

Statement of Reasons for Approval under the *Environment Protection and Biodiversity Conservation Act 1999*

I, GREG HUNT, Minister for the Environment, provide the following statement of reasons for my decision of 21 December 2015, under section 130(1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, to approve the proposed action by the Queensland Government Department of State Development to undertake capital dredging, onshore placement and reuse of dredged material at Abbot Point, 25 kilometres (km) north of Bowen, North Queensland (EPBC 2015/7467).

A copy of this decision is available on the Department of the Environment's website at: <http://epbcnotices.environment.gov.au/referralslist/> (EPBC 2015/7467).

Legislation

1. Relevant legislation is set out in Annexure A.

Background

EPBC Act referral and assessment

2. On 15 April 2015, under section 68 of the EPBC Act, the Queensland Government Department of State Development (the **proponent**), referred the Abbot Point Growth Gateway Project (EPBC 2015/7467) (the **proposed action**) for consideration under the EPBC Act. The proponent stated its belief that the proposal is a controlled action for the purposes of the EPBC Act, due to likely significant impacts on: 1) the World Heritage values of World Heritage properties; 2) the National Heritage values of National Heritage places; 3) listed threatened species and ecological communities; 4) listed migratory species; and 5) the environment in the Great Barrier Reef Marine Park.
3. The site of the proposed action is the Port of Abbot Point, approximately 25 km north of Bowen on the north Queensland coast.
4. The **proposed action** has two key components – the offshore capital dredging operation located within the Great Barrier Reef World Heritage Area and the onshore placement and reuse of dredged material, adjacent to the Great Barrier Reef World Heritage Area.
5. The proposed action involves the:
 - construction of an onshore dredge material containment area (DMCA) on the site previously allocated for the development of the 'Terminal 2' (T2) coal export terminal and adjoining industrial land;
 - capital dredging of approximately 1.1 million m³ *in situ* (Mm³) of previously undisturbed seabed for new berth pockets and ship apron areas required to support the development of Terminal 0 (T0);
 - relocation of the dredge material to the onshore DMCA and offshore discharge of return water draining out of the dredge material; and
 - ongoing management of the dredge material including its removal, treatment and beneficial reuse within the port area and the Abbot Point State Development Area, where appropriate.

6. The proposed action explicitly excludes the disposal of dredge material offshore in the Great Barrier Reef Marine Park and Great Barrier Reef World Heritage property.
7. The referral was available for public comment for 10 business days from 20 April 2015 - 39,694 public submissions were received regarding the potential impacts of the proposed action.
8. On 1 May 2015, the delegate for the Queensland Minister for Environment and Heritage Protection, Mr Delzoppo, advised that the proposed action would not be assessed in a manner described in Schedule 1 to the *Agreement between the Commonwealth of Australia and the State of Queensland* established under section 45 of the EPBC Act (the **Bilateral Agreement**).
9. On 8 May 2015 Mr Delzoppo was invited to provide further information relevant in deciding which approach would be appropriate to assess the relevant impacts of the action. On 11 May 2015, Mr Delzoppo responded, stating that the Department of Environment and Heritage Protection had no further comments on the matter.
10. On 14 May 2015, under section 75 of the EPBC Act, I determined that the proposed action was a controlled action, to which the following, and only the following, controlling provisions apply:
 - sections 12 and 15A (World Heritage properties);
 - sections 15B and 15C (National Heritage places);
 - sections 18 and 18A (listed threatened species and communities);
 - sections 20 and 20A (listed migratory species);
 - sections 23 and 24A (Commonwealth marine areas); and
 - sections 24B and 24C (Great Barrier Reef Marine Park).
11. Also on 14 May 2015, under section 87 of the EPBC Act, I decided that the relevant impacts of the proposed action must be assessed by environmental impact statement (**EIS**) under Part 8, Division 6 of the EPBC Act.
12. The proponent's draft EIS was released for public comment between 21 August 2015 and 18 September 2015. A total of 55,127 submissions were received by the proponent during that period.
13. The proponent's final EIS, including the proponent's response to relevant matters raised in public comments, was submitted to the Department on 26 October 2015.
14. Submissions made on the draft EIS have been taken into account during the assessment of the proposed action. Issues raised during the comment period were addressed by the proponent in finalising the EIS and were considered in the Secretary's recommendation report, and the Department's briefing material.
15. On 4 November 2015, the EIS was published in accordance with section 104(4) of the EPBC Act.

State Assessment and Approval

16. This proposal was not assessed under the Bilateral Agreement. The proposed action will be subject to a number of Queensland State approvals and permits.

17. Offshore works (including dredging and pipeline infrastructure) will be wholly located within Strategic Port Land and will therefore be subject to the approval process under the *Sustainable Planning Act 2009* (Qld) and the associated Integrated Development Assessment System process.
18. Onshore works will be wholly located within the Abbot Point State Development Area (APSDA), and will be subject to the approval process under the APSDA Development Scheme (November 2014).

Approval

19. On 26 November 2015, I proposed to approve the proposed action subject to conditions, having regard to relevant information.
20. In accordance with sections 131 and 131AA of the EPBC Act, I invited comments on my proposed decision from:
 - the proponent;
 - the Commonwealth Minister for Infrastructure and Regional Development; and
 - the Commonwealth Minister for Resources, Energy and Northern Australia.
21. I also decided to consult with:
 - the Queensland Coordinator-General;
 - the Great Barrier Reef Marine Park Authority.
22. Mr Phil McClure responded on behalf of Minister Truss on 8 December 2015, advising that there were no comments on the proposed approval decision.
23. The following parties provided comments on the proposed decision; these comments are set out in paragraphs 199 to 205 of these reasons.
 - Mr Richard Niven from the Department of Industry and Science responded on behalf of Ministers Frydenberg on 16 December 2015. This response also included comments from Geoscience Australia.
 - Mr Bruce Elliot provided an initial response on behalf of the Chairman of the Great Barrier Reef Marine Park Authority (GBRMPA) on 1 December 2015, noting that he had no comments. A subsequent response was received from Mr David Leverton from the GBRMPA on 9 December 2015.
 - The Queensland Coordinator-General, Mr Barry Broe, provided a response on 4 December 2015.
 - Mr Michael Schaumburg, Director-General of the Queensland Department of State Development responded on 16 December 2015.
24. On 2/December 2015, I approved, subject to conditions, the taking of the proposed action under section 130(1) and section 133 of the EPBC Act for the purposes of sections 12 and 15A; sections 15B and 15C; sections 18 and 18A; sections 20 and 20A; sections 23 and 24A and sections 24B and 24C of the EPBC Act.

Evidence or other material on which my findings were based

25. My decision to approve the proposed action was based on consideration of the final approval decision brief prepared by the Assessment and Policy Implementation Branch of the Department (the **brief**) dated 17 December 2015.
26. The brief included the following attachments which I considered as part of that brief:
 - A. Proposed approval cover brief and appendices:
 - a. Finalised environmental impacts statement
 - b. Secretary's Recommendation Report
 - c. Project Maps
 - d. Approved Conservation Advices, Recovery plans and Threat Abatement Plans
 - e. Additional information including:
 - E1 Reef 2050 Long Term Sustainability Plan
 - E2 Outstanding Universal Value for the Great Barrier Reef World Heritage Area
 - E3 Comprehensive Strategic Assessment of the Great Barrier Reef World Heritage Area
 - E4 North East Shipping Management Plan (October 2014)
 - E5 Queensland State Planning Policy Strategic Ports (July 2014)
 - E6 Advisian Worley Parson Group Technical Memorandum Cost of sediment reduction
 - E7 Advisian Worley Parson Group Technical Memorandum seagrass restoration
 - E8 Independent Review of the Bund Wall at the Port of Gladstone - Report on Findings (April 2014)
 - E9 The Australian Government Response to: The independent review of the Port of Gladstone (July 2013) and The independent review of the bund wall at the Port of Gladstone (April 2014) (August 2015).
 - f. Legislative provisions
 - g. Key issues and relevant conditions
 - h. Proposed decision notice
 - i. Public submissions
 - j. Consultation letters
 - B. Responses to invitation for comment on the proposed decision from the following parties:
 - B1: Queensland Department of State Development
 - B2: Departmental response on behalf of Minister Frydenberg
 - B3: Departmental response on behalf of Minister Truss
 - B4: Departmental response on behalf of Chairman of the Great Barrier Reef Marine Park Authority
 - B5: Queensland Coordinator-General, Mr Barry Broe
 - C1: Letter from Queensland Environmental Defenders Office
 - C2: Response from the North Queensland Bulk Ports
 - C3: Response from Queensland Department of State Development
 - D1: Correspondence from GVK Hancock & Australian Marine Conservation Society

D2: Response from Queensland Department of State Development

- E. Table summarising responses to the proposed decision and the Department's comments
- F. Approval decision notice showing track changes from proposed approval decision.
- G. Final decision notice
- H. Letters to proponent and other Commonwealth Ministers
- I. Statement of Reasons for the approval decision
- J. List of relevant stakeholders

Findings on material questions of fact

World Heritage properties (sections 12 and 15A)

27. 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). 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.
28. The proponent's EIS states that 29 specific natural heritage values are recognised as contributing to the world heritage values of the World Heritage Area. Of these, the following three attributes were considered by the proponent to be relevant to the proposed action: aesthetics, birds, and marine mammals.
29. I found that for the purposes of assessment under the EPBC Act, and based on the EPBC Act referral guidelines for the Outstanding Universal Value of the Great Barrier Reef World Heritage Area, May 2014 (listing criterion appears in parentheses), that these attributes reflect the following values:
- aesthetics → superlative natural beauty above and below the water (7), unique and varied seascapes and landscapes (8).
 - birds → breeding colonies of seabirds (7), other fauna including microfauna (9), important role of birds, such as the pied imperial pigeon, in processes such as seed dispersal and plant colonisation (9), diversity supporting marine and terrestrial species (global conservation significance) (10), 242 species of birds (10), 22 seabird species breeding (cays and some continental islands have globally significant breeding sites) (10).
 - marine mammals → migrating whales (7), other fauna including microfauna (9), diversity supporting marine and terrestrial species (global conservation significance) (10), dugong (10), species of whales (10), species of dolphins (10), humpback whale calving (10).
30. I found the following values are also relevant:
- corals - coral assemblages of hard and soft corals (7), coral reef ecosystems (8), coral reefs, sand banks and coral cays (9), coral reefs and coral cays (10).

- marine turtles – green turtle breeding (7, 10), nesting turtles (7), marine turtle (10), marine turtle rookeries (10).
- wetland values – thousands of species of reef fish (7), significant spawning aggregations of many reef fish (7), over 4000 species of molluscs and over 1500 species of fish, plus a great diversity of sponges, anemones, marine worms, crustaceans and many others (9), other fauna including microfauna (9), diversity supporting marine and terrestrial species (global conservation significance) (10), diversity of mangroves (10), plant species diversity and endemism (10).

