2025

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Environment Protection Reform Bill 2025

No. , 2025

(Climate Change, Energy, the Environment and Water)

A Bill for an Act to amend the law relating to the environment, and for related purposes

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A Bill for an Act to amend the law relating to the environment, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Environment Protection Reform Act 2025*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2 other than item 571	A day or days to be fixed by one or more Proclamations. However, if any of the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, item 571	The day after this Act receives the Royal Assent.	
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	
5. Schedule 2, Part 1	At the same time as the *National Environmental Protection Agency Act 2025*. However, the provisions do not commence at all if that Act does not commence.	
6. Schedule 2, Part 2	The later of: (a) the same time as the provisions covered by table item 5; and (b) the time item 35 of Schedule 1 to the *Environment Protection (Sea Dumping) Amendment (Using New Technologies to Fight Climate Change) Act 2023* commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
7. Schedule 2, Part 3	At the same time as the provisions covered by table item 5.	
8. Schedule 3	At the same time as the provisions covered by table item 5.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

Providing different days on which amendments are to apply

(2) The Minister may, by notifiable instrument, provide that the amendment made by a provision covered by table item 2 applies, in relation to different matters or things, on and after different days for one or more of those matters or things.

(3) Part 3 of Schedule 1 (application and transitional provisions), or any rules made under item 715 of that Schedule, as it applies in relation to an amendment, does not limit a notifiable instrument made for the purposes of subsection (2) in relation to the amendment.

(4) To avoid doubt, a reference in subsection (2) to an amendment includes the insertion of a new provision or the repeal of a provision.

Note: An amendment might have an application provision in Part 3 of Schedule 1 as well as in a notifiable instrument.

Example: An item in a Schedule to this Act inserts a new section into the principal Act that covers 2 matters, one of which is to begin on Royal Assent and one of which is to begin on a later day. That new section applies in relation to the matter that is to begin on Royal Assent from that day, and in relation to the other matter, from the day that other matter is to begin.

For the purposes of the application provision for the new section in Part 3 of Schedule 1, the day that is the commencement day for the new section will vary depending on the matter (see the definition of ***commencement day*** in item 675 of that Schedule).

Date/details information in column 3

(5) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—General amendments

Part 1—General amendments

Airports Act 1996

1 Subsection 96D(7)

Repeal the subsection.

Environment Protection and Biodiversity Conservation Act 1999

2 After paragraph 12(2)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

3 Paragraph 12(2)(c)

Omit "manner; or", substitute "manner.".

4 Paragraph 12(2)(d)

Repeal the paragraph.

5 After paragraph 15A(4)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

6 Paragraph 15A(4)(c)

Omit "manner; or", substitute "manner.".

7 Paragraph 15A(4)(d)

Repeal the paragraph.

8 After paragraph 15B(8)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

9 Paragraph 15B(8)(c)

Omit "manner; or", substitute "manner.".

10 Paragraph 15B(8)(d)

Repeal the paragraph.

11 After paragraph 15C(16)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

12 Paragraph 15C(16)(c)

Omit "manner; or", substitute "manner.".

13 Paragraph 15C(16)(d)

Repeal the paragraph.

14 After paragraph 16(2)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

15 Paragraph 16(2)(c)

Omit "manner; or", substitute "manner.".

16 Paragraph 16(2)(d)

Repeal the paragraph.

17 After paragraph 17B(4)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

18 Paragraph 17B(4)(c)

Omit "manner; or", substitute "manner.".

19 Paragraph 17B(4)(d)

Repeal the paragraph.

20 After paragraph 19(3)(a)

Insert:

(aa) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

21 Paragraph 19(3)(b)

Omit "manner; or", substitute "manner.".

22 Paragraph 19(3)(c)

Repeal the paragraph.

23 After paragraph 20(2)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

24 Paragraph 20(2)(c)

Omit "manner; or", substitute "manner.".

25 Paragraph 20(2)(d)

Repeal the paragraph.

26 After paragraph 20A(4)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

27 Paragraph 20A(4)(c)

Omit "manner; or", substitute "manner.".

28 Paragraph 20A(4)(d)

Repeal the paragraph.

