for the process if he or she believes that having and implementing a threat abatement plan is a feasible, effective and efficient way to abate the process. The Minister must decide not to have a threat abatement plan if he or she does not believe that.

Consultation before making a decision

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

Consulting others

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

Request may be made before listing

- (5) A request for advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process may be made before or after the process is included in the list of key threatening processes established under section 183.

Time for giving advice

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

Considering views expressed in consultation

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

Publishing decision and reasons

- (8) The Minister must publish in accordance with the regulations (if any):
 - (a) a decision whether or not to have a threat abatement plan for a key threatening process; and

- (b) the Minister's reasons for the decision.

Special rules for processes included in original list

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

270B Making or adopting a threat abatement plan

Application

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

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

Making a plan

- (2) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the process.

Making a plan jointly with a State or Territory

- (3) The Minister may make a written threat abatement plan for the purposes of reducing the effect of the process, jointly with the States and self-governing Territories in which the process occurs or with agencies of those States and Territories.

Content of a plan

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

Prerequisites to making a plan

- (5) Before making a threat abatement plan for the process under subsection (2) or (3), the Minister must:
 - (a) consult the appropriate Minister of each State and self-governing Territory in which the process occurs, with a view to:
 - (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
 - (ii) making the plan jointly under subsection (3);unless the process occurs only in a Commonwealth area; and
 - (b) consider the advice of the Scientific Committee given under section 274; and
 - (c) consult about the plan and consider comments in accordance with sections 275 and 276.

Limits on making a plan

- (6) The Minister must not make a threat abatement plan under subsection (2) for a process that occurs wholly or partly outside a Commonwealth area unless the Minister is satisfied that it is not reasonably practicable to make the plan:
 - (a) jointly with each of the States and self-governing Territories in which the process occurs; and

- (b) within 3 years of the decision to have the plan.

Adopting a State or Territory plan

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

Note: Section 277 requires that:

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

Effect of adopting a plan

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

271 Content of threat abatement plans

- (1) A threat abatement plan must provide for the research, management and other actions necessary to reduce the key threatening process concerned to an acceptable level in order to maximise the chances of the long-term survival in nature of native species and ecological communities affected by the process.
- (2) In particular, a threat abatement plan must:
 - (a) state the objectives to be achieved; and
 - (b) state criteria against which achievement of the objectives is to be measured; and
 - (c) specify the actions needed to achieve the objectives; and
 - (g) meet prescribed criteria (if any) and contain provisions of a prescribed kind (if any).
- (3) In making a threat abatement plan, regard must be had to:
 - (a) the objects of this Act; and
 - (b) the most efficient and effective use of the resources that are allocated for the conservation of species and ecological communities; and
 - (c) minimising any significant adverse social and economic impacts consistently with the principles of ecologically sustainable development; and
 - (d) meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the species or ecological community threatened by the key threatening process that is the subject of the plan; and
 - (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.
- (4) A threat abatement plan may:
 - (a) state the estimated duration and cost of the threat abatement process; and
 - (b) identify organisations or persons who will be involved in evaluating the performance of the threat abatement plan; and

- (c) specify any major ecological matters (other than the species or communities threatened by the key threatening process that is the subject of the plan) that will be affected by the plan's implementation.
- (5) Subsection (4) does not limit the matters that a threat abatement plan may include.

272 Eradication of non-native species

If:

- (a) the actions specified under paragraph 270(2)(c) in a recovery plan, or under paragraph 271(2)(c) in a threat abatement plan, include the eradication of a non-native species; and
 - (b) the species is threatened in a country in which its native habitat occurs;
- the recovery plan, or threat abatement plan, must require the Commonwealth to offer to provide stock of the species to that country before the eradication proceeds.

273 Ensuring plans are in force

When a plan comes into force

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

Deadline for recovery plan

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

Ensuring recovery plan is in force

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

Note: The Minister may revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community. See section 283A.

Deadline for threat abatement plan

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

Ensuring threat abatement plan is in force

- (5) Once the first threat abatement plan for a key threatening process is in force, the Minister must exercise his or her powers under this Subdivision to ensure that a

threat abatement plan is in force for the process until the Minister decides under section 270A not to have a threat abatement plan for the process.

Note: The Minister may revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process. See section 283A.

274 Scientific Committee to advise on plans

- (1) The Minister must obtain and consider the advice of the Scientific Committee on:
 - (a) the content of recovery and threat abatement plans; and
 - (b) the times within which, and the order in which, such plans should be made.
- (2) In giving advice about a recovery plan, the Scientific Committee must take into account the following matters:
 - (a) the degree of threat to the survival in nature of the species or ecological community in question;
 - (b) the potential for the species or community to recover;
 - (c) the genetic distinctiveness of the species or community;
 - (d) the importance of the species or community to the ecosystem;
 - (e) the value to humanity of the species or community;
 - (f) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.
- (3) In giving advice about a threat abatement plan, the Scientific Committee must take into account the following matters:
 - (a) the degree of threat that the key threatening process in question poses to the survival in nature of species and ecological communities;
 - (b) the potential of species and ecological communities so threatened to recover;
 - (c) the efficient and effective use of the resources allocated to the conservation of species and ecological communities.

