

DEPARTMENT OF THE ENVIRONMENT AND ENERGY

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

I, JOSH FRYDENBERG, MINISTER FOR THE ENVIRONMENT AND ENERGY, provide the following statement of reasons for my decision of 19 January 2017, under section 130(1) and section 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (the **EPBC Act**), to develop the Stage 3 Expansion of New Acland Coal Mine, Queensland (EPBC 2007/3423) (the **project**).

A copy of this decision is available on the Department of the Environment and Energy's (the **Department**) website.

Legislation

1. Relevant legislation is set out in Annexure A.

Background

2. New Acland Coal Pty Ltd (the **proponent**) is proposing to expand the existing open-cut New Acland coal mine, located about 35 kilometres north north-west of Toowoomba, in the Darling Downs, Queensland.
3. The project area covers 3,668 hectares which is currently used for agricultural purposes. 1,466 hectares within the project area, which is owned by the proponent, will be directly impacted by the project. The extension will increase maximum thermal coal production from 5.2 Million tonnes per annum (Mtpa) to 7.5 Mtpa across three new open cut pits.
4. The project is estimated by the proponent to require \$900 million in capital investment, \$5.7 billion in operational expenditure and create up to 435 jobs during operations.
5. The project's disturbance footprint is approximately 1,466 hectares (ha), with the three proposed open-cut areas covering 1,201 ha.
6. The project was referred for consideration under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in 2007 and determined to be a controlled action due to the likely significant impact on listed threatened species and ecological communities (sections 18 and 18A). On 17 October 2013, the then Minister for the Environment determined that sections 24D and 24E (water resources) also applied to the project.
7. The project has been assessed through an Environmental Impact Statement (**EIS**) by the Queensland Coordinator-General (**Coordinator-General**) under the assessment bilateral agreement between the Queensland and Commonwealth Governments (the **Bilateral Agreement**).
8. The Queensland Coordinator-General completed his assessment of the Stage 3 Expansion of New Acland Coal Mine on 19 December 2014. The Coordinator-General recommended that the project proceed subject to conditions, as stated in his Assessment Report.
9. On 16 April 2015, the timeframe for making a decision on whether to approve the project was suspended pending the outcome of a Queensland Government review into the

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Coordinator-General's assessment of the project. The review was received by the Department on 13 May 2016.

10. The statutory deadline for making a decision on whether to approve the project was subsequently extended to allow time for the Department to review and consult with relevant stakeholders regarding the documentation provided by the Queensland Government.
11. The statutory timeframe for making a decision on whether or not to approve the project is 20 January 2017.
12. The project has generated concerns at the local level and continues to receive media attention. Key concerns raised in public submissions relate to: direct impacts to fauna and flora, water resources and agricultural land; and indirect impacts to the communities living adjacent to the project.
13. The project was amended in 2008 and 2012 in response to concerns raised by the public to minimise and mitigate the impacts associated with the project.
14. The proponent's draft EIS for the project was made available for public comment from 18 January 2014 to 3 March 2014. The Coordinator-General received 18 local, state and Commonwealth advisory agency submissions, 11 organisation submissions and 1368 public submissions on the draft EIS.
15. On 17 April 2014, the Coordinator-General requested that the proponent submit additional information to the EIS and this was released for public comment from 29 August 2014 to 29 September 2014. There were an additional seven state and local advisory agency submissions, nine organisation submissions and 598 public submissions received during this period.
16. Objections to the granting of an environmental authority and mining lease application for the project by Queensland authorities were lodged with the Queensland Land Court in October 2015. The case has been heard and the court's recommendations are anticipated to be released in early 2017.
17. The Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development provided advice on this project on three occasions (10 April 2014, 10 December 2015 and 14 December 2016).
18. The proponent provided responses to the first round of Committee advice in the Additional information to the EIS (AEIS) and in a separate response to the second round of Committee advice. In response to the Committee advice and conditions imposed by the Coordinator-General, the proponent has updated their groundwater modelling.
19. In its most recent advice (14 December 2016), the Committee stated that most matters raised in the 10 December 2015 advice have been addressed. The Committee also noted that the proponent's groundwater modelling undertaken to date is appropriate for this stage of the project and is consistent with industry standards. The Committee identified some residual matters which it recommended could be addressed through collection of additional data before and during mining operations. All of the measures suggested by the Committee are included in the conditions attached to the approval.

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20. On 21 December 2016, the Chair of the Committee provided advice that the proposed conditions of approval fully address the matters that were raised by the Committee in its December 2016 advice. Minor revisions to two conditions were made in response to this advice.
21. On 22 December 2016, I proposed to approve the project subject to conditions, having regard to relevant information.
22. In accordance with sections 131 and 131AA of the EPBC Act, I invited comments on my proposed decision from:
 - the proponent;
 - the Minister for Agriculture and Water Resources;
 - the Minister for Minister for Resources and Northern Australia; and
 - the Minister for Industry, Innovation and Science.
23. I also notified the Queensland Coordinator-General and the Queensland Department of Environment and Heritage Protection of my proposed decision.
24. Their responses were considered in making my decision, and are summarised below:
 - a. The proponent responded on 23 December 2016, noting that they are satisfied with the proposed conditions.
 - b. On 9 January 2017, the Department of Industry, Innovation and Science responded on behalf of the Minister for Resources and Northern Australia noting that Geoscience Australia is of the view that the conditions are adequate and recommending some minor amendments for clarity of technical interpretation and understanding. This response also noted that no additional comments were made on behalf of the Minister for Industry, Innovation and Science.
 - c. The Department of Agriculture and Water Resources responded on 10 January 2017 noting that they had no comment.
 - d. The Queensland Coordinator-General responded on 10 January 2017 noting that the conditions of approval generally accord with those set in his evaluation report and suggests a minor amendment to provide flexibility to review trigger levels in the future.
25. In response to these comments, I included minor changes, as suggested by Geoscience Australia and the Queensland Coordinator-General. No substantive changes were made to the decision.
26. My Department advised that I cannot condition for financial elements of make good agreements and can only regulate for physical impacts to the water resource. I therefore amended the conditions of approval to remove reference to make good measures.
27. I approved, subject to conditions, the taking of the project under section 130(1) and section 133 of the EPBC Act for the purposes of the controlling provisions identified in paragraph 6 of these reasons.

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Evidence or other material on which my findings were based

28. My decision to approve the project was based on consideration of the final approval decision brief prepared by the Assessment and Sea Dumping Branch of the Department (the **brief**) dated 10 January 2017.

29. The final approval decision brief contained the following attachments:

A: Proposed decision brief (and attachments italicised below)

A: *Queensland Coordinator General's Assessment report*

B: *Assessment Documentation and other relevant information*

B1. Environmental Impact Statement (EIS)

B2. Additional information to the EIS (AEIS)

B3. Additional Clarification to the AEIS

B4. Public submissions:

a. Submissions on the EIS

b. Submissions on the AEIS

c. Additional submissions (Oakey Coal Action Alliance and supporters of the mine)

B5. Additional information provided by the proponent since the completion of the Coordinator-General's Assessment report.