Aesthetics – Superlative natural beauty above and below the water (7), Unique and varied seascapes and landscapes (8)

31. The proponent's EIS stated that a visual impact assessment undertaken as part of the Abbot Point Cumulative Impact Assessment concluded that Abbot Point does not encompass areas of exceptional natural beauty, but does support superlative natural phenomena, specifically in the form of aggregations of birds and migrations of marine mammals and other iconic species. The assessment concludes that these values are represented at Abbot Point only in a 'minor' way or 'in a way which contributes to overall [World Heritage Area] scenic diversity; but [are] neither outstanding per se nor uniquely expressed at Abbot Point.'
32. I found that the visual impact of the proposed action is minor given all activities will be undertaken within port limits or the coastal area adjacent to the existing port infrastructure, and there are no residential areas nearby with a view of the project area. In addition, the proposed action is limited to a temporary and slow moving dredge plant that will be in operation for a short period of time.
33. I found that increased shipping as a result of dredging for the T0 project (EPBC 2011/6194) has the potential to result in an increasing number of ships required to be at anchorage offshore from Abbot Point, and ships using this route are visible to recreational and tourism vessels that may be travelling from the mainland to the reef.
34. The EIS states that management of shipping in the Great Barrier Reef is subject to higher level strategic policies that have been developed in consideration of industry trends (including the continued expansion of the export coal industry). These policies include the recently released North-East Shipping Management Plan (Australian Marine Safety Authority, 2014). I found that the North-East Shipping Management Plan addresses the impacts of the current and increased shipping on the world heritage values of the Great Barrier Reef and sets out additional measures to further reduce risk.
35. In addition, the EIS notes that the conditions of approval attached to the T0 project (EPBC 2011/6194) address the marine and shipping world heritage impacts of that project by requiring the approval holder to prepare and implement a shipping management plan. The EIS concludes that the cumulative impacts of shipping on the world heritage values of the Great Barrier Reef will be managed through government regulation and industry codes of practice.
36. The EIS concluded that any impacts of the proposed action on these two world heritage values of the World Heritage Area would be insignificant and therefore not unacceptable.
37. I agreed with this conclusion, and considered that no additional avoidance or mitigation measures were necessary.

Birdlife – Important role of birds, such as the pied imperial pigeon, in processes such as seed dispersal and plant colonisation (9), 242 species of birds (10), 22 seabird species breeding (cays and some continental islands have globally significant breeding sites) (10)

38. The EIS notes that whilst the Caley Valley Wetlands are not located within the World Heritage Area, it is a significant aggregation site for birds including shorebirds and other waterbirds. The Caley Valley Wetlands are located to the south west of the proposed DMCA. The EIS notes that there will be a minimum 50 m buffer between the DMCA and the wetland habitat.
39. I found that the potential impacts associated with the proposed action on birdlife include noise, dust, light spill, increased activity, and changes to stormwater and groundwater regimes.
40. The EIS stated that the area of habitat for bird species that may be potentially disturbed by noise is approximately 21.9 ha or 0.4 % of the wetland; and 115 ha or 2.2% of the wetland will be disturbed by dust (particulate matter 10 micrometres or less in diameter (PM10)). The EIS notes that these impacts are considered small relative to the total area of habitat available (5,154 ha).
41. The proposed action is located within a port industrial precinct, and immediately adjacent to the existing T1 operating coal terminal. The EIS notes that the direct light spill from the proposed action is expected to be contained within the buffer area between the proposed action and the wetland. The EIS concludes that impact from light on bird species is assessed as low.
42. Disturbance from human activity has the potential to disturb bird foraging and nesting behaviour. Research has also shown that the energetic costs of disturbance of shorebirds can be quite high and may compromise their capacity to build enough energy reserves to undertake their migration.
43. The EIS states that there is variability in the response of bird species to disturbance, and that the proposed buffer between the proposed action and wetland habitats is likely to mitigate the risk of disturbance.
44. Increased activity has the potential to increase bird mortality through direct vehicle strikes. The EIS notes that the overall risk of mortality as a result of vehicle strike is expected to be low. However, there is an increased potential for this to occur during construction.
45. Based on groundwater modelling undertaken for the proposed action, the EIS states that changes to the water quality of the wetland utilised by shorebirds are not expected. Worst case scenario modelling has indicated that there is the potential of an increase in groundwater salinity within the wetland. The EIS notes that this is expected to be minimal (less than 2 parts per thousand (ppt)), and substantial changes to wetland vegetation are unlikely.
46. In addition, the comments from Geoscience Australia noted that further groundwater modelling is required to determine potential impacts from groundwater seepage, and monitoring points to determine whether any adverse impact from groundwater seepage on the birdlife habitat occurs.
47. I found that the DMCA has the following design features to ensure the integrity of the DMCA during extreme weather events:

- capacity to store water for rainfall events up to 20 years Average Recurrence Interval (**ARI**), post dewatering of the dredge material.
 - permanent outlet structures designed to disperse flow and minimise the potential for erosion at the base of the discharge points.
 - the inside face of the embankments will be lined with a low density polyethylene liner or similar to assist in managing internal erosion and potential lateral seepage from the DMCA.
 - a spillway to avoid overtopping and potential dam failure. The spillway will include a fuseplug to control the outflow and minimise potential erosion of the embankment, reducing the risk of embankment failure.
48. In the event of emergency stormwater discharge, the EIS concludes that impacts will be localised and mitigated by the large amount of water flowing naturally through the wetland. I agreed with this conclusion.
49. I found that this design addresses the concerns raised in the Independent Review of the Bund Wall at the Port of Gladstone - Report on Findings (April 2014) and The Australian Government Response (August 2015). The proponent's EIS states that the containment bunds in Gladstone were constructed offshore as part of a reclamation project and were not effectively lined. The dredge material containment areas at Abbot Point will be partly lined to minimise leakage, and the dredge material containment area is onshore and will not be subject to the tidal influences that occurred at Gladstone.
50. The EIS provides a number of general mitigation measures to minimise impacts associated with the proposed action on bird species. These include:
- limiting the extent of vegetation clearing;
 - wetting of surfaces including roads, exposed stockpiles and embankments to minimise dust;
 - installing physical barriers such as bund or wind breaks;
 - reducing speed limits for all vehicles and ensuring speed limits are clearly sign-posted;
 - vehicles will be restricted to designated roads and tracks;
 - maintaining a buffer area of 50m between the DMCA and the Caley Valley Wetlands;
 - design of plant machinery to minimise noise;
 - use of directional lighting and shrouds to protect adjacent areas from direct light; and
 - use of mobile towers that can be moved and adjusted during construction to minimise the need to light unused areas.
51. The proponent has committed to the development of an onshore environmental management plan and dredge material management plan that will outline how the implementation of the above measures will occur. This commitment is enforced by the conditions that I have attached to the approval.

52. To minimise impacts associated with extreme weather events and disturbance on birdlife habitat in the Caley Valley Wetlands, I attached a condition of approval that prohibits construction of the DMCA between December and March. I have also required the proponents to maintain a 50 m buffer zone between the DMCA and the wetland fringe of the Caley Valley Wetlands.
53. To ensure the integrity of the DMCA, I attached conditions of approval requiring the proponent to provide a detailed design of the DMCA, prior to commencing construction, including: how the design is consistent with the Manual for Assessing Consequence Categories and Hydraulic Performance of Structures; and ensuring that the DMCA has sufficient freeboard to contain a 1 in 20 ARI, post dewatering of the dredge material. The proponent is also required to undertake further modelling of the potential seepage of seawater, which could impact on the habitat of birds that utilise the Caley Valley Wetlands.
54. I have also attached conditions of approval that require the proponent to implement ongoing management and monitoring to ensure impacts of the proposed action on birdlife and their habitats are minimised. In particular, conditions 10 and 12 of my approval require the proponent to develop an onshore environmental management plan and a dredge material management plan, which includes a monitoring program, triggers for corrective action and adaptive management, and that this will effectively manage, monitor and mitigate impacts of the proposed action on bird species and their habitat. Under condition 16, the proponent will also be required to offset impacts to the habitat of relevant bird species if impacts occur to their habitat in the Caley Valley Wetlands.
55. In response to the concerns raised by Geoscience Australia, I attached a condition requiring the proponent to re-run the groundwater modelling, and to consider that information to determine the appropriate location for monitoring points to identify potential impacts on relevant bird habitat, including listed threatened and migratory birds in the Caley Valley Wetland. The conditions require the proponent to provide a process to offset impacts on habitat for relevant bird species, if the monitoring determines that the impacts are greater than what was predicted in the final environmental impact statement.
56. I considered that, based on the proponent's EIS, Departmental Advice, the proposed mitigation measures, and the conditions I attached to the approval, the impacts of the proposed action on these three world heritage values of the World Heritage Area would not be unacceptable.

Marine mammals – Migrating whales (7), Dugong (10), Species of whales (10), Species of dolphins (10), and Humpback whale calving (10)

57. Humpback whales (*Megaptera novaeangliae*) and dugongs (*Dugong dugon*) are both known to pass through the waters off Abbot Point. Although there are some local seagrass meadows that provide a potential foraging resource for dugongs, the proponent's EIS notes that the area has not been identified as being important to either species for breeding, calving or foraging.
58. Inshore dolphins, in particular the Australian snubfin dolphin (*Orcaella heinsohnii*) and Indo-Pacific humpback dolphin (*Sousa chinensis*) are also known to occur in the waters off Abbot Point. Neither of these species is well understood in terms of their distribution, biology or behaviour, although the EIS suggests that individual populations may be genetically important. The EIS acknowledges that the 'conservation importance of

Australian snubfin and Indo-Pacific humpback dolphins in a local context should therefore be considered high’.

59. I found that this group of species is likely to be at risk from impacts associated with the proposed action – noise, turbidity, and vessel strike. Additionally, dugongs may be indirectly impacted by impacts on seagrass meadows, addressed separately in paragraphs 90 - 100.
60. Based on predicted noise modelling, the EIS notes that underwater noise may cause behavioural changes to some marine mammal species, and they may move further away from the activity. The EIS concludes that given the short-term nature of the dredging activities and proposed mitigation measures, impacts from underwater noise on marine mammals are not expected to be significant at a local or Great Barrier Reef World Heritage Area scale.
61. The EIS notes that operation of the cutter suction dredge will reduce the amount of sediment entering the water column compared with the operation of other dredge vessels. Additionally, dredge material will be pumped to the onshore DMCA, which will reduce the amount of sediment entering the marine environment to only fugitive sediments released from the action of the cutter suction head. The EIS states that dredging and the return water discharge is expected to contribute approximately 9,938 tonnes (t) of fine sediment to the marine environment.
62. Based on sedimentation/plume modelling, the proponent’s EIS concludes that changes in marine water quality from increased sediments will be short-lived and generally isolated to within a 500m radius of the dredging operation. Beyond this, sediment may be detected, but no impacts on marine mammals are expected. The proponent considers that changes in water quality near the return water discharge point are also expected to be localised and of short duration.
63. I found that the cutter suction dredge is anchored during dredging and moves slowly, either with self-propulsion or the use of support vessels. The EIS notes that the use of a support vessel has been reduced due to the pumping of the dredge material to the DMCA. The EIS includes proposed management measures, including restricting the location of the cutter suction dredge, visual monitoring for marine fauna in the immediate vicinity of the dredge vessel and maintaining speed to minimise impacts of vessel strike on marine mammals. The EIS concludes that given the limited number of vessel movements and proposed mitigation measures, the likelihood and consequential impacts of vessel collision is expected to be low.
64. I found that the proposed action has the potential to facilitate increased shipping in the Great Barrier Reef World Heritage Area and this may increase the risk of vessel collision with marine mammals. The EIS notes that the impacts relating to shipping, including vessel collision, have been addressed in the environmental assessment of the T0 project (EPBC 2011/6194). Furthermore, the management of shipping in the Great Barrier Reef is subject to higher level strategic policies including the North-East Shipping Management Plan (Australian Marine Safety Authority, 2014). The EIS concludes that the cumulative impacts of shipping on world heritage values of the Great Barrier Reef have been addressed and will be managed through government regulation and industry codes of practice.