275 Consultation on plans

- (1) Before making a recovery plan or threat abatement plan under this Subdivision, the Minister must:
 - (a) take reasonable steps to ensure that copies of the proposed plan are available for purchase, for a reasonable price, at prescribed places in each State and self-governing territory; and
 - (b) give a copy of it, together with a notice of a kind referred to in subsection (2), to the Scientific Committee; and
 - (c) cause the notice to be published:
 - (i) in the *Gazette*; and
 - (ii) in a daily newspaper that circulates generally in each State, and self-governing Territory, in which the relevant listed threatened native species, listed threatened ecological community or key threatening process occurs; and
 - (iii) in any other way required by the regulations (if any).
- (2) The notice must:
 - (a) specify the places where copies of the proposed plan may be purchased; and
 - (b) invite persons to make written comments about the proposed plan; and

- (c) specify:
 - (i) an address for lodgment of comments; and
 - (ii) a day by which comments must be made.
- (3) The day specified must not be a day occurring within 3 months after the notice is published in the *Gazette*.

276 Consideration of comments

The Minister:

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

277 Adoption of State plans

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

278 Publication of plans

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

279 Variation of plans by the Minister

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

- (3) If the Minister considers that a variation of a plan is necessary, the Minister may, subject to subsections (4), (5), (6) and (7), vary the plan.
- (4) The Minister must not vary a plan, unless the plan, as so varied, continues to meet the requirements of section 270 or 271, as the case requires.
- (5) Before varying a plan, the Minister must obtain and consider advice from the Scientific Committee on the content of the variation.
- (6) If the Minister has made a plan jointly with, or adopted a plan that has been made by, a State or self-governing Territory, or an agency of a State or self-governing Territory, the Minister must seek the co-operation of that State or Territory, or that agency, with a view to varying the plan.
- (7) Sections 275, 276 and 278 apply to the variation of a plan in the same way that those sections apply to the making of a recovery plan or threat abatement plan.

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

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

283 Plans may cover more than one species etc.

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

283A Revoking a plan

- (1) The Minister may, by legislative instrument:
 - (a) revoke a recovery plan for a listed threatened species or a listed threatened ecological community if the Minister decides under section 269AA not to have a recovery plan for the species or community; or

- (b) revoke a threat abatement plan for a key threatening process if the Minister decides under section 270A not to have a threat abatement plan for the process.
- (2) The Minister must publish in accordance with the regulations (if any):
 - (a) the instrument revoking the plan; and
 - (b) the Minister's reasons for revoking the plan.

316 Making plans

Minister must make plan

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

Amending and replacing plan

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

Requirements for plan

- (3) A plan must not be inconsistent with:
 - (a) Australia's obligations under the World Heritage Convention; or
 - (b) the Australian World Heritage management principles.
- Note: Section 323 explains what Australian World Heritage management principles are.

Ensuring plans reflect current management principles

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

Plan may be in same document as another plan

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

Commonwealth reserves

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in a Commonwealth reserve.
- Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the World Heritage Convention.

Heard Island and McDonald Islands

- (7) Despite subsections (1) and (2), the Minister may not make a plan for so much of a property as is in the Territory of Heard Island and McDonald Islands and covered by a plan:
- (a) that is in operation under the *Environment Protection and Management Ordinance 1987* of that Territory; and
 - (b) that the Minister is satisfied is not inconsistent with:
 - (i) Australia's obligations under the World Heritage Convention; or
 - (ii) the Australian World Heritage management principles.

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

320 Application

This Subdivision applies in relation to a property that:

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

321 Co-operating to prepare and implement plans

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

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

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

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

322 Commonwealth responsibilities

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

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

323 Australian World Heritage management principles

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

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

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

324X Plans and Commonwealth responsibilities

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

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

Subdivision E—The National Heritage management principles

324Y National Heritage management principles

- (1) The regulations must prescribe principles for managing National Heritage places. The principles prescribed are the ***National Heritage management principles***.
- (2) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles if the obligations relate to:

- (a) a constitutional corporation, the Commonwealth or a Commonwealth agency; or
 - (b) trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; or
 - (c) either or both of the following:
 - (i) a Commonwealth area;
 - (ii) a Territory; or
 - (d) the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; or
 - (e) the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.
- (4) Paragraph (2)(e) applies only to a prescribed obligation that is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.



391 Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

- (1) The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

- (2) The **precautionary principle** is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Decisions in which precautionary principle must be considered

- (3) The decisions are:

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
1	75	whether an action is a controlled action
2	133	whether or not to approve the taking of an action



Chapter 8—Definitions

Part 23—Definitions

Division 1—Some definitions relating to particular topics

Subdivision A—Actions

523 *Actions*

- (1) Subject to this Subdivision, **action** includes:
- (a) a project; and
 - (b) a development; and
 - (c) an undertaking; and
 - (d) an activity or series of activities; and
 - (e) an alteration of any of the things mentioned in paragraph (a), (b), (c) or (d).