B6. Queensland Government review and Coordinator-General's Response

B7. Environmental Authority for the project.

B8. 2015 New Hope Group Annual Report and Financial Statements

C: *Legal Considerations*

D: *Departmental advice on matters of national environmental significance*

D1. Annexure 1 to Attachment D – Addressing matters raised by the IESC

E: *Independent Expert Scientific Committee Advice*

E1. 10 April 2014 Advice

E2. 10 December 2015 Advice

E3. 14 December 2016 Advice

E4. Letter from the Chair dated 21 December 2016

F: *Approved Conservation Advice*

G: *Legislative provisions*

H: *Proposed approval decision notice*

I: *Letters to proponent, Commonwealth Ministers and State Agencies*

B: Responses to invitation to comment on proposed approval

B1: Proponent

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B2: Department of Industry, Innovation and Science and Department of Resources and Northern Australia

B3: Department of Agriculture and Water Resources

B4: Queensland Coordinator-General

C: Approval decision notice – FOR SIGNATURE

D: Letters advising of your decision – FOR SIGNATURE

E: Statement of Reasons – FOR SIGNATURE

F: Approval decision notice showing track changes from proposed approval

Findings on material questions of fact

Listed threatened species and ecological communities

Impacted species and communities

30. The following listed threatened species and ecological communities were considered during the assessment of project impacts:

- Bluegrass (*Dichanthium* spp.) dominant grasslands of the Brigalow Belt Bioregions (North and South) – endangered
- Brigalow (*Acacia harpophylla* dominant and co-dominant) – endangered
- Semi-evergreen vine thickets of the Brigalow belt (North and South) and Nandewar Bioregions – endangered
- White Box-Yellow Box- Blakely's Red Gum Grassy Woodland and Derived Native Grassland – critically endangered
- Swift Parrot (*Lathamus discolor*) – endangered
- Star Finch (*Neochmia ruficauda ruficauda*) – endangered
- Black-throated Finch (*Poephila cincta cincta*) – endangered
- Regent Honeyeater (*Xanthomyza phrygia*) – endangered
- Red Goshawk (*Erythrotriorchis radiatus*) – vulnerable
- Squatter Pigeon (*Geophaps scripta scripta*) – vulnerable
- Australian Painted Snipe (*Rostratula australis*) – vulnerable
- Black-breasted Button-quail (*Turnix melanogaster*) – vulnerable
- Murray Cod (*Maccullochella peelii*) – vulnerable
- Northern Quoll (*Dasyurus hallucatus*) – endangered
- Large-eared Pied Bat (*Chalinolobus dwyeri*) – vulnerable
- South-eastern Long-eared Bat (*Nyctophilus corbeni*) – vulnerable
- Brush-tailed Rock Wallaby (*Petrogale penicillata*) – vulnerable
- Long-nosed Potoroo (*Potorous tridactylus tridactylus*) – vulnerable
- Grey-headed Flying-fox (*Pteropus poliocephalus*) – vulnerable
- Finger Panic Grass (*Digitaria porrecta*) – endangered

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- Wandering Pepper-cress (*Lepidium pergrinum*) – endangered
- Siah's Backbone (*Streblus pendulinus*) – endangered
- Ooline (*Cadelia pentastylis*) – vulnerable
- Stream Clematis (*Clematis fawcettii*) – vulnerable
- King Blue-grass (*Dichanthium queenslandicum*) – vulnerable
- Lobed-bluegrass (*Bothriochloa biloba*)
- Tall Velvet Sea-berry (*Haloragis exalata* subsp. *velutina*) – vulnerable
- Belson's Panic (*Homopholis belsonii*) – vulnerable
- Hawkweed (*Picris evae*) – vulnerable
- Austral Cornflower (*Rhapondicum australe*) – vulnerable
- Blotched Sarcophilus, Weinthal's Sarcophilus (*Sarcophilus weinthalii*) – vulnerable
- Austral Toadflax (*Thesium australe*) – vulnerable
- Grassland Earless Dragon (*Tympanocryptus pinguicola*) – endangered
- Five-clawed Worm-skink (*Anomalopus mackayi*) – vulnerable
- Collared Delma (*Delma torquata*) – vulnerable
- Yakka Skink (*Egernia rugosa*) – vulnerable
- Dunmall's Snake (*Furina dunmalli*) – vulnerable
- Brigalow Scaly-foot (*Paradelma orientalis*) – vulnerable

31. Since the controlled action decision on 24 May 2007, the following listed threatened species have been delisted and an assessment under the EPBC Act was no longer required:

- Brigalow Scaly-foot (*Paradelma orientalis*);
- Finger Panic Grass (*Digitaria porrecta*); and
- Lobed-bluegrass (*Bothriochloa biloba*).

32. While considered during the assessment and addressed in the Assessment Report, the ecological communities below were not listed at the time the project was determined to be a controlled action.

- Bluegrass (*Dichanthium* spp.) dominant grasslands of the Brigalow Belt Bioregions (North and South) – endangered
- Brigalow (*Acacia harpophylla* dominant and co-dominant) – endangered
- Semi-evergreen vine thickets of the Brigalow belt (North and South) and Nandewar Bioregions – endangered.

33. Although these communities were listed again on 25 October 2007, this was after the controlled action decision for this project was made. I therefore could not consider these ecological communities in deciding whether to approve the project, and what conditions to attach to the approval.¹

¹ See: EPBC Act, section 158A.

34. Based on information provided in the proponent's EIS and the Coordinator-General's Assessment Report, I found that the following listed species would be impacted by the project:

- Belson's Panic (*Homopholis belsonii*).

35. The proponent provided further information in July 2016 stating that additional surveying required as part of the Land Court proceedings identified the vulnerable Austral Cornflower (*Rhaponticum australe*) within the project footprint. The further information provided indicates that the Austral Cornflower will be impacted by the proposed action.

36. In the same information, the proponent advised that the vulnerable Hawkweed (*Picris evae*) was identified outside of the project site. No direct impact to this species is expected as a result of the proposed action.

37. The Assessment Report noted that one record of the vulnerable Grey-headed Flying-fox (*Pteropus poliocephalus*) was recorded in 1999. However, I found the site is unlikely to be important to Grey-headed Flying-fox due to sporadic use and limited habitat, and that the distance from the nearest camp is approximately 40 km's.

38. I found that the project is unlikely to have a significant residual impact to Grey-headed Flying-fox as a result of the clearance of vegetation, construction of the surface infrastructure and mining pits.

Vegetation clearing impacts

39. The proponent has estimated the area of impact on habitat for the following listed threatened species known to occur on the project site, representing the areas of impact over the life of the action.

EPBC Threatened Terrestrial species	disturbance (ha)
Belson's Panic (<i>Homopholis belsonii</i>)	70.8
Austral Cornflower (<i>Rhaponticum australe</i>)	0.7

Avoidance, mitigation and management measures

40. The proponent has committed to a number of avoidance and mitigation measures for EPBC Act listed threatened species and communities, as identified in the Assessment Report, including:

- removal of the diversion of Lagoon Creek;
- implementing a conservation zone 50 m to either side of Lagoon creek;
- excluding mining within 150 m of Lagoon creek;
- erosion and sediment control measures; and
- management of weeds and pests.