65. I found that the proponent has committed to preparing and implementing a dredge management plan. The dredge management plan will include best practice mitigation and management measures for dredging operations that are known to be effective in addressing the potential impacts identified above. This commitment is enforced by conditions that I have attached to the approval.
66. The proponent has also proposed additional measures to provide improvements in water quality through a contribution to an entity or authority endorsed by the Department to undertake activities aligned with the Reef 2050 Plan (discussed in paragraphs 173 - 178). I noted this may involve funding gully erosion or similar projects to reduce sediment entering the Great Barrier Reef.
67. To minimise impacts of vessel strike and water quality on marine mammals, I attached a condition of approval specifying that dredging must be undertaken using a cutter suction dredge, and that no more than 1.1 Mm³ of dredge material be removed from the dredge footprint.
68. I have attached conditions of approval to ensure that the proponent implements measures to minimise the impacts of the proposed action on these five world heritage values of the World Heritage Area. In particular, condition 8 of my approval requires the proponent to develop and implement a dredge management plan that incorporates management actions, including monitoring to mitigate the impacts of the proposed action on marine mammals and their habitat. The plan must include measures to: modify dredging activity and / or stop works if specified water quality triggers levels are reached; to avoid the introduction of marine pests and disturbance to marine fauna; and ensure the return water discharge complies with the Water Quality Guidelines for the Great Barrier Reef Marine Park (2010).
69. To ensure any long-term impacts to listed threatened and migratory marine fauna are compensated for, I have attached a condition of approval that requires the proponent to provide details of how it will offset long-term impacts to marine fauna as a result of dredge activities as identified in the Dredge Management Plan.
70. I considered that, based on the EIS, Departmental Advice, the proposed mitigation measures, and the conditions I attached to the approval, the impacts of the proposed action on these five world heritage values of the World Heritage Area would not be unacceptable.

Coral communities - coral assemblages of hard and soft corals (7), coral reef ecosystems (8), coral reefs, sand banks and coral cays (9), coral reefs, coral cays (10)

71. The EIS stated that survey results located hard and soft coral in the project area. However, they are sparsely distributed and do not represent complex coral communities. In contrast, Camp Island, located 20km to the west of the dredging area, has more extensive fringing coral growing on underwater rocky outcrops and is considered to be an important coral community. The EIS states that the closer coral locations are likely to be important to some local residents for fishing and diving.
72. Increased sedimentation and a reduction in light availability have the potential to impact on coral communities in the project area. Based on sedimentation / plume modelling, the proponent's EIS concludes that changes in marine water quality from increased sediments will be short lived and generally isolated to within a 500m radius of the dredging operation and that complex coral communities will not be impacted by the proposed action.

73. I found that there is likely to be temporary anchoring of vessels for dredging activities that can result in coral breakage and tissue damage from the scraping of anchor chains. Coral damage may take years to rebuild and in some cases may not recover. I found that given there are no complex coral communities within the dredge footprint, impacts associated with anchoring are unlikely to occur.
74. The proponent has committed to preparing and implementing a dredge management plan that will include best practice mitigation and management measures for dredging operations to address the potential impacts to corals.
75. I attached a condition of approval requiring the proponent to develop and implement a dredge management plan that incorporates management actions, including monitoring to minimise any potential impacts of the proposed action on complex coral communities.
76. I considered that, based on the EIS, Departmental Advice, the proposed mitigation measures, and the conditions I attached to the approval, the proposed action would not have unacceptable impacts on these four world heritage values of the World Heritage Area.

Marine turtles – Green turtle breeding (7, 10), nesting turtles (7), marine turtle (10), marine turtle rookeries (10)

77. I found that five species of marine turtle, the loggerhead turtle (*Caretta caretta*), hawksbill turtle (*Eretmochelys imbricata*), olive ridley turtle (*Lepidochelys olivacea*), green turtle (*Chelonia mydas*) and flatback turtle (*Natator depressus*) are known or expected to occur in the waters off Abbot Point.
78. The EIS states that while loggerhead, hawksbill and olive ridley turtles are known to occur in the Abbot Point area, the area is unlikely to be important for these turtle species. They utilise a variety of marine habitats and no known nesting beaches or notable foraging resources for these species have been recorded in the vicinity of Abbot Point.
79. I found that only the green turtle and flatback turtle are considered likely to be significantly impacted by the proposed action, as they are known to nest on the sandy beaches on either side of the Abbot Point headland.
80. Marine turtles are considered likely to be at risk from noise, turbidity, and vessel strike associated with the proposed action. Suction from trailing hopper suction dredgers can also pose a risk to marine turtles. The EIS notes that this is not considered to be a concern with a cutter suction dredge as the disturbance associated with vibration from the cutter suction dredge and the slow progression of the dredge vessel, provides significant time for resting turtles to relocate.
81. The EIS notes that predator tracks (primarily pigs) were identified on mainland coastal beaches at Abbot Bay including Abbot Point. Feral Pigs are known to prey upon marine turtle eggs. The EIS notes that the onshore environmental management plan will include pest control measures to reduce the impacts of feral species on matters of national environmental significance including marine turtle species.
82. Green turtles may also be indirectly impacted by impacts on seagrass meadows, addressed separately in paragraphs 90 - 100.
83. Nesting turtles may be impacted by construction noise and vibration, but are at most risk from light spill. Lighting can disrupt turtle nesting, which typically occurs at night, by

disorientating adult females as they approach the beach to lay their eggs, or hatchlings as they emerge and move towards the water. Nesting may also be impacted by the deployment of dredging pipework if the beach is used for temporary construction or storage of pipework.

84. The EIS states that mitigation measures will be implemented to reduce the impacts of light spill on nesting turtles, including the use of mobile towers that can be adjusted during construction to minimise lighting of unused areas.
85. I found that the proposed action has the potential to facilitate increased shipping in the Great Barrier Reef World Heritage Area and this may increase the risk of vessel collision with marine turtles. The EIS notes the impacts relating to shipping, including vessel collision, have been addressed in the environmental assessment of the T0 project (EPBC 2011/6194).
86. As discussed in paragraph 65, the proponent has committed to prepare and implement a dredge management plan that will include mitigation measures manage the risks associated with vessel strike.
87. I have attached conditions of approval to ensure that the proponent implements measures to minimise the impacts of proposed action on these four world heritage values of the World Heritage Area. In particular:
 - condition 7 of my approval requires the proponent to maintain a buffer zone between the proposed dredge material delivery pipeline and return water pipeline and any identified turtle nest areas located along the coastal zone at Abbot Point;
 - conditions 8 and 10 of my approval requires the proponent to develop a dredge management plan and an onshore environmental management plan to manage the direct and indirect impacts of the proposed action, which includes adaptive management and monitoring programs that will avoid, minimise and mitigate impacts of the proposed action on marine turtle species and their habitat.
 - condition 16 of my approval requires the proponent to provide details of how it will offset any long-term impacts to listed threatened and migratory turtles, as a result of laying of pipelines and dredge activities as identified in the Dredge Management Plan.
88. In addition, I considered that the additional management measures in relation to seagrass (discussed in paragraphs 173 - 178) and water quality (addressed in paragraphs 174 - 176) would also sufficiently address any residual significant impacts on marine turtles.
89. I considered that, based on the EIS, Departmental Advice, the proposed mitigation measures, and the conditions I attached to the approval, the proposed action would not have unacceptable impacts on these four world heritage values of the World Heritage Area.

Seagrass – Diversity of seagrass (10), plant species diversity and endemism (10)

90. I found that seagrass meadows are an ecological feature of importance to many other values of the World Heritage Area (including as a foraging resource for green turtle and dugong) and also contribute to the integrity of the World Heritage Area by consolidating marine sediments and consuming excess nutrients.

91. Seagrass surveys undertaken in December 2014 identified seagrass at one site in the proposed apron area. The area of seagrass found in the dredging footprint consisted of less than 1% cover of the deepwater seagrass *Halophila decipiens*.
92. The EIS notes that while seagrasses are mostly absent from the 61 ha dredge footprint, where they are present, it is at low densities (1% to 5% cover). I found that proposed dredging will result in direct impacts on approximately 61 ha of actual and potential seagrass habitat within the dredge footprint.
93. The EIS states that dredging of the T0 berth pocket will deepen the seabed, resulting in reduced light levels, with the potential to preclude recolonisation of seagrass from an area of approximately 10.5 ha. I found that this represents approximately 0.04% of the available seagrass mapped at Abbot Point.
94. I found that the dredging of the apron area is likely to directly impact on 50.5 ha of potential seagrass habitat. However the EIS states that this is expected to be a temporary impact due to: the dredging depth of the apron areas being no more than 18.5 LAT, and that this is unlikely to alter benthic light to preclude seagrass re-establishment; and characteristic (texture and composition) of the seabed in the apron area, after dredging, is expected to be similar to pre-dredging, thus allowing for recolonisation of seagrass.
95. In addition, the EIS notes that further impacts on seagrass communities may occur due to increased sedimentation from dredging activities and the return water discharge from the DMCA, however these impacts are expected to be temporary.
96. The EIS states that given there is an additional 27,000 ha of mapped seagrass outside of the proposed dredging area in the Abbot Point region, it is unlikely marine species would be dependent on the ephemeral deepwater seagrass patches that are occasionally found in the dredge footprint.
97. The EIS concludes that the potential permanent loss of 10.5 ha of seagrass habitat as a result of the proposed action is considered a negative impact in relation to the world heritage values that cannot be further mitigated. The proponent has proposed a contribution to the Reef Trust to provide improvement in the water quality and enhance the resilience of seagrass ecosystems in the Great Barrier Reef World Heritage Area. Details of this proposal are discussed separately in paragraphs 173 -178.
98. I noted that this approach is consistent with the Reef 2050 Plan. I was advised by the the Department that although seagrass has the potential to recolonise in some of these areas, that this process is likely to be slow and / or incomplete, given the ongoing disturbance of port operations including the potential for maintenance dredging. Taking the Department's advice into account, I attached a condition requiring the proponent to prepare and implement an offset management strategy to compensate for the loss of the 61 ha of potential seagrass habitat within the dredge footprint, or a reduced area if seagrass is found to recolonise those areas outlined by the proponent.
99. I have also attached conditions requiring the proponent to prepare and implement a dredge management plan. The plan must provide management measures including controls, performance targets, early warning trigger levels, adaptive management strategies and corrective actions, including in relation to water quality.
100. I considered that, based on the EIS, Departmental Advice, the proposed mitigation measures, and the conditions I attached to the approval, the proposed action would not

have unacceptable impacts on these two world heritage values of the World Heritage Area.