524 *Things that are not actions*

- (1) This section applies to a decision by each of the following kinds of person (**government body**):
- (a) the Commonwealth;
 - (b) a Commonwealth agency;
 - (c) a State;
 - (d) a self-governing Territory;
 - (e) an agency of a State or self-governing Territory;
 - (f) an authority established by a law applying in a Territory that is not a self-governing Territory.
- (2) A decision by a government body to grant a governmental authorisation (however described) for another person to take an action is not an **action**.
- (3) To avoid doubt, a decision by the Commonwealth or a Commonwealth agency to grant a governmental authorisation under one of the following Acts is not an **action**:
- (a) the *Customs Act 1901*;
 - (b) the *Export Control Act 1982*;
 - (c) the *Export Finance and Insurance Corporation Act 1991*;
 - (d) the *Fisheries Management Act 1991*;
 - (e) the *Foreign Acquisitions and Takeovers Act 1975*;
 - (f) the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
 - (g) the *Biosecurity Act 2015*;
 - (h) the *Competition and Consumer Act 2010*.

This subsection does not limit this section.

524A *Provision of grant funding is not an action*

Provision of funding by way of a grant by one of the following is not an **action**:

- (a) the Commonwealth;

- (b) a Commonwealth agency;
- (c) a State;
- (d) a self-governing Territory;
- (e) an agency of a State or self-governing Territory;
- (f) an authority established by a law applying in a Territory that is not a self-governing Territory.



Subdivision C—Entities

526 Subsidiaries of bodies corporate

The question whether a body corporate is a subsidiary of a body or company is to be determined in the same way as the question whether a body corporate is a subsidiary of another body corporate is determined for the purposes of the *Corporations Act 2001*.

Subdivision D—Criminal law

527 Convictions

A reference in this Act to a conviction of a person of an offence includes a reference to making an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.



Subdivision F—Impacts

527E Meaning of *impact*

- (1) For the purposes of this Act, an event or circumstance is an **impact** of an action taken by a person if:
 - (a) the event or circumstance is a direct consequence of the action; or
 - (b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.
- (2) For the purposes of paragraph (1)(b), if:
 - (a) a person (the **primary person**) takes an action (the **primary action**); and
 - (b) as a consequence of the primary action, another person (the **secondary person**) takes another action (the **secondary action**); and
 - (c) the secondary action is not taken at the direction or request of the primary person; and
 - (d) an event or circumstance is a consequence of the secondary action;
 then that event or circumstance is an **impact** of the primary action only if:
 - (e) the primary action facilitates, to a major extent, the secondary action; and
 - (f) the secondary action is:
 - (i) within the contemplation of the primary person; or

- (ii) a reasonably foreseeable consequence of the primary action; and
- (g) the event or circumstance is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the secondary action.

Division 2—General list of definitions

528 Definitions

In this Act, unless the contrary intention appears:

accredited authorisation process has the meaning given by subsection 33(2A).

accredited management arrangement has the meaning given by subsection 33(2).

acquisition of property has the meaning given by subsection 519(2).

action has the meaning given by Subdivision A of Division 1 of Part 23.

agency of a State or self-governing Territory means:

- (a) a Minister of the State or Territory; or
- (b) a body corporate established for a public purpose by a law of the State or Territory; or
- (c) a body corporate established by:
 - (i) the Governor of the State; or
 - (ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or
 - (iii) if the Territory is the Northern Territory or Norfolk Island—the Administrator of the Territory; or
 - (iv) a Minister of the State or Territory; otherwise than by or under a law of the State or Territory; or
- (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the State or Territory; or
- (e) a body corporate that is a subsidiary of:
 - (i) a body or company referred to in paragraph (b), (c) or (d); or
 - (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be an agency of the State or Territory for the purposes of this definition; or
- (f) a person holding, or performing the duties of:
 - (i) an office established by or under a law of the State or Territory (except a judicial office or an office of member of a tribunal); or
 - (ii) an appointment made under a law of the State or Territory (except appointment to a judicial office or an office of member of a tribunal); or
- (g) a person holding, or performing the duties of, an appointment made by:
 - (i) the Governor of the State; or
 - (ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or

- (iii) if the Territory is the Northern Territory or Norfolk Island—the Administrator of the Territory; or
- (iv) a Minister of the State or Territory;
otherwise than by or under a law of the State or Territory.

aircraft means an apparatus that can derive support in the atmosphere from the reactions of the air.

animal means any member, alive or dead, of the animal kingdom (other than a human being).

animal reproductive material means:

- (a) an embryo, an egg or sperm of an animal; or
- (b) any other part, or product, of an animal from which another animal could be produced.

Antarctic has the same meaning as in the *Antarctic Treaty (Environment Protection) Act 1980*.

Apia Convention means the Convention on Conservation of Nature in the South Pacific, done at Apia, Western Samoa, on 12 June 1976, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1990 No. 41.

approved conservation advice has the meaning given by subsection 266B(2).

article includes a substance or a mixture of substances.

artificially propagated, in relation to a plant or plant reproductive material, has the meaning given by section 527C.

assess an action includes assess the impacts that the action:

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

assessment report has the meaning given by subsection 130(2).

Australian aircraft has the meaning given by subsection 5(5).

Australian Biosphere reserve management principles has the meaning given by section 340.

Australian Heritage Council means the body established by the *Australian Heritage Council Act 2003*.

Australian IUCN reserve management principles has the meaning given by subsection 348(1).

Australian jurisdiction has the meaning given by subsection 5(5).

Australian Ramsar management principles has the meaning given by section 335.

Australian vessel has the meaning given by subsection 5(5).