29 Subdivision E of Division 1 of Part 3 (heading)

Omit "**nuclear**", substitute "**radiological exposure**".

30 Section 21 (heading)

Omit "**nuclear**", substitute "**radiological exposure**".

31 Subsections 21(1), (2) and (3)

Omit "nuclear", substitute "radiological exposure".

32 After paragraph 21(4)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

33 Paragraph 21(4)(c)

Omit "manner; or", substitute "manner.".

34 Paragraph 21(4)(d)

Repeal the paragraph.

35 Section 22 (heading)

Repeal the heading, substitute:

22 Definition of *radiological exposure action*

36 Before subsection 22(1)

Insert:

Radiological exposure action

(1A) An action that is any of the following is a ***radiological exposure action***:

(a) establishing or significantly modifying a nuclear installation;

(b) transporting spent nuclear fuel or radioactive waste products arising from reprocessing;

(c) establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;

(d) uranium mining or milling, other than in circumstances involving only trace amounts of uranium;

(e) mining, processing, stockpiling or disposing of naturally occurring radioactive materials, if the action exceeds the activity level prescribed by the regulations for the circumstances in which the action is taken;

(f) establishing or significantly modifying a large-scale disposal facility for radioactive waste;

(g) decommissioning or rehabilitating any facility or area in which an activity described in any of paragraphs (a) to (f) has been undertaken;

(h) establishing, significantly modifying, decommissioning or rehabilitating a facility at which radioactive materials at or above the activity level prescribed by the regulations for the facility have been, are being, or are proposed to be, used or stored;

(i) an action prescribed by the regulations.

(1B) To avoid doubt, paragraph (1A)(d) does not include operations for the recovery of mineral sands or rare earth elements.

37 Subsection 22(1) (definition of *nuclear action*)

Repeal the definition.

38 Section 22A (heading)

Omit "**nuclear**", substitute "**radiological exposure**".

39 Subsections 22A(1), (2), (3), (4), (5) and (6)

Omit "nuclear" (wherever occurring), substitute "radiological exposure".

40 After paragraph 22A(8)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

41 Paragraph 22A(8)(c)

Omit "manner; or", substitute "manner.".

42 Paragraph 22A(8)(d)

Repeal the paragraph.

43 After paragraph 23(4)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

44 Paragraph 23(4)(d)

Omit "agency; or", substitute "agency.".

45 Paragraph 23(4)(e)

Repeal the paragraph.

46 After paragraph 24A(8)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in

accordance with the conditions (if any) specified in the determination; or

47 Paragraph 24A(8)(c)

Omit "manner; or", substitute "manner.".

48 Paragraph 24A(8)(d)

Repeal the paragraph.

49 After paragraph 24B(3)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

50 Paragraph 24B(3)(d)

Omit "agency; or", substitute "agency.".

51 Paragraph 24B(3)(e)

Repeal the paragraph.

52 After paragraph 24C(9)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

53 Paragraph 24C(9)(d)

Omit "agency; or", substitute "agency.".

54 Paragraph 24C(9)(e)

Repeal the paragraph.

55 After paragraph 24D(4)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

56 Paragraph 24D(4)(c)

Omit "manner; or", substitute "manner.".

57 Paragraph 24D(4)(d)

Repeal the paragraph.

58 After paragraph 24E(4)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

59 Paragraph 24E(4)(c)

Omit "manner; or", substitute "manner.".

60 Paragraph 24E(4)(d)

Repeal the paragraph.

61 After paragraph 25(2)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

62 Paragraph 25(2)(c)

Omit "manner; or", substitute "manner.".

63 Paragraph 25(2)(d)

Repeal the paragraph.

64 After paragraph 26(3)(b)

Insert:

(c) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

65 Paragraph 26(3)(e)

Repeal the paragraph.

66 After paragraph 27A(6)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

67 Paragraph 27A(6)(d)

Repeal the paragraph.

68 After paragraph 27B(2)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

69 Paragraph 27B(2)(c)

Omit “manner; or”, substitute “manner.”.

70 Paragraph 27B(2)(d)

Repeal the paragraph.

71 After paragraph 27C(5)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in

accordance with the conditions (if any) specified in the determination; or

72 Paragraph 27C(5)(c)

Omit "manner; or", substitute "manner.".