Miscellaneous – Breeding colonies of seabirds and marine turtles (7), Other fauna including microfauna (9), Diversity supporting marine and terrestrial species (global conservation significance) (10), beds of Halimeda algae (9)

101. The EIS identifies the presence of macroalgae, including three species of *Halimeda*, in the Abbot Point project area. Surveys identified macroalgae to be widespread but patchy in distribution and typically with a low (less than 5%) cover. I found that no macroalgae are present in the dredge footprint.
102. Macroalgae provide foraging resources for marine species such as dugongs and turtles. The EIS notes that impacts on macroalgae communities may occur due to increased sedimentation from dredging activities.
103. The EIS concludes that changes in marine water quality from increased sediments will be short lived and isolated to within a 500m radius of the dredging operation and that macroalgae will not be impacted by the proposed action. In addition, the proponent has committed to prepare and implement a dredge management plan to address impacts from dredging.
104. I found that the matters discussed above in relation to birds (paragraphs 38 - 56) marine mammals (paragraphs 57 - 70), marine turtles (paragraphs 77 - 89) and seagrass (paragraphs 90 - 100) also contribute to these four world heritage values. Therefore, I considered that, based on the EIS, Departmental Advice, the proposed mitigation measures, and the conditions I attached to the approval, the proposed action would not have unacceptable impacts on these four world heritage values of the World Heritage Area.

Integrity

105. I found that the proposed action would slightly expand the Port of Abbot Point (albeit still within existing port limits), but without causing any fragmentation of values other than the minor and temporary fragmentation caused by submerged and floating pipework. As noted in paragraph 92, I found that approximately 61 ha of potential seagrass habitat would be modified.
106. I found that the proposed action poses a number of other risks to the integrity of the World Heritage Area, such as the potential for introduction of pest species and contamination resulting from the catastrophic failure of dredging infrastructure and the DMCA.
107. The EIS states that, given the scale of the Great Barrier Reef World Heritage Area, it is not considered likely that the size of the proposed action alone would influence the integrity of the Great Barrier Reef World Heritage Area.
108. I noted that the proponent has committed to preparing and implementing management plans, to ensure that impacts are mitigated, monitored and adaptive management strategies implemented if required. These commitments have been enforced by conditions that I have attached to the approval.
109. I found that given the relatively small scale of the anticipated impacts and the temporary nature of certain impacts, the proposed action would not have an unacceptable impact on the integrity of the World Heritage Area.

Property management arrangements

110. I found that the proposed action is consistent with the designation of the area as a working port. The Department advised that if approved, the proposed action would be managed through a range of conditions attached by the Commonwealth and / or Queensland Governments. I found that the proposed action would not result in a change in the protection and management mechanisms of the World Heritage Area.

Conclusion

111. In making my decision I considered the EIS, the Secretary's Recommendation Report, and the Department's briefing material. Based on this information, and with consideration of the impacts associated with the proposed action, proposed mitigation measures, and the conditions I attached to the approval, I found that the proposed action would not have an unacceptable impact on the world heritage values of the Great Barrier Reef World Heritage Area.

National Heritage Places (sections 15B and 15C)

112. 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.
113. 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:
- ii. 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;
 - iii. 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;
 - iv. 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;
 - v. 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; and
 - vi. 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.
114. The heritage values that cause the Great Barrier Reef National Heritage place to meet the above criteria (its national heritage values), are similar to the heritage values that cause it to meet the world heritage criteria set out above.

115. I found that the potential impacts to the Great Barrier Reef National Heritage place are commensurate to the potential impacts from the proposed action on the Great Barrier Reef World Heritage property. I found that the mitigation and management measures equally apply to the Great Barrier Reef National Heritage place.
116. I considered that the conditions I attached to the approval to minimise impacts of the proposed action on the Great Barrier Reef World Heritage property would also minimise impacts of the action on the Great Barrier Reef National Heritage place.

Conclusion

117. In making my decision I considered the proponent's EIS, the Secretary's Recommendation Report, and the Department's briefing material. Based on this information, and with consideration of the impacts associated with the proposed action, proposed mitigation measures, and the conditions I attached to the approval, I found that the proposed action would not have any unacceptable impacts on the National Heritage values of the Great Barrier Reef National Heritage place.

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

118. The proponent's EIS states that the Great Barrier Reef Marine Park was assessed against the significant impact guidelines. The significant impact guidelines state that an action may have a significant impact on the Great Barrier Reef Marine Park if it is likely to:
- modify, destroy, fragment, isolate or disturb an important, substantial, sensitive or vulnerable area of habitat or ecosystem component such that an adverse impact on marine ecosystem health, functioning or integrity in the Great Barrier Reef Marine Park results;
 - have a substantial adverse effect on a population of a species of cetacean including its life cycle (for example, breeding, feeding, migration behaviour, life expectancy) and spatial distribution;
 - result in a substantial change in air quality or water quality (including temperature) which may adversely impact on biodiversity, ecological health or integrity or social amenity or human health;
 - result in a known or potential pest species being introduced or becoming established in the Great Barrier Reef Marine Park;
 - result in persistent organic chemicals, heavy metals, or other potentially harmful chemicals accumulating in the marine environment such that biodiversity, ecological integrity, or social amenity or human health may be adversely affected, or
 - have a substantial adverse impact on heritage values of the Great Barrier Reef Marine Park, including damage or destruction of an historic shipwreck.
119. Relevant impacts on habitat and ecosystems (including seagrass) and marine mammals are discussed in World and National Heritage (paragraphs 27-117), listed threatened species and ecological communities (paragraphs 133 - 156) and listed migratory species (paragraphs 157-163).

Water quality

120. I found that water quality is a key environmental value of the Great Barrier Reef Marine Park. The EIS notes that the proposed action may result in impacts on water quality through increase in sedimentation in the water column from dredging activities.
121. I found that the result of the hydrodynamic modelling indicates that the suspended sedimentation plumes resulting from the increased sedimentation is mainly confined to the dredging area. The EIS notes that sediments will be short lived and generally isolated to within a 500m radius of the dredging operation, beyond this sediment may be detected however, long-term water quality impacts are not expected.
122. The EIS found, based on the water quality assessment undertaken across the dredge footprint, that sediments released into the marine environment are not expected to contain organic chemicals, heavy metals or other harmful chemicals at concentrations that are of environmental concern or toxic to marine species. I agreed with this conclusion.
123. The proponent's EIS states that water quality impacts will be mitigated through best practice dredging and the use of sediment thresholds for discharge of return water. Protocols for management of hazardous materials, including contingency responses, would also serve to reduce the risk of water pollution resulting from fuel or other contaminants entering the marine environment.
124. I found that whilst the EIS states that the proposed action will have no residual impact on matters of national environmental significance, it has the potential to have a negative impact on water quality and seagrass habitat.
125. Therefore, I attached conditions of approval requiring the proponent to prepare and implement an offset strategy that details how the proponent will improve water quality and seagrass habitat in the Great Barrier Reef World Heritage Area. I also attached conditions of approval requiring the proponent to prepare and implement a dredge management plan that incorporates appropriate mitigation measures, and includes an adaptive management and monitoring program.

Marine pests

126. The EIS notes that whilst it is unlikely, there is a potential for invasive species to be introduced into the marine environment as a result of dredging activities. I found that introduced species can be translocated to regions through use of ballast water (to control trim and draft of vessels) and biofouling (for example organisms on hulls and propellers).
127. I found that all dredging vessels will adhere to the Australian mandatory ballast water reporting system, and mandatory ballast water management will need to meet the Australian Biosecurity Inspection and Quarantine Service requirements. In addition the proponent has committed to implementing a dredge management plan, which will incorporate risk assessment procedures consistent with the National System for the Prevention and Management of Marine Pest Incursion guidelines. I also attached conditions of approval requiring the proponent to prepare and implement a dredge management plan that incorporates appropriate mitigation measures to avoid or minimise the introduction of marine species.

Social, economic and cultural aspects

128. The EIS notes that the proposed action may impact on fisheries, tourism or other uses of the Great Barrier Reef Marine Park; however, these impacts are expected to be limited due to the location, scale of dredging, and the temporary and confined nature of most of the anticipated impacts within the immediate environs of an operating port.

Heritage values

129. The EIS notes that the Catalina Plane wreck is located 32 km from the T0 dredging footprint and has been declared a Maritime Cultural Protection Special Management Area. The EIS states that no predicted impacts to this site are expected as a result of the proposed action.
130. The EIS also notes that the proposed action is not likely to directly or indirectly impact on the heritage values of the Great Barrier Reef Marine Park.
131. The Department advised, based on the assessment provided in the EIS, that the impacts of the proposed action on these heritage values of the Great Barrier Reef Marine Park would not be unacceptable and, therefore, no additional avoidance or mitigation measures were considered necessary. I agreed with this advice.

Conclusion

132. In making my decision I considered the EIS, the Secretary's Recommendation Report, and the Department's briefing material. Based on this information, and with consideration of the impacts associated with the proposed action, proposed mitigation measures, and the conditions I attached to the approval, I found that impacts of the proposed action on the Great Barrier Reef Marine Park would not be unacceptable.

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

133. The Department's Environment Reporting Tool indicates that a total of 26 EPBC Act listed threatened species and 1 EPBC Act listed threatened ecological community may occur within a 5 kilometre radius of the project site.
134. Based on the location of the proposed action and likely habitat in the area, coupled with the data presented in the EIS, I found that the proposed action may have potential impacts on the following listed threatened species and ecological communities:
- Semi-evergreen vine thickets of the Brigalow Belt (north and south) and Nandewar Bioregion – endangered
 - Squatter pigeon (southern) (*Geophaps scripta scripta*) – vulnerable
 - Australian painted snipe (*Rostratula australis*) – endangered
 - Green turtle (*Chelonia mydas*) – vulnerable (also listed migratory)
 - Flatback turtle (*Natator depressus*) – vulnerable (also listed migratory)
 - Humpback whale (*Megaptera novaeangliae*) – endangered (also listed migratory)

Semi-evergreen vine thickets of the Brigalow Belt (north and south) and Nandewar Bioregions (semi-evergreen vine thickets)

135. The EIS states that no semi-evergreen vine thickets ecological community has been recorded within the footprint of the DMCA or pipeline alignments. The closest record is located approximately 50 m from the proposed pipeline alignment between the DMCA and the beach to the north. The EIS notes that these semi-evergreen vine thickets are generally in good condition but some are degraded to varying degrees by invasion of the exotic rubber vine or other weeds.
136. The National Recovery Plan for the Semi-evergreen vine thicket of the Brigalow Belt (North and South) and Nandewar Bioregions ecological community (2010) identifies the main threat to this community as broad-scale clearing; establishment of weeds; increased fire regimes; livestock grazing; coastal development; and increase in vertebrate pests such as rabbits and pigs.
137. The EIS notes that whilst the proposed action will not result in any clearing of the semi-evergreen vine thickets, it has the potential to result in indirect impacts on this ecological community through increases in weeds and alteration of fire regimes.