Australian Whale Sanctuary has the meaning given by subsection 225(2).

Australian World Heritage management principles has the meaning given by section 323.

authorisation process means a process set out in a law of the Commonwealth or a State or Territory under which actions are authorised.

authorised officer means:

- (a) a warden; or
- (b) an inspector.

baggage has the meaning given by section 443.

bilateral agreement has the meaning given by subsection 45(2).

bilaterally accredited authorisation process has the meaning given by subsection 46(2A).

bilaterally accredited management arrangement has the meaning given by subsection 46(2).

biodiversity means the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes:

- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

Biodiversity Convention means the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992, as amended and in force for Australia from time to time.

Note: The English text of this Convention is set out in Australian Treaty Series 1993 No. 32.

biological resources includes genetic resources, organisms, parts of organisms, populations and any other biotic component of an ecosystem with actual or potential use or value for humanity.

bioregional assessment, in relation to an area, means the scientific analysis of the ecology, hydrology and geology of the area for the purpose of assessing the potential direct and indirect impacts of coal seam gas development or large coal mining development on water resources in the area, including any impacts of associated salt production and/or salinity.

bioregional plan means a bioregional plan for a bioregion as mentioned in section 176.

Biosphere reserve has the meaning given by section 337.

Board means a Board established under section 377.

Bonn Convention means the Convention on the Conservation of Migratory Species of Wild Animals done at Bonn on 23 June 1979, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1991 No. 32.

bred in captivity, in relation to an animal or animal reproductive material, has the meaning given by section 527B.

CAMBA means the Agreement between the Government of Australia and the Government of the People's Republic of China for the protection of Migratory Birds and their Environment done at Canberra on 20 October 1986, as amended and in force for Australia from time to time.

Note: The English text of the Agreement is set out in Australian Treaty Series 1988 No. 22.

cetacean means a member of the sub-order Mysticeti or Odontoceti of the Order Cetacea, and includes:

- (a) a part of such a member; and
- (b) any animal reproductive material of such a member, or any part of such reproductive material; and
- (c) any product derived from such a member; and
- (d) the whole or part of the dead body of such a member; and
- (e) any product derived from the dead body, or part of the dead body, of such a member.

CITES means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington on 3 March 1973, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1976 No. 29.

CITES I species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix I to CITES.

CITES I specimen means a specimen that belongs to a CITES I species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES II species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix II to CITES.

CITES II specimen means a specimen that belongs to a CITES II species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES III species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix III to CITES.

CITES III specimen means a specimen that belongs to a CITES III species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES specimen means:

- (a) a CITES I specimen; or
- (b) a CITES II specimen; or
- (c) a CITES III specimen.

civil penalty provision has the meaning given by section 482.

coal seam gas development means any activity involving coal seam gas extraction that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

- (a) in its own right; or
- (b) when considered with other developments, whether past, present or reasonably foreseeable developments.

coastal sea of Australia or an external Territory has the same meaning as in subsection 15B(4) of the *Acts Interpretation Act 1901*.

coastal waters of a State or the Northern Territory has the meaning given by section 227.

commercial fishing activity has the meaning given by subsection 390SC(1A).

commissioner means a person holding an appointment under paragraph 107(1)(a).

Commonwealth agency means:

- (a) a Minister; or
- (b) a body corporate established for a public purpose by a law of the Commonwealth; or
- (c) a body corporate established by a Minister otherwise than under a law of the Commonwealth; or
- (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the Commonwealth; or
- (e) a body corporate that is a subsidiary of:
 - (i) a body or company referred to in paragraph (b), (c) or (d); or
 - (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be a Commonwealth agency for the purposes of this definition; or
- (f) a person holding, or performing the duties of:
 - (i) an office established by or under a law of the Commonwealth (except a judicial office or office of member of a tribunal); or
 - (ii) an appointment made under a law of the Commonwealth (except an appointment to a judicial office or office of member of a tribunal); or
- (g) a person holding, or performing the duties of, an appointment made by the Governor-General, or by a Minister, otherwise than under a law of the Commonwealth;

but does not include:

- (h) a person holding an office established by or under any of the following Acts, or holding an appointment made under any of them:
 - (i) the *Northern Territory (Self-Government) Act 1978*;
 - (ii) the *Norfolk Island Act 1979*;
 - (iii) the *Australian Capital Territory (Self-Government) Act 1988*; or
- (i) any of the following:
 - (i) an Aboriginal Land Trust, or an Aboriginal Land Council, established under the *Aboriginal Land Rights (Northern Territory) Act 1976*;
 - (ii) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
 - (iii) the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; or

- (j) a company prescribed by the regulations for the purposes of this paragraph.

Commonwealth aircraft has the meaning given by section 403.

Commonwealth area has the meaning given by section 525.

Commonwealth Heritage criteria has the meaning given by subsection 341D(1).

Commonwealth Heritage List means the list referred to in section 341C.

Commonwealth Heritage management principles has the meaning given by section 341Y.

Commonwealth Heritage place has the meaning given by subsection 341C(3).

Commonwealth Heritage value has the meaning given by section 341D.

Commonwealth land has the meaning given by section 27.

Commonwealth marine area has the meaning given by section 24.

Commonwealth reserve means a reserve declared under Division 4 of Part 15.