41. The Coordinator-General has imposed a number of conditions in order to manage and minimise impacts on ecological values. These included requirements for pre-clearance surveys for fauna and flora, including for EPBC Act listed threatened species and communities.

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42. The Assessment Report includes a recommendation for the Department to include a species management plan. However, I am of the view that the conditions to manage flora and fauna imposed by the Coordinator-General, including the requirements regarding EPBC Act listed threatened species and communities, are such that an additional species management plan would not be required.
43. I noted that the project will impact on 0.7 ha of Austral Cornflower, located in the middle of the proposed Manning Vale West pit. The proponent has identified three additional areas which contain Austral Cornflower which will not be impacted and has identified that they would manage any unavoidable impacts by identifying and managing alternate sites.
44. I consider that the management measures required for the Austral Cornflower are equivalent to those already committed to by the proponent and the conditions imposed by the Coordinator-General and, as such, additional management measures for this species are not required. While the proponent has committed to offsetting impacts to 0.7 ha of Austral Cornflower, I note that this impact is unlikely to constitute a significant impact to this species and offsetting for this amount would not be required under the EPBC Act Environmental Offsets Policy.
45. For the protection of Belson's Panic, I imposed a condition which requires the proponent to comply with the disturbance limits for that species as identified in the table above.
46. In the event that additional surveys identify additional potential impacts on EPBC Act listed threatened species and ecological communities, I imposed a condition which requires the proponent to notify the Department and propose appropriate management when finding additional areas of EPBC Act listed threatened species or communities in the project area that were listed at the time of the referral decision.

Offsets

47. I found that the project was likely to have a residual significant impacts on Belson's panic. I agreed with the Coordinator-General's conclusion that those impacts would need to be offset.
48. The recommended approval conditions require offsets to be provided for impacts on Belson's Panic in accordance with the Department's EPBC Act Environmental Offsets Policy, with offsets for impacts associated with the project to be detailed in an Offset Management Plan. The Offset Management Plan must be approved by me prior to the commencement of the project.
49. I considered that, based on information provided in the Assessment Report, the proponent has identified areas within and adjacent to the proposed action area sufficient to address the offset requirements under the recommended proposed approval conditions. Further information was provided by the proponent in July 2016 identifying additional work which has been undertaken in identifying offsets since the Assessment Report was completed in December 2014.
50. The additional information highlighted the proponent's commitments to offset any residual impacts to listed threatened species.

Cumulative impacts

51. The proponent has undertaken a cumulative assessment of current and future projects in the area.
52. The proponent has concluded that where there is a potential for cumulative impacts on EPBC Act listed threatened species and communities, those impacts are best managed at the individual project scale through specific mitigation and management measures.
53. The proponent states that there are no other resource developments within 50 km of the project with the potential to create regional cumulative impacts to terrestrial ecology values. Further, the incremental clearing associated with the project is minor in comparison with historical clearing. The minor clearing that has occurred for the mine to-date has been offset by the establishment and management of conservation zones along Lagoon Creek and Bottle Tree Hill. The proponent has proposed specific mitigation measures for listed threatened species and communities. These measures are reflected in the proponent's commitments.

Conclusion

54. I noted that the proponent has identified and reported impacts to Austral Cornflower and Hawkweed that are additional to those assessed by the Coordinator-General under the bilateral agreement. These impacts have been considered in the above discussion and I concluded that the proposed management measures are appropriate.
55. Based on the Assessment Report, the Coordinator-General's imposed conditions and recommended conditions for an Environmental Authority, the proponent's commitments to avoid, mitigate and manage impacts, and measures in the conditions of approval, I am of the view that the project will not have unacceptable impacts on EPBC Act listed threatened species and ecological communities.

A water resource, in relation to coal seam gas development and large coal mining development

Summary of assessment and Independent Expert Scientific Committee consultation

56. On 5 March 2014, the Department and the Office of the Coordinator-General jointly sought advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development on the impacts described in the project's EIS. The Independent Expert Scientific Committee concluded that uncertainties remained in relation to the hydrogeological conceptualisation and groundwater model in terms of design and implementation.
57. The Independent Expert Scientific Committee noted that this reduced their ability to assess the appropriateness of the proposed management and mitigation measures. With regard to impacts on surface water resources, the Independent Expert Scientific Committee noted that there was still uncertainty regarding release limits and water quality objectives for the project.
58. The proponent provided a response to each of the points raised in the Independent Expert Scientific Committee's advice in Appendix N of the Additional Information to the EIS. As part of its response, the proponent:

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- updated their groundwater model to include new data from monitoring bores and observed mine pit inflows increasing the model's calibration targets;
 - undertook a sensitivity and uncertainty analysis on the model to provide greater confidence in the project impact predictions;
 - engaged an independent expert to peer review the results of the modelling; and
 - undertook a further assessment of the predicted surface water impacts including potential impacts to Groundwater Dependant Ecosystems.
59. The Queensland Coordinator-General considered the matters raised by the Independent Expert Scientific Committee in his Assessment Report and in making recommendations for the Environmental Authority and the other conditions of approval.
60. On 27 October 2015, the Department sought further advice from the Independent Expert Scientific Committee to determine whether all outstanding concerns from the Independent Expert Scientific Committee had been addressed by updated modelling or through state conditions of approval. This second Independent Expert Scientific Committee advice noted that there were still some uncertainties with regard to parameters used in the modelling and the estimations of the extent of groundwater impacts.
61. On 26 June 2016, the proponent provided additional information to the Department including an update of its groundwater monitoring program and bore baseline assessment program, and advice on issues raised during the Land Court proceedings. The Department notes that there is disagreement about the modelling parameters, in particular faulting and how this affects the propagation of groundwater drawdown.
62. On 6 September 2016, I visited the Acland region and met with the proponent and community representatives. The community representatives identified the continued uncertainty regarding impacts to groundwater as noted in the Independent Expert Scientific Committee's second set of advice dated 10 December 2015 and discussed during the Queensland Land Court process.
63. On 22 September 2016, the proponent met with the Department. The delegate of the Minister requested additional information in relation to further minimising uncertainties relating to potential groundwater impacts and to ensure that these impacts were conservatively modelled.
64. The proponent provided further information on 24 October 2016 and this information was considered at the Independent Expert Scientific Committee meeting of 12-13 December 2016.
65. The Independent Expert Scientific advice of 14 December 2016 noted that most matters raised in previous advice have been addressed or the additional information provided by the proponent had identified a process to address them. Where the Independent Expert Scientific Committee had outstanding concerns, the proponent proposed additional management measures. These measures have been incorporated into my conditions of approval.

Impacts

66. The assessment of impacts to ground and surface water is provided in sections 8.3 to 8.7 of the Assessment Report and in section 8.2 in relation to water related impacts to listed threatened species and communities.