Squatter Pigeon (southern) (Geophaps scripta scripta) – Vulnerable

138. The EIS states the squatter pigeon has been observed regularly in small numbers in the coastal areas near Dingo Beach and in the Caley Valley Wetlands. Whilst this sub-species has not been recorded on the project site, the proponent's EIS notes that there is habitat for this sub-species on the project site.
139. The approved Conservation Advice for the Squatter Pigeon (TSSC 2015) states the main threats to the squatter pigeon include loss of habitat due to clearing for agriculture or development purposes; degradation of habitat by grazing species; predation and illegal shooting.
140. The EIS states that the proposed action will result in clearing of approximately 94 ha of suitable habitat. This includes 75 ha associated with the DMCA and a further 18.6 ha associated with the soil stockpile, alternative pipeline route and pipeline laydown area.
141. The EIS also notes that other impacts on the squatter pigeon may occur as a result of increase in vehicle strike and the potential destruction of ground nests during the construction phase; habitat fragmentation; increase in predation and edge effects.
142. The proponent's EIS concludes that the squatter pigeon at Abbot Point does not meet the criteria for an important population or habitat critical to the survival of the species for the following reasons:
 - the species is ubiquitous in this part of its geographic range;
 - species is not restricted by habitat availability in the region;
 - numbers recorded at Abbot Point are small and the species is neither rare nor disjunct from the broader population;
 - it is not at the edge of the range of the species and is therefore not important in terms of range expansion and recovery; and
 - there is no evidence to suggest the individuals found at Abbot Point are important in term of maintaining genetic diversity.

Australian painted snipe (Rostratula australis) – endangered

143. I found that the Caley Valley Wetlands are considered a stronghold for the Australian painted snipe. The proponent's EIS indicates that the Caley Valley Wetlands support approximately 1.87% of the total population of the species. The species has been detected in relatively large numbers (24 birds in one count) in both wet and dry conditions and chicks and juveniles have been observed, suggesting local breeding.
144. The EIS notes that the Australian painted snipe has been sighted on nine occasions adjacent to the project site and to the north, south and west of the project site.
145. The approved Conservation Advice for *Rostratula australis* (Australian painted snipe) (TSSC 2013) notes that loss of high quality habitat is a major threat to the species and recommends, 'no disturbance in areas where the species is known to breed'.
146. I found that the potential impacts associated with the proposed action on the Australian painted snipe included noise, dust, light spill, increased human activity and impacts to wetland habitat due to changes to stormwater and groundwater regimes.

Listed turtles and humpback whale

147. As discussed in paragraphs 57 - 70 and 77 - 89, I considered the impacts of the proposed action on listed turtle species and humpback whale. In addition to those matters discussed above I also considered the relevant recovery plans for marine turtles and the approved conservation advice for the humpback whale discussed below.
148. I found that the overall recovery objective of the National Marine Turtle Recovery Plan (for the green, flatback, leatherback, olive ridley, loggerhead and hawksbill turtle species) is to reduce detrimental impacts on Australian populations of marine turtles and hence promote their recovery in the wild. The National Marine Turtle Recovery Plan noted the continued decline of the eastern Australian population of the loggerhead turtle and identified the need for its conservation to be implicit in all actions.
149. I found that the approved conservation advice for *Megaptera novaeangliae* (Humpback Whale) (TSSC 2015) identifies the following threats to the species: whaling; climate and oceanographic variability and change; overharvesting of prey; noise interference; habitat degradation (including port expansions); entanglement; and vessel strike.

Mitigation measures

150. The proponent has committed to the implementation of a number of avoidance, mitigation and management measures to reduce impacts to the listed threatened species and ecological community listed at paragraph 134. These measures include:
 - a. For the semi-evergreen thickets ecological community -
 - areas to be cleared for the proposed action will be surveyed and marked out to ensure no areas of semi-evergreen vine thickets are inadvertently cleared;
 - all imported soil will be certified as weed-free prior to use;
 - soil and fill material from weed-affected areas within the project area will not be transported to clean sites;

- fire prevention measures will be implemented including appropriate storage of flammable material; fitting spark controls to equipment and ensuring adequate firefighting equipment is available;
- b. For the squatter pigeon -
- restricting clearing to the minimum footprint;
 - survey and marking of areas to be cleared to ensure no additional habitat is inadvertently disturbed;
 - pre-clearance surveys to be undertaken prior to vegetation clearance to flush individuals and determine the location of any nests. If nests are identified, translocation of eggs/young may be undertaken by suitably qualified personnel, if appropriate; and
 - education of personnel operating equipment to ensure they are aware that squatter pigeon occur on the project site and where habitat has been identified.

151. The mitigation measures for the threatened marine turtle species and the humpback whale are set out earlier in these reasons at paragraphs 63 and 84.

Threat abatement plans

152. The following threat abatement plans have been identified as relevant to the listed threatened species and ecological community considered above:

- Marine Debris Threat Abatement Plan
- European Red Fox Threat Abatement Plan
- Feral Cat Threat Abatement Plan
- Tramp Ant Threat Abatement Plan
- Rabbits Threat Abatement Plan

153. The goal of the above threat abatement plans is to minimise the impact of exotic species on biodiversity in Australia and its territories by protecting affected threatened species, and preventing further species and ecological communities from becoming threatened.

154. I found that the proposed action has the potential to further increase the occurrence of pest species and marine debris during the construction and operation of the proposed action. The EIS notes that the proponent has committed to preparing and implementing an onshore environmental management plan and a dredge management plan. These plans will include management measures to minimise threats through pest and weed controls and waste management.

Approval conditions

155. I have attached 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 134. The conditions require the proponent to:

- maintain a buffer zone between the proposed dredge material delivery pipelines and any identified turtle nest areas located along the coastal zone at Abbot Point;

- develop and implement an onshore environmental management plan, and a dredge management plan that incorporate appropriate mitigation and management measures. These plans must also include adaptive management and monitoring programs that will mitigate impacts of the proposed action on marine turtle species and their habitat;
- undertake pre-clearance surveys for the squatter pigeon. If the squatter pigeon is identified, the proponent is required to provide an offset to compensate for the loss of squatter pigeon habitat. The offset amount must be in accordance with the Department's Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy (October 2012);
- prepare and implement a dredge material management plan. The dredge material management plan must include monitoring, triggers and corrective actions. The dredge material management plan must be independently reviewed; and
- maintain a 50 m buffer zone between the DMCA and the wetland fringe of the Caley Valley Wetlands and ensure that construction of the DMCA does not occur between December and March.

Conclusion

156. In making my decision I considered the EIS, the Secretary's Recommendation Report, and the Department's briefing material. Based on this information, and with consideration of the impacts associated with the proposed action, proposed mitigation measures, and the conditions I attached to the approval, I found that the proposed action would not have any unacceptable impacts on listed threatened species and ecological communities.

Listed migratory species (sections 20 and 20A)

157. Based on ecological surveys and proximity of habitat, the EIS identified the proposed action may have potential impact on the following listed migratory bird species:

- Eastern great egret (*Ardea modesta*)
- Sharp-tailed sandpiper (*Calidris acuminata*)
- Curlew sandpiper (*Calidris ferruginea*)
- Red-necked stint (*Calidris ruficollis*)
- Latham's snipe (*Gallinago hardwickii*)
- Caspian tern (*Hydroprogne caspia*)
- Eastern curlew (*Numenius madagascariensis*)
- Australian painted snipe (*Rostratula australis*) (also listed as endangered)
- Little tern (*Sterna albifrons*)
- Common greenshank (*Tringa nebularia*)
- Marsh sandpiper (*Tringa stagnatilis*)

158. I accepted the Department's advice that the Australian painted snipe was delisted as migratory species under the EPBC Act on 30 June 2015. I noted that this species was not considered further in the discussion on EPBC listed migratory species, but was considered in the discussion on listed threatened species and ecological communities.
159. The following listed migratory marine species have also been identified as occurring in the Port of Abbot Point:
- Loggerhead turtle (*Caretta caretta*)
 - Hawksbill turtle (*Eretmochelys imbricata*)
 - Olive ridley (*Lepidochelys olivacea*)
 - Green turtle (*Chelonia mydas*)
 - Flatback turtle (*Natator depressus*)
 - Dugong (*Dugong dugon*)
 - Humpback whale (*Megaptera novaeangliae*)
 - Australian snubfin dolphin (*Orcaella heinsohnii*)
 - Indo-Pacific humpback dolphin (*Sousa chinensis*)
160. The potential impacts associated with the proposed action on listed migratory bird species includes noise, dust, light spill, increased human activity, and changes to stormwater and groundwater regimes. These impacts are discussed in paragraphs 38 - 56 in relation to impacts on birdlife. I consider that the impacts would be of a similar nature and scale to the impacts described in those paragraphs.
161. The mitigation measures and approval conditions discussed in paragraphs 50 - 56 are relevant to the impacts of the project on listed migratory bird species.
162. The impacts of the proposed action on listed migratory marine species, and the mitigation measures and approval conditions which aim to address those impacts are discussed at paragraphs 57 – 70 (marine mammals), paragraphs 77 – 89 (marine turtles) and paragraphs 90 - 100 (seagrass) of these reasons.

Conclusion

163. In making my decision I considered the EIS, the Secretary's Recommendation Report, and the Department's briefing material. Based on this information, and with consideration of the impacts associated with the proposed action, proposed mitigation measures, and the conditions I attached to the approval, I found that the proposed action would not have unacceptable impacts on listed migratory species.

Commonwealth marine areas (sections 23 and 24A)

164. I found that within Queensland, the Commonwealth marine area overlaps with the boundaries of the Great Barrier Reef Marine Park and the Great Barrier Reef World Heritage Area.
165. I found that at Abbot Point, the values of the Great Barrier Reef Marine Park are equivalent to those of the Commonwealth marine area and similar to those in the Great Barrier Reef World Heritage Area, and impacts on the values the Great Barrier Reef World Heritage Area and Great Barrier Reef Marine Park and are discussed in paragraphs 27 - 132.
166. The proponent's EIS states that the potential impacts of the proposed action to the environment in the Commonwealth marine area are:
- nutrients and sediment from runoff;
 - increased sediments as a result of dredging activities;
 - noise and physical impacts to threatened and migratory species; and
 - increased shipping.
167. I found that dredging will occur outside the Commonwealth marine area, and there will be no disposal of dredge material in the Commonwealth marine area. The plume modelling outlined in the proponent's EIS indicates that sediment migration will be highly localised from the dredging site and will not significantly affect the Commonwealth marine area.
168. The proponent has stated that potential indirect impacts to benthic communities as a result of the proposed action may extend into the Commonwealth marine area however these are expected to be temporary. I found that the effects of the sediment plume on light availability are not predicted by the proponent to result in detectable losses of seagrass or have detectable impacts on potential seagrass habitat with the Commonwealth marine area.
169. The proponent's EIS states that return waters from the DMCA will contain higher than natural levels of suspended solids. I found that the sediments are expected to quickly disperse and any impact to deepwater ephemeral seagrass habitat in the Commonwealth marine area is likely to be temporary in nature.
170. I found that no commercial shipping activity will occur as part of the proposed action, however I consider that shipping has been assessed as a consequential impact, as dredging will enable the T0 coal and shipping terminal project (EPBC 2011/6194) to proceed.
171. The proponent's EIS notes that the cumulative impacts of shipping have been addressed and will be managed through government regulation and industry codes of practice.