Commonwealth ship has the meaning given by section 403.

components of biodiversity has the meaning given by subsection 171(3).

conservation agreement means an agreement made under section 305.

conservation dependent: a native species may be included in the **conservation dependent** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

conservation dependent species means a listed threatened species that is included in the conservation dependent category of the list referred to in section 178.

conservation order means an order made under section 464 (with variations (if any) under section 466 or 469).

conservation zone means a Commonwealth area that is declared to be a conservation zone under Division 5 of Part 15.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

continental shelf means the continental shelf (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

continuation of a use of land, sea or seabed has the meaning given by section 43B.

control: a Commonwealth agency **controls** a place only if the agency has rights (whether arising under a law, lease, licence or otherwise) to:

- (a) occupy or use the place; and
- (b) take actions in relation to the place that could potentially have an impact on heritage values that the place may have.

controlled action has the meaning given by section 67.

controlling provision has the meaning given by section 67.

convict a person of an offence has a meaning affected by section 527.

copy, when used in relation to a warrant issued under section 409 or 416 (or a form of warrant completed under subsection 409A(6) or 416(6)), includes:

- (a) a copy sent by fax or other electronic means; or
- (b) a copy of a copy so sent.

country includes a place that is a territory, dependency or colony (however described) of a foreign country.

critical habitat for a listed threatened species or a listed threatened ecological community has the meaning given by subsection 207A(4).

critically endangered:

- (a) a native species may be included in the **critically endangered** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the **critically endangered** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

daily newspaper means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days.

declaration affected person has the meaning given by subsection 390SE(3).

declared commercial fishing activity has the meaning given by subsection 390SC(1).

declared Ramsar wetland has the meaning given by section 17.

declared State or Territory means a State or self-governing Territory that is declared by the Minister under section 505E.

declared World Heritage property has the meaning given by section 13.

designated proponent of an action means the person designated under Division 2 of Part 7 as the proponent of the action.

directed environmental audit has the meaning given by subsection 460(4).

Director means the Director of National Parks referred to in section 514A.

disease means:

- (a) a disease, parasite or pest that, for the purposes of the *Quarantine Act 1908*, is a disease in relation to animals; or
- (b) a disease, pest or plant that, for the purposes of that Act, is a disease in relation to plants.

dory means:

- (a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a law of the Commonwealth, a State or a Territory authorising the vessel to be used in association with a primary commercial fishing vessel; or

- (b) a vessel that is used in association with a primary commercial fishing vessel.

Note: A dory might also be known as a tender commercial fishing vessel.

ecological character has the meaning given by subsection 16(3).

ecological community means the extent in nature in the Australian jurisdiction of an assemblage of native species that:

- (a) inhabits a particular area in nature; and
- (b) meets the additional criteria specified in the regulations (if any) made for the purposes of this definition.

ecologically sustainable use of natural resources means use of the natural resources within their capacity to sustain natural processes while maintaining the life-support systems of nature and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the needs and aspirations of future generations.

ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

eligible seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

endangered:

- (a) a native species may be included in the **endangered** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the **endangered** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

environmental authorisation has the meaning given by section 43A.

environmental authority has the meaning given by subsection 458(4).

environmental law means:

- (a) this Act; or
- (b) the regulations; or
- (c) the *Great Barrier Reef Marine Park Act 1975*; or
- (d) regulations made under the *Great Barrier Reef Marine Park Act 1975*.

environmental penalty provision means:

- (a) a civil penalty provision under this Act; or
- (b) a civil penalty provision under the *Great Barrier Reef Marine Park Act 1975*.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

evidential material has the meaning given by subsection 406(2).

exclusive economic zone means the exclusive economic zone (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

executing officer, in relation to a warrant, means:

- (a) the authorised officer named in the warrant as being responsible for executing the warrant; or
- (b) if that authorised officer does not intend to be present at the execution of the warrant—another authorised officer whose name has been written in the warrant by the authorised officer so named; or
- (c) another authorised officer whose name has been written in the warrant by the authorised officer last named in the warrant.

executive officer of a body corporate has the meaning given by section 493.

extinct: a native species may be included in the **extinct** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

extinct in the wild: a native species may be included in the **extinct in the wild** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

Federal Court means the Federal Court of Australia.

Federal Register of Legislative Instruments means the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003*.

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

Fisheries Minister means the Minister administering the *Fisheries Management Act 1991*.

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

fishing activity has the meaning given by subsection 390SC(2).

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

foreign whaling vessel has the meaning given by subsection 236(5).

frisk search has the meaning given by subsection 413(3).

genetic resources means any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential value for humanity.

goods has the meaning given by section 443.

Great Barrier Reef Marine Park means the Great Barrier Reef Marine Park established under the *Great Barrier Reef Marine Park Act 1975*.

Great Barrier Reef Marine Park Authority means the Great Barrier Reef Marine Park Authority established by the *Great Barrier Reef Marine Park Act 1975*.

habitat means the biophysical medium or media:

- (a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; or
- (b) once occupied (continuously, periodically or occasionally) by an organism, or group of organisms, and into which organisms of that kind have the potential to be reintroduced.

heritage value of a place includes the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

holder means:

- (a) in the case of a permit issued under Chapter 5—the person to whom the permit was issued or transferred, as the case may be; or
- (b) in the case of an approval under Part 9—the person named in the approval under paragraph 133(2)(c).

impact has the meaning given by section 527E.

important cetacean habitat area means an area declared, by a declaration in force under subsection 228A(1), to be an important cetacean habitat area.

Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development means the Committee established by section 505C.

indigenous heritage value of a place means a heritage value of the place that is of significance to indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history.

indigenous people's land has the meaning given by subsection 363(3).

indigenous person has the meaning given by subsection 363(4).

indigenous tradition has the meaning given by section 201.

inspector means:

- (a) a person appointed as an inspector under section 396;
- (b) a person who is an inspector because of section 397; or
- (c) a person who is an inspector because of an arrangement entered into under section 398.

interested person has the meaning given by section 475.

interfere with a cetacean has the meaning given by subsection 229B(4).

IUCN category has the meaning given by subsection 346(1).

JAMBA means the Agreement between the Government of Japan and the Government of Australia for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment done at Tokyo on 6 February 1974, as amended and in force for Australia from time to time.

Note: The English text of the Agreement is set out in Australian Treaty Series 1981 No. 6.

jointly managed reserve has the meaning given by subsection 363(5).

Kakadu National Park has the meaning given by subsection 387(3).

Kakadu region has the meaning given by subsection 386(1).

keep a cetacean or member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community means:

- (a) in the case of a cetacean, or a species of animal or community of animals—have charge or possession of the cetacean or member, either in captivity or in a domesticated state; and
- (b) in the case of a species of plant or community of plants—have possession of the member.

key threatening process means a threatening process included in the list referred to in section 183.

land has the meaning given by subsection 345(2).

land council for indigenous people's land has the meaning given by subsection 363(2).

large coal mining development means any coal mining activity that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

- (a) in its own right; or
- (b) when considered with other developments, whether past, present or reasonably foreseeable developments.

large-scale disposal facility for radioactive waste has a meaning affected by subsection 22(2).

list includes a list containing no items.

listed marine species means a marine species included in the list referred to in section 248.

listed migratory species means a migratory species included in the list referred to in section 209.

listed threatened ecological community means an ecological community included in the list referred to in section 181.

listed threatened species means a native species included in the list referred to in section 178.

List of Overseas Places of Historic Significance to Australia means the record referred to in section 390K.

live animal includes animal reproductive material.

live plant includes plant reproductive material.

longfin mako shark means the listed migratory species with the common name longfin mako shark and the scientific name *Isurus paucus*.

magistrate means a magistrate who is remunerated by salary or otherwise.

management arrangement includes:

- (a) a management plan; and
- (b) a regime; and
- (c) a policy.

master of a foreign whaling vessel has the meaning given by subsection 236(5).

matter protected by a provision of Part 3 has the meaning given by section 34.

member includes:

- (a) in relation to a species of animal (other than a species of cetacean):
 - (i) any part of an animal of the species; and
 - (ii) any animal reproductive material of an animal of the species, or any part of such reproductive material; and
 - (iii) the whole or any part of the dead body of an animal of the species; and
- (b) in relation to a species of plant:
 - (i) any part of a plant of the species; and
 - (ii) any plant reproductive material of a plant of the species, or any part of such reproductive material; and
 - (iii) the whole or any part of a plant of the species that has died; and
- (c) in relation to an ecological community:
 - (i) any part of an animal or plant of the community; and
 - (ii) any animal reproductive material of an animal, or plant reproductive material of a plant, of the community, or any part of such animal reproductive material or plant reproductive material; and
 - (iii) the whole or any part of an animal or plant of the community that has died.

migration zone has the same meaning as in the *Migration Act 1958*.

migratory species has the meaning given by subsection 209(8).

mineral has the meaning given by subsection 355(3).

mining operations has the meaning given by subsection 355(2).

monitoring power relating to premises has the meaning given by section 407.

monitoring warrant has the meaning given by section 409.

National Heritage criteria has the meaning given by subsection 324D(1).

National Heritage List means the list referred to in section 324C.

National Heritage management principles has the meaning given by section 324Y.

National Heritage place has the meaning given by subsection 324C(3).

National Heritage value has the meaning given by section 324D.

native amphibian means an amphibian of a native species.

native animal means an animal of a native species.

native bird means a bird of a native species.

native mammal means a mammal of a native species.

native plant means a plant of a native species.

native reptile means a reptile of a native species.

native species means a species:

- (a) that is indigenous to Australia or an external Territory; or
- (b) that is indigenous to the seabed of the coastal sea of Australia or an external Territory; or
- (c) that is indigenous to the continental shelf; or
- (d) that is indigenous to the exclusive economic zone; or
- (e) members of which periodically or occasionally visit:
 - (i) Australia or an external Territory; or
 - (ii) the exclusive economic zone; or
- (f) that was present in Australia or an external Territory before 1400.