67. The project has the potential to impact on surface water through:

- a. flooding;
- b. a reduction in water availability due to a minor reduction in the size of the Lagoon Creek Catchment;
- c. the release of treated and untreated mine water; and
- d. erosion and sedimentation.

These impacts are discussed in Section 8.5.1 of the Assessment Report.

68. Potential impacts to groundwater as a result of the project may occur through:

- a. impacts to water quality due to mine voids;
- b. in-pit waste storage;
- c. mine water use; and
- d. groundwater drawdown.

These impacts are discussed in Section 8.5.2 of the Assessment Report.

Mitigation and management measures

69. The proponent has outlined management and mitigation measures for potential impacts to surface water including: management of site contaminants and works in creeks; management of release events and the design of water management structures. These have been collated within the proponent's Water Resource Management Plan, reflected in the Environmental Management Plan and summarised at Section 8.6.1 of the Assessment Report.

70. To address outstanding concerns regarding impacts to surface water resources, the Coordinator-General has stated conditions to be included in the draft Environmental Authority for the project under the *Environmental Protection Act 1994*. Schedule F of the Environmental Authority (dated 14 July 2015) outlines the conditions which have been developed for the protection of surface water resources.

71. Draft Environmental Values and Water Quality Objectives are currently under development by the state for the project catchment area. When finalised, these will be included in the *Environmental Protection (Water) Policy 2009*. Once finalised, relevant conditions applied in the project's Environmental Authority will be reviewed by the Queensland Department of Environment and Heritage Protection and adjusted if required to align with the *Environmental Protection (Water) Policy 2009*.

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72. To provide oversight of these conditions for compliance and monitoring purposes, I have included a condition requiring the proponent to undertake management and monitoring of water resources in accordance with the Environmental Authority issued for the project under the *Environmental Protection Act 1994* (Qld).
73. Both Lagoon and Spring Creek are ephemeral and the proponent has noted that there is difficulty in collecting adequate baseline data to develop site-specific water quality thresholds. In the absence of this data, the Independent Expert Scientific Committee advice of December 2016 notes the proponent could use ANZECC water quality guidelines for 95 per cent species protection in slightly-to-moderately disturbed systems until site-specific thresholds have been developed.
74. I also included a condition requiring the proponent to submit the Receiving Environment Monitoring Plan for approval with additional requirements to ensure that appropriate sampling is undertaken and conservative thresholds are used until such time as site-specific thresholds have been derived as recommended by the Independent Expert Scientific Committee.
75. Section 8.6.2 of the Assessment Report outlines the conclusions in relation to the management of groundwater impacts including: groundwater quality; groundwater users; groundwater dependent ecosystems; Oakey Creek alluvial aquifer; Tertiary Basalt aquifer and the Marburg Sandstone aquifer.
76. The Coordinator-General has stated and imposed conditions requiring the proponent to:
- undertake baseline monitoring to determine the natural groundwater levels and quality;
 - identify the condition and supply capacity of the bore and the operational requirements and current use of the bore;
 - outline the predicted decrease in water level as a result of mining activities;
 - provide an assessment of likely water supply impacts during and following the project activity; and
 - outline the potential future actions (make good measures) which will ensure that affected water users will have access to a reasonable quantity and quality of water for the authorised use and purpose of the bore.
77. The Independent Expert Scientific Committee notes that the modelled drawdown described in the AEIS (with faults) and updated groundwater modelling (without faults) encompass the likely range of groundwater drawdown that would be realised by the project. The Independent Expert Scientific Committee also noted some specific improvements that should be included within the proponent's draft Groundwater Monitoring and Management Plan including:
- a. installing or adopting existing groundwater monitoring bores to use as indicators of early warning of drawdown propagation;
 - b. an outline of the proposed methodology to assess groundwater connectivity between each hydrogeological unit using nested bore arrays;

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- c. a methodology to undertake groundwater quality monitoring to determine existing groundwater conditions within the proposed project area;
 - d. details of the proposed ongoing groundwater monitoring, including identification of physical groundwater conditions, analytes, contaminants and physico-chemical properties to be monitored; and
 - e. an outline of the ongoing fault hydrogeological studies to be undertaken as mining progresses.
78. I have included a condition of approval which requires the proponent to submit a Groundwater Monitoring and Management Plan to me for written approval prior to the commencement of mining activities. This condition addresses all of the recommendations of the Independent Expert Scientific Committee and also includes a requirement to develop drawdown triggers to ensure that there is early warning for groundwater drawdown beyond what was considered during the environmental assessment. If a trigger threshold is reached, a process will be in place to require the proponent to submit additional management measures for approval.
79. I also included a stop work condition in the event that groundwater drawdown limits are substantially exceeded.
80. The Coordinator-General has imposed a condition requiring the proponent undertake a review of the groundwater model within two years of commencement of mining activities and at least every three years thereafter, or at intervals specified by the administering authority in writing, which will occur if the observed groundwater levels are not consistent with those predicted by the groundwater model. The Coordinator-General has also imposed a condition requiring a peer reviewed report outlining the justification for the refined model and the outputs of the refined model; and an evaluation of the accuracy of the predicted changes to groundwater levels.
81. The Department notes that the Coordinator-General's imposed condition for the review of the groundwater model does not require a peer review of the assessment of impacts to a groundwater resource, including a review of the volume of groundwater removed as a result of the project, nor does it address the outstanding concern noted in section 8.7.3 of the Assessment Report. For the greater protection of groundwater resources and to inform any groundwater offsetting, I attached a condition to the approval which imposes these additional requirements.
82. The Assessment Report notes that Oakey Creek Alluvium is recognised as an important resource to the community and the environment. If it is determined that the proposed action will have an impact on the Oakey Creek Alluvium as a result of mining activities, the Coordinator-General has recommended a condition which would require the proponent to determine the volume of groundwater removed from the Oakey Creek Alluvium and offset any long-term take from this aquifer, as directed by the Queensland Department of Natural Resources and Mines.
83. Similar conditions have been recommended by the Coordinator-General with regard to Tertiary Basalt aquifers (also referred to as Main Range Volcanics aquifer in the Assessment Report), with the proponent required to offset any project-related take from

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this aquifer, as directed by Queensland Department of Natural Resources and Mines. The offset will need to take into account the permanent reduction in available take from the aquifers. Offsets may comprise a retirement of part or all of an existing entitlement, or purchase and retirement of a new entitlement.