73 Paragraph 27C(5)(d)

Repeal the paragraph.

74 After paragraph 28(2)(b)

Insert:

(ba) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

75 Paragraph 28(2)(d)

Omit "manner; or", substitute "manner.".

76 Paragraph 28(2)(e)

Repeal the paragraph.

77 Subsection 29(1)

Omit ", other than section 24D or 24E,".

78 Paragraph 29(1)(b)

Omit "management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the bilateral agreement", substitute "management or authorisation framework that is accredited for the purposes of the agreement".

79 Paragraphs 29(1)(d) and (e)

Repeal the paragraphs, substitute:

(d) the action is taken in accordance with the management or authorisation framework.

80 Paragraph 31(c)

Omit "bilaterally accredited management arrangement or a bilaterally accredited authorisation process", substitute "management or authorisation framework that is accredited for the purposes of the agreement".

81 Paragraphs 31(f) and (g)

Repeal the paragraphs, substitute:

(f) the action is taken in accordance with the framework.

82 Division 2 of Part 4 (heading)

Omit "**management arrangements or accredited authorisation processes**", substitute "**management or authorisation frameworks**".

83 Paragraph 32(a)

Omit "an accredited management arrangement or an accredited authorisation process", substitute "a management or authorisation framework that is accredited".

84 Paragraphs 32(c) and (d)

Repeal the paragraphs, substitute:

(c) the action is taken in accordance with the framework.

85 Section 33

Repeal the section, substitute:

33 Making declaration that actions do not need approval under Part 9

Declaration of actions not needing approval

(1) The Minister may declare in writing, in relation to a specified class of actions, that the actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 because the taking of the actions has been approved in accordance with a management or authorisation framework that is accredited for the purposes of the declaration.

Note: Subdivision C deals with prerequisites for making a declaration. Subdivision D deals with suspension, variation and revocation of a

declaration. Subdivision E has other provisions relating to declarations (for example, dealing with exclusion determinations and review of declarations).

Minister may accredit management or authorisation framework

(2) The Minister may, by written instrument, accredit a management or authorisation framework for the purposes of a declaration under subsection (1).

Note: The Minister's power to accredit a framework is affected by other provisions of this section and sections 33A, 33B and 33C.

Minister must not accredit unless satisfied of certain criteria

(3) The Minister must not accredit a management or authorisation framework for the purposes of a declaration under subsection (1) unless the Minister is satisfied that:

(a) the framework is wholly or partly set out in, or wholly or partly made under:

(i) a law of the Commonwealth; or

(ii) an instrument made under a law of the Commonwealth; and

(b) if subparagraph (a)(i) applies to the framework—the law mentioned in that subparagraph:

(i) is identified in the declaration; and

(ii) meets any criteria prescribed by the regulations; and

(c) if subparagraph (a)(ii) applies to the framework—the law and the instrument mentioned in that subparagraph:

(i) are identified in the declaration; and

(ii) each meet any criteria prescribed by the regulations; and

(d) the framework meets any criteria prescribed by the regulations; and

(e) the framework is not inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and

(f) approving an action or class of actions in accordance with the framework will not be inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and

(g) there has been or will be adequate assessment of the impacts that actions or classes of actions approved in accordance with the framework have or will have or are likely to have on each matter protected by a provision of Part 3 to which the declaration relates (a ***declared protected matter***); and

(h) actions or classes of actions approved or taken in accordance with the framework will not have or be likely to have unacceptable impacts on a declared protected matter; and

Note: See the definition of ***unacceptable impacts*** in section 527F.

(i) the taking of an action or class of actions will only be approved under the framework if the approval would, assuming it were required to pass the net gain test, pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have, or is likely to have, on a declared protected matter; and

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

(j) the framework provides for appropriate disclosure of the greenhouse gas emissions information for actions taken in accordance with the framework; and

(k) the Minister has considered any other relevant matter.

Note 1: Subdivision C sets out more prerequisites for accrediting a management or authorisation framework.

Note 2: For paragraph (k), matters that the Minister might consider relevant may include, for example, policies or plans of the Commonwealth.