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

nuclear action has the meaning given by subsection 22(1).

nuclear installation has the meaning given by subsection 22(1).

occupier of premises means the person apparently in charge of the premises.

officer assisting, in relation to a warrant, means:

- (a) an authorised officer who is assisting in executing the warrant; or
- (b) a person who is not an authorised officer, but who has been authorised by the relevant executing officer to assist in executing the warrant.

officer of Customs has the same meaning as it has in the *Customs Act 1901*.

ordinary search has the meaning given in subsection 414(3).

organism includes:

- (a) a virus; and
- (b) the reproductive material of an organism; and
- (c) an organism that has died.

place includes:

- (a) a location, area or region or a number of locations, areas or regions; and
- (b) a building or other structure, or group of buildings or other structures (which may include equipment, furniture, fittings and articles associated or connected with the building or structure, or group of buildings or structures); and
- (c) in relation to the protection, maintenance, preservation or improvement of a place—the immediate surroundings of a thing in paragraph (a) or (b).

plant means a member, alive or dead, of the plant kingdom or of the fungus kingdom, and includes a part of a plant and plant reproductive material.

plant reproductive material means:

- (a) a seed or spore of a plant; or
- (b) a cutting from a plant; or

- (c) any other part, or product, of a plant from which another plant can be produced.

population of a species or ecological community means an occurrence of the species or community in a particular area.

porbeagle shark means the listed migratory species with the common name porbeagle shark and the scientific name *Lamna nasus*.

precautionary principle has the meaning given by subsection 391(2).

premises includes a place, vehicle, vessel and aircraft.

prescribed waters means waters in respect of which regulations made for the purposes of section 226 are in force.

primary commercial fishing vessel means:

- (a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a law of the Commonwealth, a State or a Territory authorising the vessel to be used to take fish for commercial purposes; or
- (b) a vessel that is used to take fish for commercial purposes.

principles of ecologically sustainable development has a meaning affected by section 3A.

progeny includes:

- (a) in relation to an animal—any animal reproductive material of that animal or of any progeny of that animal; and
- (b) in relation to a plant—any plant reproductive material of that plant or of any progeny of that plant; and
- (c) in relation to a live animal that is animal reproductive material—any animal resulting from that material or any progeny of such animal; and
- (d) in relation to a live plant that is plant reproductive material—any plant resulting from that material or any progeny of such plant.

To avoid doubt, a reference in this Act to **progeny** of an animal or a plant includes a reference to any descendant of that animal or plant.

radioactive waste has the meaning given by subsection 22(1).

Ramsar Convention means the Convention on Wetlands of International Importance especially as Waterfowl Habitat done at Ramsar, Iran, on 2 February 1971, as amended and in force for Australia from time to time.

Note: The English Text of the Convention is set out in Australian Treaty Series 1975 No. 48.

range of a species means the area where members of the species live, feed, breed or visit periodically or regularly.

ranger means a person holding an appointment as a ranger under Part 17.

recovery plan means a plan made or adopted under section 269A.

regulated live specimen has the meaning given by section 303EA.

regulated native specimen has the meaning given by section 303DA.

relevant impacts of an action has the meaning given by section 82.

remediation determination means a determination, as in force from time to time, made under section 480D.

remediation order means an order, as in force from time to time, made under section 480A.

reprocessing has the meaning given by subsection 22(1).

Scientific Committee means the Threatened Species Scientific Committee established by section 502.

seabed has the meaning given by subsection 345(2).

Secretary means the Secretary of the Department that:

- (a) deals with the matter to which the provision containing the reference relates; and
- (b) is administered by the Minister administering the provision.

seized has a meaning affected by section 406B.

self-governing Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory.

shortfin mako shark means the listed migratory species with the common name shortfin mako shark and the scientific name *Isurus oxyrinchus*.

species means a group of biological entities that:

- (a) interbreed to produce fertile offspring; or
- (b) possess common characteristics derived from a common gene pool;

and includes:

- (c) a sub-species; and
- (ca) for the purposes of Part 13A—a distinct population of such biological entities; and
- (d) except for the purposes of Part 13A—a distinct population of such biological entities that the Minister has determined, under section 517, to be a species for the purposes of this Act.

In this definition, **the purposes of Part 13A**:

- (a) include the purposes of the definitions of **CITES I species**, **CITES II species** and **CITES III species**; and
- (b) do not include determining the meaning of the expression **listed threatened species** when used in Part 13A.

Note: Determinations under paragraph (d) are disallowable instruments. See section 517.

specific environmental authorisation has the meaning given by section 43A.

specimen has the meaning given by section 527A.

spent nuclear fuel has the meaning given by subsection 22(1).

subsidiary of a body corporate has a meaning affected by section 526.

sub-species means a geographically separate population of a species, being a population that is characterised by morphological or biological differences from other populations of that species.

take, except in Part 13A, includes:

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

Note: For the meaning of **take** in Part 13A, see section 303BC.

taxon means any taxonomic category (for example, a species or a genus), and includes a particular population.

terms of reference:

- (a) in relation to an inquiry under Division 7 of Part 8—has the meaning given by paragraph 107(1)(b); and
- (b) in relation to an assessment under Division 3 of Part 15B—has the meaning given by paragraph 390SH(1)(b).

territorial sea means the territorial sea (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

threat abatement plan means a plan made or adopted under section 270B.

threatening process has the meaning given by subsection 188(3).

trade:

- (a) when used in the context of a reference to a member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community—includes:
 - (i) buy the member, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
 - (ii) sell the member, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or
 - (iii) export the member from Australia or an external Territory or import it into Australia or an external Territory; or
 - (iv) cause or allow any of the acts referred to in subparagraph (i), (ii) or (iii) to be done; or
- (b) when used in the context of a reference to a cetacean (not being a reference that covers a cetacean because a cetacean is a member referred to in paragraph (a))—has the meaning given by subsection 229B(4).

traditional owners of indigenous people's land has the meaning given by subsection 368(4).

treat a cetacean has the meaning given by subsection 229D(3).