84. Section 8.6.2 of the Assessment Report outlines the existing regulation for both the Walloon Coal Measures and Marburg Sandstone. Under recent changes to the Queensland *Water Act 2000*, the take of water from the Walloon Coal Measures will be termed “associated water” and will be regulated under this Act. These changes will not impact on the conditions relating to make good measures recommended by the Coordinator-General. The Assessment Report notes that extraction of water from the Marburg Sandstone aquifer is regulated by the Water Resource Plan (Great Artesian Basin) 2006. Noting this, the Coordinator-General determined that offsets for the Walloon Coal Measures and Marburg Sandstone aquifer are not required as these aquifers will be subject to make good arrangements.
85. To provide oversight for compliance and monitoring purposes, I imposed a condition which requires the proponent to propose, as part of the Groundwater Monitoring and Management Plan, mechanisms for make good measures and offsetting and a timeframe by when these mechanisms will be implemented.
86. In their advice of 14 December 2016, the Independent Expert Scientific Committee considered that final void management conditions imposed by the Coordinator-General could be augmented. This includes further detail on the data to be collected during mining, outcomes for final landform design to avoid becoming long-term contaminant sources for water resources, and ongoing monitoring to detect whether there is seepage from the final voids.
87. The final void management recommendations from the Independent Expert Scientific Committee were included in my conditions of approval.
88. The Department sought further advice from the Chair of the Independent Expert Scientific Committee on the proposed conditions of approval. In his response on 21 December 2016, the Chair noted that the conditions of approval fully address the matters which were raised in the Independent Expert Scientific Committee advice of 14 December 2016. He recommended two minor edits to the conditions for clarity which I incorporated into my approval conditions.

Cumulative impacts

89. I noted the Independent Expert Scientific Committee’s advice in relation to potential cumulative impacts to water resources. The proponent has considered cumulative groundwater impacts which the Independent Expert Scientific Committee considers reasonably deals with four surrounding mines but not coal seam gas activities or entitlements.
90. As part of my conditions of approval, the proponent is required to make data available to the Department and Queensland Government authorities for inclusion in any cumulative impact assessment, regional water balance model and/or bioregional model.

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91. I consider that impacts to groundwater resources including the Oakey Creek Alluvium, Tertiary Basalts, Walloon Coal Measures and Marburg Sandstone will either be offset or regulated using the methods outlined above and that the project is unlikely to contribute to a cumulative impact on water resources in the region such that further conditioning is required.

Conclusion

92. I consider the proponent's commitment to mitigation and management measures, the Coordinator-General's imposed, stated and recommended conditions as stated in Appendices 1, 2 and 3 of the Assessment Report and my conditions of approval will, in combination, address all of the concerns raised by the Independent Expert Scientific Committee and ensure that the project will not have an unacceptable impact to water resources.

Additional considerations

Considerations in deciding on conditions – section 134(4)

93. In deciding whether to attach conditions to the approval, I considered relevant imposed, stated and recommended conditions, as outlined in Appendices 1, 2 and 3 of the Coordinator-General's Report. I considered the extent to which these conditions adequately avoided mitigated or offset the impacts of the proposed action on relevant matters of national environmental significance.
94. I considered that the conditions attached to my approval are generally complementary to those likely to be imposed under Queensland legislation (as set out in the Coordinator-General's Report), augmenting them when necessary to ensure the impacts of the proposed action on each relevant controlling provision of the EPBC Act are not unacceptable.
95. In deciding whether to attach conditions to the approval, I also took into consideration the information provided by the proponent, and the desirability of ensuring that the conditions are a cost effective means of the Commonwealth and the person taking the action achieving the object of the conditions. I concluded that the conditions of approval will be cost effective and ensure that matters of national environmental significance are protected over time.

Economic and social matters – subsection 136(1)(b)

96. Information on social and economic matters is available in the Coordinator-General's Report (sections 6, 7 and 8.9). I considered economic and social matters in approving the proposed action with conditions.
97. The proponent has stated that the project is expected to generate significant economic benefits for the region as well as for the Queensland and Australian economies, including significant increases in industry output, gross regional product, employment and incomes. The proponent has estimated that capital investment of the project is \$900 million.

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98. The proponent has estimated that the project would generate a peak net increase of approximately 260 full time equivalent employees during the construction phase. During the 12 year operations phase, the project would directly employ 435 people.
99. Potential negative impacts of the project include:
- change of land use from agriculture to mining and impacts on rural amenity
 - social and economic impacts from mining operations, including air quality, noise, vibration and water resources
 - traffic safety and connectivity
 - impact on local and regional housing markets
 - increased demand for health and education services
 - community concerns over the level of consultation and engagement processes and procedures.
100. The proponent has proposed a detailed consultation, engagement and information strategy to engage with impacted and concerned parties regarding the negative impacts identified above.
101. The Coordinator-General has stated and imposed a number of conditions to address concerns regarding the impacts of the project on groundwater users. These conditions are summarised in paragraph 76 above.
102. I was provided, and took into account, a further submission from a landholder about the impacts of the project and the advice from the IESC of 14 December 2016.
103. I consider that the conditions, described earlier in these reasons, will address the concerns of landholders by protecting the water resource.
104. In March 2015, Synergies Economic Consulting Pty Ltd was commissioned by the Queensland Government to undertake a Rapid Social Benefit-Cost Analysis. This analysis found that the project is expected to yield a net operating revenue from the mine estimated to be \$1.73 billion Net Present Value and supported the proponents' assertions that the project would result in a net economic benefit.
105. This analysis identified that coal price, exchange rate, mine output and operating costs are the major determinants of the overall economic impact of the project. In all cases, the Net Present Value remained positive with the lowest Net Present Value estimated at \$468 million.
106. I agree with the Coordinator-General's conclusion regarding the social and economic impacts of the project, noting his conclusion that the project will result in a benefit to the local, regional and state economies. Further, I note that updated modelling (referenced in paragraphs 104 and 105 above) supported this conclusion regarding the economic benefits of the project.

Environmental history – subsection 136(4)

107. In deciding whether to approve the taking of a proposed action, and what conditions to attach to an approval, I can consider whether the person proposing to take the action is a suitable person to be granted an approval, having regard to:
- a. the person's history in relation to environmental matters;
 - b. if the person is a body corporate – the history of its executive officers in relation to environmental matters; and
 - c. if the person is a body corporate that is a subsidiary of another body or company (the **parent body**) – the history in relation to environmental matters of the parent body and its executive officers.
108. The Department conducted a search of its compliance database to see whether the proponent had an adverse compliance history in respect of the EPBC Act. No adverse environmental history for New Acland Coal Pty Ltd or its directors was found. The proponent has had no compliance action taken against it in relation to the EPBC Act.
109. New Acland Coal Pty Ltd maintains a Health, Safety and Environmental Management System based on the principles of the International Standard for Environmental Management Systems and the Australian Standard for Occupational Health and Safety Management System.
110. Taking into consideration the above, I concluded that the proponent is a suitable person to be granted an approval.

Precautionary principle – section 391

111. In deciding whether to approve the project, I had regard to the precautionary principle as required by s. 391(1) of the EPBC Act.
112. In accordance with 391(2) of the EPBC Act, the precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation where there are threats of serious or irreversible environmental damage.
113. The Coordinator-General's Report (section 8.8) notes that a conservative approach was taken to estimate the project's impacts. The assessment was based on a maximum development scenario, and where there was insufficient information, conditions were imposed to avoid, mitigate or offset any potential impacts.
114. I took a similarly conservative approach to managing the project's impacts on threatened species and water resources as reflected in my approval conditions.
- a. The proponent is required to provide offsets for residual impacts to 70.8 ha of Belson's Panic as identified through the assessment. The Department has also included adaptive management conditions to address any further impacts to

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listed threatened species or ecological communities which may be identified during pre-clearance surveys.