Conclusion

172. I found that direct or indirect impacts to the environment that occur in the Commonwealth marine area are expected to be limited. In making my decision I considered the EIS, the Secretary's Recommendation Report, and the Department's briefing material. Based on this information, and with consideration of the impacts associated with the proposed

action, proposed mitigation measures, and the conditions I attached to the approval, I found that the proposed action would not have unacceptable impacts on the environment of the Commonwealth marine area.

Additional management measures

173. The EIS states that the proposed action will not result in a residual significant impact on matters of national environmental significance, and therefore there is no requirement to offset impacts in accordance with the EPBC Act Environmental Offset Policy (2012). However, the EIS notes that the proposed action is likely to have a negative impact on the Great Barrier Reef World Heritage Area through:
- the exposure of 9,938 t of fine sediment available for resuspension from dredging activities; and
 - permanent loss of 10.5 ha of potential seagrass habitat within the proposed berth pockets.
174. I found that the proponent has proposed to improve water quality and seagrass in the Great Barrier Reef World Heritage Area by contributing funds to actions delivered under the framework that implements the strategies of the Reef 2050 Plan. This includes:
- A contribution to catchment management actions that will prevent sediment, equivalent to 150% of the fine sediment predicted to be mobilised in the marine environment.
 - An assessment of the costs to implement a hypothetical (yet feasible) cost effective gully erosion management plan to reduce erosion from active gullies in the grazing areas of the Lower Burdekin and Don River catchments.
 - Financial contributions to undertake a seagrass recovery and restoration program within the Great Barrier Reef World Heritage Area.
175. I found that the proposal would contribute to the Reef 2050 target to achieve up to 50% reduction in anthropogenic end-of-catchment sediment loads and provide compensation for impacts on water quality and seagrass habitat. However, the Department advised that further information is required including additional calculations, to determine the amount of funding and specific details of relevant projects that could be delivered through an entity or agency endorsed by the Department.
176. In order to determine the actual amount of fine sediment mobilised from dredging, I attached a condition of approval requiring the proponent to provide a report on completion of the dredging. The completion report must include details of modelling used to determine the actual amount of fine sediment discharge to the marine environment. This data can be used to calculate the contribution required to achieve a 150% reduction in fine sediment entering the marine environment.
177. As discussed in paragraph 98, the Department advised me that there is a risk that the seagrass within the apron areas will not recolonise. Therefore, I attached a condition to my approval that requires the proponent to prepare and implement an offset management strategy to compensate for the loss of 61 ha of seagrass habitat within the dredge footprint, or a reduced area if seagrass is found to recolonise those areas outlined by the proponent.

178. The offset management strategy must provide details on how the proponent will achieve an improvement in water quality and seagrass habitat in the Great Barrier Reef World Heritage Area.

Cumulative impacts

179. I considered the impacts of development associated with dredging and disposal and increased shipping from T0, T1 and T3 and the proposed action, as they have the potential to have overlapping spatial and temporal impacts.

180. The EIS states that threats with the potential to result in cumulative impacts are:

- exotic species - the potential for introduction of marine pests to the local marine environment from construction and operation, including increased shipping, resulting from development of the T0 and T3 projects; and
- land clearing and habitat loss - the potential for land clearing and habitat loss to result in significant residual impacts for conservation significant species.

181. I found that the cumulative impacts occurring at the Port of Abbot Point on matters of national environmental significance will be addressed by the implementation of management measures and the approval conditions for projects that have been approved (T0, T1 and T3). The cumulative impacts of any new proposals will be considered in future assessment processes.

Greenhouse gas emissions

182. The 2014 Great Barrier Reef Outlook Report identifies climate change as the most serious threat to the Great Barrier Reef. The report states that climate change is already affecting the Reef and is likely to have far-reaching consequences in the decades to come. Sea temperatures are on the rise and this trend is expected to continue, leading to an increased risk of mass coral bleaching; gradual ocean acidification will increasingly restrict coral growth and survival; and there are likely to be more intense weather events. The extent and persistence of these impacts depends to a large degree on how effectively the issue of rising levels of greenhouse gases is addressed worldwide. The impacts of increasing ocean temperatures and ocean acidification will be amplified by the accumulation of other impacts such as those caused by excess nutrient run-off.

183. The EIS identified the emissions of the proposed action including Scope 1 emissions, Scope 2 emissions and Scope 3 emissions. This approach is consistent with the provisions of the *National Greenhouse and Energy Reporting Act 2007 (Cth)* (**NGER Act**).

184. The NGER Act prescribes a single, national framework for corporations to report on greenhouse gas 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 greenhouse gas emissions reported by corporations that meet specific legislative emissions and/or energy thresholds.

185. For each facility under its operational control, the NGER Act requires a corporation to identify whether its emissions are:

- Scope 1 (direct) emissions—includes the release of greenhouse gas emissions as a direct result of activities undertaken at a facility. They are emissions over which the entity has a high level of control; or

- Scope 2 (energy direct) emissions—includes the release of greenhouse gas 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.
- Scope 3 (indirect) emissions—includes all indirect emissions that are not included in Scope 2. They are a consequence of the activities of the facility, but occur at sources or facilities not owned or controlled by the entity. Scope 3 emissions are not defined in the NGER Act because reporting them is not mandatory.

186. The EIS has determined that the proposed action’s emissions are considered to include:

- construction of the onshore DMCA’s;
- dredging of undisturbed seabed for new berth pockets and ship apron areas; and
- relocation of the dredged material to the DMCA and offshore discharge of return water.
- ongoing management and removal of the dredged material.

187. The EIS includes the following calculation of Green House Gas (GHG) emissions from the proposed action:

Scope	emissions (t CO ₂ -e)	activities that relate to the proposed action
scope 1	84 464	emissions from combustion of purchased fuel, fugitive emissions of GHGs for site equipment or vegetation clearance
scope 2	24	fuel combustion and vegetation removal
scope 3	18 160	Extraction, production and transport of fossil fuels consumed Extraction, production and transportation of fuels consumed in the generation of electricity Embodied emissions in key construction material Road transport of construction and equipment material, and construction crew between the camp and the APGG Project sites.
total (scope 1, 2 &3)	102 648	

188. The proponent’s EIS concludes that there are minimal GHG emissions directly associated with the construction and operation of the proposed action.

Conclusion

189. I found that Scope 1, 2 and 3 GHG emissions are likely to occur within Australia, if the proposed action proceeds. Australia has set targets to reduce GHG emissions through a climate change policy framework that includes the Emission Reduction Fund. Therefore while the proposed action will have scope 1, 2 and 3 GHG emissions, this will occur within a national framework of modelled reductions in net GHG emissions.

Economic and social matters

190. The proponent’s EIS notes the proposed action is expected to generate up to 164 jobs during the construction phase. The ongoing operating costs of managing the port over a nominal five year period will be a total of \$6.25 million. The proponent’s EIS further notes

the annual operating economic benefit of the proposed action, operating at the maximum capacity of 120 Mtpa of coal, is estimated to be \$2.39 million.

191. The proponent's EIS estimates the construction phase of the proposed action will contribute between \$95.75 million and \$191.49 million to the Mackay, Isaac and Whitsunday region. This includes an estimated direct economic contribution of between \$74.27 million and \$148.54 million to the region. The proposed action will also indirectly enable employment opportunities through Adani Mining's Galilee Basin projects, which could potentially provide an overall investment of up to \$21.7 billion in Queensland and create approximately 9,500 direct jobs.
192. The proponent's social impact assessment considered matters including employment and business opportunities, community values and lifestyle, housing and accommodation, and community infrastructure and services, with generally positive conclusions.
193. I found that the potential negative impacts of the proposed action may occur through local businesses possibly being unable to tender for the main aspects of the proposed action due to their size and nature, shipping and dredging activities having an impact on the local tourism industry, the potential degradation or loss of recreation and commercial fishing grounds, and increased pressure on community infrastructure and services.

Additional considerations

Principles of ecologically sustainable development and precautionary principle (sections 136(2)(a) and 391)

194. 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.
195. 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:
 - 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.
 - Any lack of certainty in relation to the potential impacts of the proposed action is addressed by conditions that restrict impacts, impose monitoring requirements and

adopt standards that if not achieved, require the application of response mechanisms in a timely manner to avoid adverse impacts.

- I have attached conditions of approval that will ensure that the potential impacts of the proposed action on world and national heritage values of the Great Barrier Reef World Heritage Area and National Heritage place, listed migratory species, listed threatened species and ecological communities, the Commonwealth marine environment and the Great Barrier Reef Marine Park resulting from the proposed action, are avoided and mitigated.
- I attached conditions of approval that included measures to address improved valuation through requirements for offsets for any unavoidable residual significant impacts.
- I considered the importance of conserving biological diversity and ecological integrity in relation to all of the controlling provisions for the proposed action.
- I have sought to ensure that the financial costs of compliance with the approval decision are reasonable to the extent that the proposed action can proceed whilst also making a fair contribution to environmental protection. I considered that the impacts of the proposed action will be suitably compensated through requirements for offsets for all unavoidable residual significant impacts. I further considered that the cost of the required offsets will be commensurate with the likely impacts on matters of national environmental significance.

196. In making my decision, 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.”

197. I agreed with the conclusions of the Department’s brief that there is sufficient scientific information to conclude that the proposal will not result in threats of serious or irreversible environmental damage to the Great Barrier Reef World Heritage Area, the Great Barrier Reef National Heritage place, listed migratory species, listed threatened species and communities, Commonwealth marine area and the Great Barrier Reef Marine Park.

Any other information the Minister has on the relevant impacts of the action (section 136(2)(e))

198. In making my decision, I considered all information on the relevant impacts discussed in the Secretary’s recommendation report and the Department’s briefing material, including the Comprehensive Strategic Assessment of the Great Barrier Reef World Heritage Area.

199. In making my decision and deciding what conditions I attached, I also considered the response from the Queensland Coordinator-General and the Great Barrier Reef Marine Park Authority to my invitation to comment on the proposed decision.

200. The comments provided by Queensland Coordinator-General related to clarifying the implementation of the conditions of approval. The Great Barrier Reef Marine Park Authority comments noted that the potential monitoring for this project could be undertaken to complement existing and future integrated monitoring programs of the Great Barrier Reef. I made changes to the conditions I attached to the approval decision in response to those comments.

Comments provided by the proponent and Commonwealth Ministers (section 136(2)(f))

201. I invited comment on my proposed approval decision from the Minister for Infrastructure and Regional Development, The Hon Warren Truss MP, the Minister for Resources, Energy and Northern Australia, The Hon Josh Frydenberg MP and the proponent. As set out in paragraph 22 of these reasons, Minister Truss provided no comments.
202. Mr Richard Niven responded on behalf of Minister Frydenberg recommending that further groundwater modelling is required to determine potential impacts from groundwater seepage, and that any adverse impact from groundwater seepage on the habitat of relevant birds, including listed threatened and migratory bird species is addressed. As set out in paragraph 55, I have taken this into account.
203. I noted the proponents requested that construction of the DMCA be allowed to occur during the peak cyclone season.
204. The Department advised that there be no change to the timeframes for construction of the DMCA, as this has the potential to increase the risk associated with extreme weather events during construction impacting on matters of national environmental significance. I agreed with my Department's advice and made no change to the condition 6 prohibiting construction of the DMCA during the peak cyclone season from December to March.
205. The proponent also requested Condition 10 b) i. b. iii. be reworded to clarify that the design of the DMCA will have sufficient freeboard to meet various weather events for all stages of the project, and also suggested a number of administrative and minor clarifications. I made changes to the conditions I attached to the approval decision in response to those comments.