Uluru-Kata Tjuta National Park has the meaning given by subsection 344(3).

Uluru region has the meaning given by subsection 386(2).

usage right has the meaning given by subsection 350(7).

vehicle includes a hovercraft.

vessel means a ship, boat, raft or pontoon or any other thing capable of carrying persons or goods through or on water and includes a floating structure and hovercraft.

vulnerable:

- (a) a native species may be included in the **vulnerable** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the **vulnerable** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

warden means a person holding an appointment as a warden under Part 17.

warrant premises means premises in relation to which a warrant is in force.

water resource has the same meaning as in the *Water Act 2007*.

wetland has the same meaning as in the Ramsar Convention.

whale watching has the meaning given by section 238.

wildlife means:

- (a) an animal; or
- (b) a specimen derived from an animal; or
- (c) a plant; or
- (d) a specimen derived from a plant.

wildlife conservation plan means a plan of a kind referred to in section 285 that has been made or adopted under that section.

World Heritage Convention means the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1975 No. 47.

World Heritage List means the list kept under that title under Article 11 of the World Heritage Convention.

world heritage values of a property has the meaning given by subsection 12(3).

Schedule 5—Australian World Heritage management principles

(regulation 10.01)

1 General principles

- 1.01 The primary purpose of management of natural heritage and cultural heritage of a declared World Heritage property must be, in accordance with Australia's obligations under the World Heritage Convention, to identify, protect, conserve, present, transmit to future generations and, if appropriate, rehabilitate the World Heritage values of the property.
- 1.02 The management should provide for public consultation on decisions and actions that may have a significant impact on the property.
- 1.03 The management should make special provision, if appropriate, for the involvement in managing the property of people who:
 - (a) have a particular interest in the property; and
 - (b) may be affected by the management of the property.
- 1.04 The management should provide for continuing community and technical input in managing the property.

2 Management planning

- 2.01 At least 1 management plan should be prepared for each declared World Heritage property.
- 2.02 A management plan for a declared World Heritage property should:
 - (a) state the World Heritage values of the property for which it is prepared; and
 - (b) include adequate processes for public consultation on proposed elements of the plan; and
 - (c) state what must be done to ensure that the World Heritage values of the property are identified, conserved, protected, presented, transmitted to future generations and, if appropriate, rehabilitated; and
 - (d) state mechanisms to deal with the impacts of actions that individually or cumulatively degrade, or threaten to degrade, the World Heritage values of the property; and
 - (e) provide that management actions for values, that are not World Heritage values, are consistent with the management of the World Heritage values of the property; and
 - (f) promote the integration of Commonwealth, State or Territory and local government responsibilities for the property; and
 - (g) provide for continuing monitoring and reporting on the state of the World Heritage values of the property; and
 - (h) be reviewed at intervals of not more than 7 years.

3 Environmental impact assessment and approval

- 3.01 This principle applies to the assessment of an action that is likely to have a significant impact on the World Heritage values of a property (whether the action is to occur inside the property or not).
- 3.02 Before the action is taken, the likely impact of the action on the World Heritage values of the property should be assessed under a statutory environmental impact assessment and approval process.

3.03 The assessment process should:

- (a) identify the World Heritage values of the property that are likely to be affected by the action; and
- (b) examine how the World Heritage values of the property might be affected; and
- (c) provide for adequate opportunity for public consultation.

3.04 An action should not be approved if it would be inconsistent with the protection, conservation, presentation or transmission to future generations of the World Heritage values of the property.

3.05 Approval of the action should be subject to conditions that are necessary to ensure protection, conservation, presentation or transmission to future generations of the World Heritage values of the property.

3.06 The action should be monitored by the authority responsible for giving the approval (or another appropriate authority) and, if necessary, enforcement action should be taken to ensure compliance with the conditions of the approval.

Schedule 5A—Management plans for National Heritage places

Schedule 5B—National Heritage management principles

(regulation 10.01E)

- 1 The objective in managing National Heritage places is to identify, protect, conserve, present and transmit, to all generations, their National Heritage values.
- 2 The management of National Heritage places should use the best available knowledge, skills and standards for those places, and include ongoing technical and community input to decisions and actions that may have a significant impact on their National Heritage values.
- 3 The management of National Heritage places should respect all heritage values of the place and seek to integrate, where appropriate, any Commonwealth, State, Territory and local government responsibilities for those places.
- 4 The management of National Heritage places should ensure that their use and presentation is consistent with the conservation of their National Heritage values.
- 5 The management of National Heritage places should make timely and appropriate provision for community involvement, especially by people who:
 - (a) have a particular interest in, or association with, the place; and
 - (b) may be affected by the management of the place.
- 6 Indigenous people are the primary source of information on the value of their heritage and the active participation of indigenous people in identification, assessment and management is integral to the effective protection of indigenous heritage values.
- 7 The management of National Heritage places should provide for regular monitoring, review and reporting on the conservation of National Heritage values.