- b. The proponent is required to undertake ongoing monitoring and modelling to ensure that modelled impacts are reflective of actual impacts.
 - c. As a result of this modelling the proponent must undertake adaptive management for the protection of water resources. This includes conditions for trigger levels, informing the Department when trigger levels have been exceeded and the requirement for the Department to oversee proposed mitigation measures where trigger levels have been exceeded.
 - d. The proponent must include compensatory measures for impacts to groundwater resources and ensure that rehabilitation is undertaken in manner that avoids ongoing long-term impacts after the mine is completed.
115. I believe there is sufficient scientific information to conclude that, if taken in accordance with the recommended conditions, the project won't have serious and irreversible impacts on listed threatened species and communities and water resources.

Principles of ecologically sustainable development – section 136(2)(a)

116. 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.
117. In making my decision, I took into account the principles of ecologically sustainable development in accordance with section 136(2)(a) of the EPBC Act. In particular:
- a. I considered the likely impacts of the project on matters of national environmental significance are acceptable in terms of their long-term and short-term economic, social and equitable impacts.
 - b. I considered the precautionary principle as outlined in paragraphs 113 - 115 above.
 - c. I imposed conditions of approval that allow for the project to be delivered and operated in a sustainable way to protect matters of national environmental

significance, and the environment for future generations. In addition, the adaptive management approach applied to the conditions takes account of the lifespan of the project.

- d. I addressed the conservation of biological diversity and ecological integrity in relation to all of the controlling provisions for the proposed action through conditions that will avoid, mitigate and offset impacts to matters of national environmental significance.
- e. I imposed conditions of approval that included measures to address improved valuation through requirements for offsets for any unavoidable residual significant impacts.

Listed threatened species and communities considerations — section 139

118. Section 139(1) of the EPBC Act requires that in deciding whether to approve a proposed action for a subsection of section 18 or 18A, 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

119. 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. Additionally, the CBD promotes environmental impact assessment as a means of avoiding and minimising the adverse impacts of development on biological diversity.
120. The project was assessed by environmental impact statement which included a process for public review. The proponent's Environmental Impact Statement identified the impacts of the project on listed threatened species and communities and included a series of commitments to avoid, manage and mitigate those impacts. The Coordinator-General's Report concludes that the project won't have an unacceptable impact on listed threatened species or communities provided that it is undertaken in accordance with the proponent's commitments and the conditions contained in the report.
121. I agree with the Coordinator-General's conclusions and included a series of conditions in my approval to address the impacts of the project on biodiversity. I considered the CBD's ultimate aim of conservation of listed threatened species and communities in the wild when attaching the specific conditions for listed threatened species requiring mitigation, management and compensation (offset) measures.
122. In particular, I gave consideration to an appropriate combination of in situ measures (e.g. implementing a management plan and specific mitigation measures for listed threatened species of concern) and ex situ measures (e.g. providing suitable offsets for impacts to listed threatened species of concern) for the management of species potentially impacted by the project.

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123. I consider that, taking into account the Assessment Report, the Coordinator-General's conditions, the mitigation and management measures proposed by the proponent, and the recommended conditions of approval, the project won't have unacceptable impacts on listed threatened species and communities.
124. In light of the matters discussed in paragraphs 119 to 123, I am satisfied that the approval of the project, and the approval conditions, are not inconsistent with Australia's obligations under the Biodiversity Convention.

Apia Convention

125. 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.
126. The Apia Convention has the general aim of conserving biodiversity and encourages the creation of protected areas which together with existing protected areas will safeguard representative samples of the natural ecosystem therein (particular attention being given the endangered species), as well as superlative scenery, striking geological formations, and regions and objects of aesthetic interest or historic, cultural or scientific value.
127. The approval conditions require the proponent to secure, protect and improve areas of high value habitat to offset for residual significant impacts to listed threatened species.
128. Accordingly, I was satisfied that my decision to approve the project (including the conditions attached to the approval) is not inconsistent with Australia's obligations under the Apia Convention.

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

129. I was satisfied that my decision to approve the project (including the conditions attached to the approval) was not inconsistent with Australia's obligations under CITES as the project does not involve international trade in endangered species of wild fauna and flora.

Approved conservation advices

130. If a proposed action will have, or is likely to have, a significant impact on a listed threatened species, or ecological community, then I must, in deciding whether to approve the taking of the action, have regard to any approved conservation advice for that species or community.
131. As I found that the only listed threatened species or ecological community likely to be significantly impacted by the project was Belson's panic (*Homopholis belsonii*), the only approved conservation advice relevant to the project is the *Approved Conservation Advice for Homopholis belsonii*, (*Threatened Species Scientific Committee, 2008*).
132. The approved conservation advice notes that the main identified threats to *Homopholis belsonii* are clearing of habitat for agriculture, development or pasture improvement; overgrazing of habitat by domestic stock; invasion of habitat by introduced weeds; and clearing of habitat for mining.
133. The following local priority recovery and threat abatement actions can be done to support the recovery of *Homopholis belsonii*:

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- a. Control access routes to suitably constrain public access to known sites on public land.
- b. Suitably control and manage access on private land.
- c. Undertake survey work in suitable habitat and potential habitat to locate any additional populations/occurrences/remnants.
- d. Minimise adverse impacts from land use at known sites.
- e. Protect populations of the listed species through the development of conservation agreements and/or covenants.
- f. Identify and remove weeds in the local area, which could become a threat to the *Homopholis belsonii*, using appropriate methods.
- g. Manage sites to prevent introduction of invasive weeds, which could become a threat to the *Homopholis belsonii*, using appropriate methods.

This list does not necessarily encompass all actions that may be of benefit to *Homopholis belsonii*, but highlights those that are considered to be of highest priority at the time of preparing the conservation advice.

134. I consider that these local recovery local priority recovery and threat abatement actions have been considered in the assessment of the project.

Recovery plans

135. I found that there are no recovery plans or threat abatement plans relevant to the project.

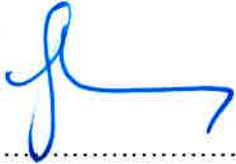
Reasons for decision

136. In deciding whether or not to approve the taking of the project, I took into account (among other matters) the principles of ecologically sustainable development as required under section 136(2)(a) of the EPBC Act, and the precautionary principle as required under section 391 of the EPBC Act.
137. In light of my findings in paragraphs 30 to 135, I decided to approve, subject to conditions, the taking of the project for the purposes of sections 18 and 18A and sections 24D and 24E of the EPBC Act.

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138. My approval will remain valid until 31 January 2042. This allows for a period of 25 years to allow sufficient time for the completion of construction, operation, decommissioning and the implementation of measures to protect matters of national environmental significance and the conservation benefit of the required offset to be realised.

Signed

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line and a small upward tick at the end.