Bioregional Plans (section 176(5))

206. In accordance with section 176(5), I am required to have regard to a bioregional plan in making any decision under the Act to which the plan is relevant.
207. I found that the proposed action is not located within or near an area designated by a bioregional plan, and there are no bioregional plans relevant to the proposed action.

Environmental history (section 136(4))

208. The proponent of the proposed action is the Queensland Department of State Development.
209. I found that there are no proceedings against the State of Queensland, represented by the proponent, relating to breaches of the law with respect to the protection of the environment or the conservation and sustainable use of natural resources under a Commonwealth, State or Territory law.
210. I found that Adani Mining Pty Ltd proposes to use Terminal 0 to ship coal from the recently approved Carmichael Mine. Concerns have been raised by mine opponents and in the media about whether that company would be a suitable person to be granted an environmental approval, on the basis of the environmental history of Adani Mining and its parent bodies (as well as the environmental history of Adani's executive officers and its parent bodies' executive officers).

211. The person taking the action is currently the Queensland Department of State Development, not Adani Mining or its parent bodies. Further, neither Adani Mining, nor its parent bodies, is a parent body of the Queensland Department of State Development. Accordingly, the environmental history of Adani Mining Pty Ltd, its parent bodies and their respective executive officers is not a relevant consideration for this approval decision.
212. I concluded that the proponent is a suitable person to be granted an approval.

Considerations in deciding on conditions (section 134(4))

213. In accordance with section 134(4) of the EPBC Act, in deciding whether to attach a condition to an approval, I am required to consider:
- a. Any relevant conditions that have been imposed, or I consider are likely to be imposed, under a law of a State or another Commonwealth law on the taking of the action;
 - b. Information provided by the person proposing to take the action or by the designated proponent of the action; and
 - c. The desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and the person proposing to take the action to achieve the object of the condition.
214. In deciding whether to attach conditions to the approval of the proposed action, I considered the information provided by the proponent in the EIS and its response to my consultation letter of 26 November 2015 as set out in paragraph 23 of these reasons.
215. In deciding whether to attach conditions to the approval of the proposed action, I considered whether the conditions are a cost effective means of achieving the object of the conditions. The Department advised, and I agreed, that the conditions of approval will be a cost effective means of achieving the object of the conditions and will ensure that matters of national environmental significance are protected over time.
216. In deciding on whether to attach conditions to the proposed action, I considered any relevant conditions that have been or are likely to be attached under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action. I found that the proposed action is currently being assessed under the relevant Queensland legislation. At the time of making my decision no conditions have been imposed under State or other Commonwealth law on the taking of the proposed action.

Requirements for decisions about World Heritage properties (section 137)

217. In accordance with section 137 of the EPBC Act, in deciding whether to grant an approval for the proposed action, and what conditions to attach to such an approval, I must not act inconsistently with Australia's obligations under the World Heritage Convention, the Australian World Heritage management principles; or a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321.

World Heritage Convention

218. Australia's key obligations under the World Heritage Convention are:

- a. to ensure the identification, protection, conservation, presentation and transmission to future generations of cultural and natural heritage (Article 4);¹
- b. to ensure the protection, conservation and presentation of natural heritage within its territory:
 - i. as far as possible and as appropriate for Australia to:
 - adopt general policies to give world heritage values a function in the life of the community (Article 5(a));
 - develop scientific and technical studies and research and to work out operating methods to make Australia capable of counteracting dangers that threaten its cultural and natural heritage (Article 5(c));
 - take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage (Article 5(d)); and
- c. to endeavour to strengthen appreciation and respect by their peoples of the cultural and natural heritage (Article 27).

219. The proposed action was assessed by an environmental impact statement which included a process for public review. The EIS identified the impacts of the proposed action on the world heritage values of the Great Barrier Reef, examined how the world heritage values would be affected and proposed mitigation measures to minimise the impacts. The key impacts to world heritage, identified in the proponent's EIS, include disturbance to marine mammals, turtles and bird life; and water quality impacts on the marine environment including seagrass habitat.

220. In addition to the mitigation measures proposed by the proponent (discussed in paragraphs 50, 63, 74, and 84, I have attached conditions to my approval decision to ensure the protection and conservation of the world heritage values of the Great Barrier Reef. Those conditions and the impacts they addressed are as follows:

- a. Water quality impacts on the marine environment:
 - The proponent is required to use using a cutter suction dredge, and cannot remove more than 1.1 Mm³ of dredge material from the dredge footprint.
 - The dredge material must be placed in a dredge material containment area onshore. No dredge material will be dumped in the Great Barrier Reef.
 - The proponent must submit for approval, and implement, once approved, a dredge management plan that contains: a program for monitoring marine water quality; early warning trigger levels for modifying the dredging activity; trigger levels for the cessation of dredging; and management measures for impacts to all marine fauna.

¹ Articles 1 and 2 of the convention define "cultural heritage" and "natural heritage" respectively (and these terms constitute world heritage values for the purposes of the EPBC Act (sections 12(3) and 12(4)).

- The dredge management plan must provide management measures to ensure water returned to the marine environment through the return water pipeline is in accordance with the current water quality guidelines.
 - At the completion of dredging the proponent must submit a completion report identifying the actual amount of sediment released into the marine environment as a result of the proposed action.
 - The required dredge management plan must provide details of management measures for impacts to seagrass.
 - To reduce the threat of an extreme weather event causing the release of sediment into the marine environment, construction of the DMCA can only be undertaken outside the peak cyclone season.
 - To reduce impacts on water quality associated with the construction and operation of the DMCA the proponent must submit for approval, and implement once approved, an onshore environmental management plan. This plan must provide measures to manage: stormwater; erosion and sediment; and avoid surface and groundwater impacts.
- b. Impacts to marine fauna from changes to water quality:
- The required dredge management plan must contain details of management measures for reducing impacts to all marine fauna.
 - To ensure any long-term impacts to listed threatened and migratory marine fauna are compensated for, the proponent must provide details of how they will offset any long-term impacts to marine fauna as a result of dredge activities as identified in the Dredge Management Plan.
- c. Impacts to turtles from the laying of pipelines, light, noise and vibration impacts:
- To reduce the impacts on turtles, the proponent must implement a buffer zone between the pipelines and any turtle nests located along the coastal zone at Abbot Point. In addition, the proponent is required to avoid or minimise impacts related to light, noise and vibration.
 - To ensure any long-term impacts to turtle nesting are compensated for, the proponent must provide details of how they will offset any long-term impacts to turtles as a result of laying of pipelines and dredge activities as identified in the Dredge Management Plan.
- d. Impacts from construction on migratory birds:
- No dredge material will be placed in the Caley Valley Wetlands (that provide habitat for listed threatened and migratory birds).
 - The proponent must implement and maintain a minimum buffer zone of 50 m between the DMCA and the Caley Valley Wetlands.
 - The proponent must submit, and implement once approved, an onshore environmental management plan that contains details of how the DMCA will be

designed with sufficient freeboard to contain a 1 in 20 year average recurrence interval (ARI) event, post dewatering of the dredge material.

- The proponent must re-run the groundwater modelling, and consider that information to determine the location of monitoring points to identify potential impacts on relevant bird habitat, including listed threatened and migratory birds in the Caley Valley Wetland.
 - If the monitoring determines that the impacts are greater than what was predicted in the final environmental impact statement, the proponent must provide a process to offset impacts on habitat for relevant bird species.
221. I have also attached a condition requiring the proponent to submit an offset management strategy for approval. The aim of the offset management strategy is to provide compensation for water quality impacts and loss of seagrass habitat. The offset management strategy must: detail how the proponent will achieve a 150% reduction of sediment entering the marine environment; and provide details of a financial contribution to an agency or entity endorsed by the Department, to compensate for the loss of potential seagrass habitat within the dredge footprint, taking account of the equivalence of the density of seagrass coverage.
222. The offset management strategy will detail the methodology for calculating the contribution to undertake actions to reduce sediments entering the Great Barrier Reef. The methodology will then be used to determine the final funding amount or equivalent, based on the completion report.
223. I was satisfied that the implementation of the offset management strategy will improve water quality and seagrass habitat within the Great Barrier Reef, thus providing a positive outcome for the attributes likely to be impacted by the proposed action.
224. I was satisfied that the recommended conditions are consistent with Article 4 and Article 5(d) as they provide measures for the protection and conservation of the Great Barrier Reef World Heritage Area through: the implementation of management plans designed to avoid and manage impacts on the world heritage values; financial measures to improve water quality and seagrass habitat; restricting dredge activities including the requirement that dredge material be placed on land; and providing buffers to protect birdlife and turtle species.
225. In addition, I required, as part of the conditions of approval, that the management plans be made publicly available and can be used as a resource for future decision making. I was satisfied that this was consistent with Article 27.
226. In light of the matters identified in paragraphs 218 - 225, I was satisfied that the approval of the proposed action and the approval conditions are not inconsistent with Australia's obligations under the World Heritage Convention.

World Heritage management principles

227. The Australian World Heritage management principles are at Schedule 5 to the EPBC Regulations.

Assessment and approval of the action, including public consultation

228. The proposed action was assessed by an environmental impact statement which included a process for public review. The proponent's EIS identified the impacts of the proposed action on the world heritage values of the Great Barrier Reef and proposed mitigation measures to minimise the impacts. The key impacts to world heritage, identified in the EIS, include disturbance to marine mammals, turtles and bird life; and water quality impacts on the marine environment including seagrass habitat (Principles 1.02, 1.03, 3.02 and 3.03).
229. As stated in paragraph 220, I have attached conditions to my approval decision to address the impacts to world heritage of the proposed action. I am satisfied that these conditions are consistent with Australia's obligations under the World Heritage Convention. I consider these conditions are necessary to ensure the protection, conservation, preservation or transmission to future generations of the world heritage values of the Great Barrier Reef (Principle 3.05).
230. Based on the assessment of environmental impacts and mitigation measures identified in the proponent's EIS, the Secretary's recommendation report and the Department's briefing material, the proposed action will not have any unacceptable impacts on the world heritage values of the Great Barrier Reef. Therefore, I was satisfied that the granting of approval for the proposed action would not be inconsistent with the protection, conservation, preservation or transmission to future generations of the world heritage values of the Great Barrier Reef (Principle 3.04).

Reef 2050 Plan

231. The Reef 2050 Plan represents the Australian and Queensland governments' commitment to working with industry and the community to undertake, determined, coordinated, wide-ranging actions to ensure the Reef's ongoing health and resilience. The Reef 2050 Plan assists the Australian Government to meet its 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 Great Barrier Reef.
232. The Reef 2050 Plan includes measures to ensure that development in the Great Barrier Reef coastal zone occurs in an ecologically sustainable manner and negative impacts on the world heritage values are avoided.
233. To meet this objective, the Reef 2050 Plan outlines a series of principles that are to inform decision making in relation to the Great Barrier Reef. These principles include:
- a. Maintaining and enhancing outstanding universal value in every action.
 - b. Basing decisions on the best available science.
 - c. Delivering a net benefit to the ecosystem.
 - d. Adopting a partnership approach to management.
234. The Reef 2050 Plan identifies a number of actions to restore ecosystem health and resilience including reducing the impacts of ports and dredging.
235. I found that the proposed action will be undertaken in a priority port area and that there will be no disposal of dredge material in the Great Barrier Reef World Heritage Area.