The Hon Josh Frydenberg MP

Minister for the Environment and Energy

18 January 2017

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

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- (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 B—Wetlands of international importance

16 Requirement for approval of activities with a significant impact on a declared Ramsar wetland

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

- (a) has or will have a significant impact on the ecological character of a declared Ramsar wetland; or
- (b) is likely to have a significant impact on the ecological character of a declared Ramsar wetland.

Civil penalty:

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

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

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

(3) In this Act:

ecological character has the same meaning as in the Ramsar Convention.

17 What is a *declared Ramsar wetland*?

Areas designated for listing

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

Areas declared by the Minister

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

17B Offences relating to declared Ramsar wetlands

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

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

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



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:

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- (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

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- (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

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- (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).

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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).

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

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

Civil penalty:

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

- (2) A person must not take an action if:
- (a) the action involves:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action is taken for the purposes of trade or commerce:

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- (i) between Australia and another country; or
- (ii) between 2 States; or
- (iii) between a State and Territory; or
- (iv) between 2 Territories; and
- (c) the action:
 - (i) has or will have a significant impact on a water resource; or
 - (ii) is likely to have a significant impact on a water resource.

Civil penalty:

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

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

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

Civil penalty:

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

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

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

(5) A person who wishes to rely on subsection (4) in proceedings for a contravention of a civil penalty provision bears an evidential burden in relation to the matters in that subsection.

24E Offences relating to water resources

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:
 - (a) the corporation or agency takes an action involving:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and

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(b) the action:

- (i) results or will result in a significant impact on a water resource; or
- (ii) is likely to have a significant impact on a water resource.

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

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

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

(2) A person commits an offence if:

(a) the person takes an action involving:

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

(b) the action is taken for the purposes of trade or commerce:

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

(c) the action:

- (i) has or will have a significant impact on a water resource; or
- (ii) is likely to have a significant impact on a water resource.

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

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

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

(3) A person commits an offence if:

(a) the person takes an action involving:

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

(b) the action is taken in:

- (i) a Commonwealth area; or
- (ii) a Territory; and

(c) the action:

- (i) has or will have a significant impact on a water resource; or
- (ii) is likely to have a significant impact on a water resource.

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

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

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

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

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

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

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.



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;

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

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

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

Notice of extension of time

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

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

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

Time does not run while further information is sought

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

131 Inviting comments from other Ministers before decision

- (1) Before the Minister (the **Environment Minister**) decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she must:
 - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action of the decision the Environment Minister proposes to make; and
 - (b) invite the other Minister to give the Environment Minister comments on the proposed decision within 10 business days.

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- (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

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- (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.

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

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

131A Inviting public comment before decision

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

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

132 Requesting further information for approval decision

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

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

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

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



133 Grant of approval

Approval

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

Content of approval

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

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

Persons who may take action covered by approval

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

Notice of approval

- (3) The Minister must:

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

Limit on publication of approval

- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
 - (a) is:
 - (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or
 - (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (b) the Minister believes it is in the national interest not to provide.

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

Notice of refusal of approval

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

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

Definition

- (8) In this section:

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

- (a) if the action is the subject of an assessment report—that report; or
- (b) if Division 3A of Part 8 (assessment on referral information) applies to the action:
 - (i) the referral of the proposal to take the action; and
 - (ii) the finalised recommendation report relating to the action given to the Minister under subsection 93(5); or
- (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
 - (ii) the recommendation report relating to the action given to the Minister under section 95C; or
- (d) if Division 5 of Part 8 (public environment reports) applies to the action:
 - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; or

- (e) if Division 6 of Part 8 (environmental impact statements) applies to the action:
 - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105.

134 Conditions of approval

Condition to inform persons taking action of conditions attached to approval

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

For the purposes of this Chapter, the condition imposed by this subsection is attached to the approval.

Generally

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

Conditions to protect matters from the approved action

- (2) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:
 - (a) protecting from the action any matter protected by a provision of Part 3 for which the approval has effect; or
 - (b) repairing or mitigating damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 for which the approval has effect.

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

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

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- (ab) conditions requiring a specified financial contribution to be made to a person for the purpose of supporting activities of a kind mentioned in paragraph (aa); and
- (a) conditions relating to any security to be given by the holder of the approval by bond, guarantee or cash deposit:
 - (i) to comply with this Act and the regulations; and
 - (ii) not to contravene a condition attached to the approval; and
 - (iii) to meet any liability of a person whose taking of the action is approved to the Commonwealth for measures taken by the Commonwealth under section 499 (which lets the Commonwealth repair and mitigate damage caused by a contravention of this Act) in relation to the action; and
- (b) conditions requiring the holder of the approval to insure against any specified liability of the holder to the Commonwealth for measures taken by the Commonwealth under section 499 in relation to the approved action; and
- (c) conditions requiring a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth; and
- (d) conditions requiring an environmental audit of the action to be carried out periodically by a person who can be regarded as being independent from any person whose taking of the action is approved; and
- (e) if an election has been made, or is taken to have been made, under section 132B in respect of the approval—conditions requiring:
 - (i) an action management plan to be submitted to the Minister for approval, accompanied by the fee (if any) prescribed by the regulations; and
 - (ii) implementation of the plan so approved; and
- (f) conditions requiring specified environmental monitoring or testing to be carried out; and
- (g) conditions requiring compliance with a specified industry standard or code of practice; and
- (h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

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

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

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- (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.

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

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

Person's environmental history

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

Minister not to consider other matters

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

138 Requirements for decisions about Ramsar wetlands

In deciding whether or not to approve for the purposes of section 16 or 17B the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

139 Requirements for decisions about threatened species and endangered communities

- (1) In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:
 - (a) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (b) a recovery plan or threat abatement plan.
- (2) If:
 - (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
 - (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.

140 Requirements for decisions about migratory species

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

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

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.

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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.

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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;

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- (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.

139. **Part 11A—Interpretation**

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

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

Division 2—Bioregional plans

176 Bioregional plans

- (1) The Minister may prepare a bioregional plan for a bioregion that is within a Commonwealth area. In preparing the plan, the Minister must carry out public consultation on a draft of the plan in accordance with the regulations.
- (2) The Minister may, on behalf of the Commonwealth, co-operate with a State or a self-governing Territory, an agency of a State or of a self-governing Territory, or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within a Commonwealth area.
- (3) The co-operation may include giving financial or other assistance.
- (4) A bioregional plan may include provisions about all or any of the following:
 - (a) the components of biodiversity, their distribution and conservation status;
 - (b) important economic and social values;
 - (ba) heritage values of places;
 - (c) objectives relating to biodiversity and other values;
 - (d) priorities, strategies and actions to achieve the objectives;
 - (e) mechanisms for community involvement in implementing the plan;
 - (f) measures for monitoring and reviewing the plan.
- (4A) A bioregional plan prepared under subsection (1) or (2) is not a legislative instrument.
- (5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

Subdivision AA—Approved conservation advice

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

Minister to ensure there is approved conservation advice

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

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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.

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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

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- (e) the role and interests of indigenous people in the conservation of Australia's biodiversity.