Additionally, the proponent has proposed measures to improve ecosystem resilience (discussed in paragraph 173 - 178).

Conclusion

236. In light of the matters discussed in paragraphs 218 to 230, I was satisfied that the approval of the proposed action, and the approval conditions, were not inconsistent with the Australian World Heritage management principles.

A plan for the management of Great Barrier Reef World Heritage Property

237. I found that a plan of management for the Great Barrier Reef World Heritage Area has not been prepared under section 316 or section 321 of the EPBC Act.

Requirements for decisions about National Heritage places (section 137A)

238. In deciding whether or not to approve for the purposes of section 15B or 15C of the EPBC Act the taking of an action, and what conditions to attach to such an approval, I 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.

239. The Commonwealth has not reached agreement with any party in relation to the management of the national heritage values of the Great Barrier Reef. A management plan for the Great Barrier Reef has not been prepared under section 324S or section 324X of the EPBC Act.

240. The National Heritage management principles as prescribed in Schedule 5B to the EPBC Regulations are at: <http://www.comlaw.gov.au/Details/F2010C00413>.

241. For the reasons set put in paragraphs 218 to 240, I was satisfied that the approval of the proposed action, and the approval conditions, were not inconsistent with National Heritage management principles.

Listed threatened species and ecological communities (section 139)

242. Section 139(1) of the EPBC Act requires that in deciding whether to approve a proposed action for which sections 18 and 18A are controlling provisions, and what conditions to attach to such an approval, I 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).

Biodiversity Convention

243. The objectives of the Biodiversity Convention (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.

244. The proposed action was assessed by an EIS which included a process for public review. The proponent's EIS identified the impacts of the proposed action on matters of national environment significance, including Semi-evergreen vine thickets of the Brigalow Belt (north and south) and Nandewar Bioregions (semi-evergreen vine thickets), squatter pigeon, Australian painted snipe, Humpback whale and listed marine turtles. In the EIS, the proponent identified a series of mitigation measures to address impacts associated with the proposed action on biodiversity.
245. In addition to the mitigation measures proposed by the proponent, I have attached a series of conditions to my approval to address the impacts of the proposed action on biodiversity. This includes requirements to make information publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.
246. In light of the matters discussed in paragraphs 243 to 245, I was satisfied that the approval of the proposed action, and the approval conditions, are not inconsistent with the Biodiversity Convention.

Apia Convention

247. The Apia Convention was suspended with effect from 13 September 2006. While this Convention has been suspended, I took into account Australia's obligations under the Convention in making my decision. I determined that approval of the proposed action was not inconsistent with the convention which has the general aim of conserving biodiversity.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

248. I found that 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

249. I found that the following approved conservation advices were relevant to the proposed action:

Threatened Species Scientific Committee (2013). Approved Conservation Advice for *Rostratula australis* (Australian Painted Snipe). Commonwealth of Australia, Canberra.

Threatened Species Scientific Committee (2015). Approved Conservation Advice for *Megaptera novaeangliae* (Humpback Whale). Commonwealth of Australia, Canberra.

Threatened Species Scientific Committee (2015). Approved Conservation Advice for *Geophaps scripta scripta* (Squatter Pigeon (southern)). Commonwealth of Australia, Canberra.

250. In accordance with section 139(2) of the EPBC Act I had regard to those conservation advices in deciding whether to approve the proposed action for the purposes of sections 18 and 18A.

Recovery plans

251. I found that the following recovery plans are relevant to the proposed action:

Environment Australia (2003). Recovery Plan for Marine Turtles in Australia. Commonwealth of Australia, Canberra.

McDonald, W.J.F. (2010). National Recovery Plan for the Semi-evergreen vine thicket of the Brigalow Belt (North and South) and Nandewar Bioregions ecological community. Report to Department of the Environment, Water, Heritage and the Arts, Canberra.

252. In accordance with section 139(1)(b) of the EPBC Act I found that approval of the proposed action (including the conditions attached to the approval) would not be inconsistent with those recovery plans as outlined in paragraphs 134 to 156.

253. In accordance with section 139(1)(b) of the EPBC Act I found that the following threat abatement plans were relevant to the proposed action:

Department of Environment and Heritage (DEH) (2006) Threat Abatement Plan for the Reduction in Impacts of Tramp Ants on Biodiversity in Australia and its Territories. Commonwealth of Australia, Canberra.

Department of the Environment, Water, Heritage and the Arts (DEWHA) (2008). Threat Abatement Plan for Competition and Land Degradation by Rabbits, Commonwealth of Australia, Canberra.

Department of the Environment, Water, Heritage and the Arts (DEWHA) (2008b). Threat Abatement Plan for Predation by the European Red Fox. Commonwealth of Australia, Canberra.

Department of the Environment, Water, Heritage and the Arts (DEWHA) (2015). Threat abatement plan for predation by feral cats. Commonwealth of Australia, Canberra.

Department of the Environment, Water, Heritage and the Arts (DEWHA) (2009). Threat Abatement Plan for the Impacts of Marine Debris on Vertebrate Marine Life. Commonwealth of Australia, Canberra.

254. I found that the goal of the above threat abatement plans is to minimise the impact of exotic species on biodiversity in Australia and its territories by protecting affected threatened species, and preventing further species and ecological communities from becoming threatened.

255. I took the threat abatement plans into account in assessing the impacts of the proposed action, proposed mitigation measures and the approval conditions. Whilst I noted that the proposed action has the potential to increase threats to listed species and ecological communities. I consider the mitigation measures and conditions attached would minimise any impacts of the project. I found that the proposed action would not have unacceptable impacts to listed species and ecological communities.

256. I was satisfied that the approval of the proposed action, and the conditions attached to the approval, are not inconsistent with the above threat abatement plans.

Listed migratory species (section 140)

257. Section 140 of the EPBC Act requires that in deciding whether to approve a proposed action for which sections 20 and 20A are controlling provisions, and what conditions to attach to such an approval, the Minister must not act inconsistently with the Convention on

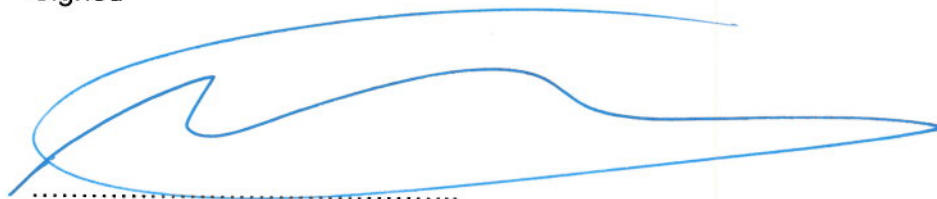
Migratory Species (Bonn Convention), the Agreement between the Government of Japan and the Government of Australia for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (JAMBA), the Agreement between the Government of Australia and the Government of the People's 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.

258. I have taken these agreements into account for the assessment of the proposed action, and given consideration to the likely impacts of the proposed action on listed migratory species. I found that the long-term impacts of the proposed action on listed migratory species will not be unacceptable.
259. In light of those matters, I am satisfied that approval of this proposed action, and the conditions attached to the approval, would not be inconsistent with Australia's obligations under the above conventions and treaties.

Reasons for decision

260. In light of my findings in paragraphs 27 to 259, I decided to approve, subject to conditions, the taking of the proposed action for the purposes of sections 12 and 15A, sections 15B and 15C, sections 18 and 18A, sections 20 and 20A, sections 23 and 24A, and sections 24B and 24C of the EPBC Act.
261. My approval remains valid until 31 January 2031. This allows for the proposed project life of approximately 15 years, sufficient time for the completion of construction, the implementation of measures to protect matters of national environmental significance and the conservation benefit of the required offset to be realised.

Signed

A large, stylized handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

The Hon Greg Hunt MP

Minister for the Environment

21 December 2015

Annexure A

Legislative extracts relevant to decisions under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (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 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 is in the public domain; or
 - (c) in the case of information referred to in paragraph (2)(b) or (c)—any conclusions or recommendations relating to that information included in documents or other material prepared by the Secretary for the Minister.
- (4) The Minister must not provide under subsection (2):
- (a) a copy of so much of a document as:
 - (i) is an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
 - (ia) is a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (ii) the Minister is satisfied contains information that is commercial-in-confidence; or
 - (b) information that:
 - (i) is of such a nature that its inclusion in a document would cause that document to be an exempt document of the kind referred to in subparagraph (a)(i); or
 - (ii) the Minister is satisfied is commercial-in-confidence.
- (5) The Minister must not be satisfied that information (including information in a document) is commercial-in-confidence unless a person demonstrates to the Minister that:
- (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.
- (6) In deciding whether or not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must take into account any relevant comments given to the Minister in response to an invitation given under paragraph (1)(b).

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

...

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.

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

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



133 Grant of approval

Approval

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

Content of approval

- (2) An approval must:
- (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 attached 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...
- (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.

...

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.

...

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.

324S Management plans for National Heritage places in Commonwealth areas

- (1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place that is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the first time the place satisfies both of the following paragraphs:
- (a) the place is included in the National Heritage List;
 - (b) the place is entirely within one or more Commonwealth areas.

Note: However, section 324T precludes the Minister from making plans for managing certain places.

- (2) The Minister may, in writing, amend a plan or revoke and replace a plan.
- (3) The Minister must give notice, in accordance with the regulations, if the Minister:
- (a) makes a plan for a National Heritage place; or
 - (b) amends such a plan; or
 - (c) revokes and replaces such a plan.
- (4) A plan must:
- (a) address the matters prescribed by the regulations; and
 - (b) not be inconsistent with the National Heritage management principles (see Subdivision E).
- (5) If the National Heritage management principles change so that a plan (the earlier plan) is inconsistent with them, the Minister must as soon as practicable make a written instrument:
- (a) amending the earlier plan to make it consistent with the principles; or
 - (b) revoking and replacing the earlier plan.
- (6) Before making, amending or revoking and replacing a plan, the Minister must:
- (a) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment; and
 - (b) seek and consider comments from the Australian Heritage Council about those matters.
- (7) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument

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 *Quarantine Act 1908*;
 - (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.

action management plan, in relation to an action, means a plan for managing the impacts of the action on a matter protected by a provision of Part 3, such as a plan for conserving habitat of a species.

agency of a State or self-governing Territory means:

- (a) a Minister of the State or Territory; or
- (b) a body corporate established for a public purpose by a law of the State or Territory; or
- (c) a body corporate established by:
 - (i) the Governor of the State; or
 - (ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or
 - (iii) if the Territory is the Northern Territory 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.

aggravated offence:

- (a) in Subdivision B of Division 1 of Part 13 – has the meaning given by section 196F; and
- (b) in Subdivision B of Division 2 of Part 13 – has the meaning given by section 211F; and
- (c) in Subdivision B of Division 4 of Part 13 – has the meaning given by section 254F.

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 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.

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.

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-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.

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.

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.

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.