270A Decision whether to have a threat abatement plan

Decision

- (1) The Minister may at any time decide whether to have a threat abatement plan for a threatening process in the list of key threatening processes established under section 183. The Minister must do so:
 - (a) within 90 days of the threatening process being included in the list; and
 - (b) within 5 years of the last decision whether to have a threat abatement plan for the process, if that decision was not to have a threat abatement plan for the process.

Basis for decision

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

Consultation before making a decision

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

Consulting others

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

Request may be made before listing

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

Time for giving advice

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

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Considering views expressed in consultation

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

Publishing decision and reasons

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

Special rules for processes included in original list

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

270B Making or adopting a threat abatement plan

Application

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

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

Making a plan

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

Making a plan jointly with a State or Territory

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

Content of a plan

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

Prerequisites to making a plan

- (5) Before making a threat abatement plan for the process under subsection (2) or (3), the Minister must:
 - (a) consult the appropriate Minister of each State and self-governing Territory in which the process occurs, with a view to:
 - (i) taking the views of each of those States and Territories into account in making the plan under subsection (2); or
 - (ii) making the plan jointly under subsection (3);unless the process occurs only in a Commonwealth area; and

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- (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

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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:

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- (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

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- (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.

Subdivision E—Management of wetlands in States and self-governing Territories

332 Application

This Subdivision applies in relation to a wetland that:

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

333 Co-operating to prepare and implement plans

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

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

334 Commonwealth responsibilities

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- (1) This section applies in relation to a wetland that is a declared Ramsar wetland.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the wetland in a way that is not inconsistent with:
 - (a) the Ramsar Convention; and
 - (b) the Australian Ramsar management principles; and
 - (c) if the wetland is included in the List of Wetlands of International Importance kept under the Ramsar Convention and a plan for managing the property has been prepared as described in section 333—that plan.

Subdivision F—Australian Ramsar management principles

335 Australian Ramsar management principles

- (1) The regulations must prescribe principles for the management of wetlands included in the List of Wetlands of International Importance kept under the Ramsar Convention. The principles prescribed are the Australian Ramsar management principles.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the Ramsar Convention.



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

140. Part 23—Definitions

Division 1—Some definitions relating to particular topics

Subdivision A—Actions

523 *Actions*

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

524 *Things that are not actions*

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

This subsection does not limit this section.

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

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

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



Subdivision C—Entities

526 Subsidiaries of bodies corporate

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

Subdivision D—Criminal law

527 Convictions

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



Subdivision F—Impacts

527E Meaning of *impact*

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

then that event or circumstance is an **impact** of the primary action only if:

- (e) the primary action facilitates, to a major extent, the secondary action; and
- (f) the secondary action is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the primary action; and
- (g) the event or circumstance is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the secondary action.

Division 2—General list of definitions

528 Definitions

In this Act, unless the contrary intention appears:

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

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

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

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

agency of a State or self-governing Territory means:

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

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- (i) the Governor of the State; or
 - (ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or
 - (iii) if the Territory is the Northern Territory or Norfolk Island—the Administrator of the Territory; or
 - (iv) a Minister of the State or Territory;
- otherwise than by or under a law of the State or Territory.

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

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

animal reproductive material means:

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

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

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

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

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

article includes a substance or a mixture of substances.

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

assess an action includes assess the impacts that the action:

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

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

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

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

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

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

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

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

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

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

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

authorised officer means:

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

baggage has the meaning given by section 443.

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

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

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

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

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

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

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

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

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

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

Biosphere reserve has the meaning given by section 337.

Board means a Board established under section 377.

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

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

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

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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.

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

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

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

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

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

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

Commonwealth agency means:

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

but does not include:

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

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

Commonwealth area has the meaning given by section 525.

Commonwealth land has the meaning given by section 27.

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

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:

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- (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.

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.

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

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

endangered:

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

environment includes:

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

environmental authorisation has the meaning given by section 43A.

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

environmental law means:

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

environmental penalty provision means:

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

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

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

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

executing officer, in relation to a warrant, means:

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

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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.

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.

holder means:

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

impact has the meaning given by section 527E.

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

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

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

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

indigenous tradition has the meaning given by section 201.

inspector means:

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

interested person has the meaning given by section 475.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

list includes a list containing no items.

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

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

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

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

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

live animal includes animal reproductive material.

live plant includes plant reproductive material.

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).

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

monitoring warrant has the meaning given by section 409.

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.

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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.

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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.

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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.

Schedule 6—Australian Ramsar management principles

(regulation 10.02)

1 General principles

1.01 The primary purpose of management of a declared Ramsar wetland must be, in accordance with the Ramsar Convention:

- (a) to describe and maintain the ecological character of the wetland; and
- (b) to formulate and implement planning that promotes:
 - (i) conservation of the wetland; and
 - (ii) wise and sustainable use of the wetland for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem.

1.02 Wetland management should provide for public consultation on decisions and actions that may have a significant impact on the wetland.

1.03 Wetland management should make special provision, if appropriate, for the involvement of people who:

- (a) have a particular interest in the wetland; and
- (b) may be affected by the management of the wetland.

- 1.04 Wetland management should provide for continuing community and technical input.

2 Management planning

- 2.01 At least 1 management plan should be prepared for each declared Ramsar wetland.

- 2.02 A management plan for a declared Ramsar wetland should:

- (a) describe its ecological character; and
- (b) state the characteristics that make it a wetland of international importance under the Ramsar Convention; and
- (c) state what must be done to maintain its ecological character; and
- (d) promote its conservation and sustainable use for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem; and
- (e) state mechanisms to deal with the impacts of actions that individually or cumulatively endanger its ecological character, including risks arising from:
 - (i) physical loss, modification or encroachment on the wetland; or
 - (ii) loss of biodiversity; or
 - (iii) pollution and nutrient input; or
 - (iv) changes to water regimes; or
 - (v) utilisation of resources; or
 - (vi) introduction of invasive species; and
- (f) state whether the wetland needs restoration or rehabilitation; and
- (g) if restoration or rehabilitation is needed—explain how the plan provides for restoration or rehabilitation; and
- (h) provide for continuing monitoring and reporting on the state of its ecological character; and
- (i) be based on an integrated catchment management approach; and
- (j) include adequate processes for public consultation on the elements of the plan; and
- (k) 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 ecological character of a Ramsar wetland (whether the action is to occur inside the wetland or not).
- 3.02 Before the action is taken, the likely environmental impact of the action on the wetland's ecological character should be assessed under a statutory environmental impact assessment and approval process.
- 3.03 The assessment process should:
- (a) identify any part of the ecological character of the wetland that is likely to be affected by the action; and
 - (b) examine how the ecological character of the wetland might be affected; and
 - (c) provide adequate opportunity for public consultation.

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3.04 An action should not be approved if it would be inconsistent with:

- (a) maintaining the ecological character of the wetland; or
- (b) providing for the conservation and sustainable use of the wetland.

3.05 Approval of the action should be subject to conditions, if necessary, to ensure that the ecological character of the wetland is maintained.

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.