Identification of law or instrument framework is set out in or made under

(4) The instrument accrediting the framework must identify:

(a) if subparagraph (3)(a)(i) applies to the framework—the law mentioned in that subparagraph; or

(b) if subparagraph (3)(a)(ii) applies to the framework—the law and the instrument mentioned in that subparagraph.

Instruments are not legislative instruments

(5) The following are not legislative instruments:

(a) a declaration made under subsection (1);

(b) an instrument accrediting a management or authorisation framework under subsection (2).

Instruments to be published

(6) The Minister must publish a copy of an instrument mentioned in paragraph (5)(a) or (b):

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

33A Tabling and opposition of accreditation of management or authorisation framework

(1) If the Minister proposes to accredit a management or authorisation framework for the purposes of a declaration under subsection 33(1), the Minister must cause the following documents (the ***relevant documents***) to be tabled in each House of the Parliament:

(a) a copy of the documents that together comprise the whole of the framework (including any part of the framework that is not set out in, or made under, a law or instrument);

(b) a notice that the Minister proposes to accredit the framework for the purposes of the declaration.

When Minister must not accredit

(2) The Minister must not accredit the framework if:

(a) notice of a motion to oppose accreditation of the framework is given in a House of the Parliament within the applicable opposition period; and

(b) within 15 sitting days of the House after the giving of the notice, the House passes a resolution, in pursuance of the motion, opposing accreditation of the framework.

When Minister may accredit

(3) The Minister may accredit the framework only if:

(a) no notice of a motion to oppose accreditation of the framework is given in a House of the Parliament within the applicable opposition period; or

(b) if such a notice is given in a House of the Parliament within the applicable opposition period:

(i) the notice is withdrawn or otherwise disposed of within 15 sitting days of the House after the notice is given; and

(ii) the applicable opposition period has ended.

Extended time for opposition after dissolution, expiry or prorogation

(4) If:

(a) notice of a motion to oppose the accreditation of the framework is given in a House of the Parliament (the ***opposing House***) within the applicable opposition period; and

(b) before the end of 15 sitting days of the opposing House after the notice is given:

(i) the House of Representatives is dissolved or expires; or

(ii) the Parliament is prorogued; and

(c) at the time of the dissolution, expiry or prorogation (as the case requires):

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the relevant documents are taken, for the purposes of subsections (2) and (3), to have been tabled in the opposing House on the first sitting day of the House after the dissolution, expiry or prorogation (as the case requires).

*Meaning of **applicable opposition period***

(5) In this section:

applicable opposition period, for a House of the Parliament, means the period of 15 sitting days of the House after the relevant documents are tabled in the House under subsection (1).

33B Advice from CEO before accreditation

Before accrediting a management or authorisation framework under subsection 33(2), the Minister must:

(a) seek advice from the CEO in relation to the decision whether to accredit the framework; and

(b) have regard to that advice in making the decision.

33C Accreditation must not result in approval of certain nuclear installations

(1) The Minister may accredit a management or authorisation framework under subsection 33(2) for the purposes of a declaration only if the Minister is satisfied the framework will not result in the approval of an action consisting of or involving the construction or operation of any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;

(b) a nuclear power plant;

(c) an enrichment plant;

(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

86 At the end of Subdivision B of Division 2 of Part 4

Add:

34AA Declaration or accreditation may apply, adopt or incorporate other instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, a declaration, or accreditation of a management or authorisation framework, under section 33 may apply, adopt or incorporate (with or without modifications) any matter contained in an instrument or other writing:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time.

87 Paragraph 34B(1)(b)

Omit "will promote the management of the property in accordance", substitute "is not inconsistent".

88 After paragraph 34B(1)(b)

Insert:

(ba) the Minister is satisfied that the declaration is not inconsistent with any plan prepared for the management of the property under section 316 or as mentioned in section 321; and

89 Subsection 34B(2)

Repeal the subsection, substitute:

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of a declaration relating to a declared World Heritage property only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) Australia's obligations under the World Heritage Convention;

(b) the Australian World Heritage management principles;

(c) any plan prepared for the management of the property under section 316 or as mentioned in section 321.

90 Paragraph 34BA(1)(a)

Omit "will promote the management of the place in accordance", substitute "is not inconsistent".

91 After paragraph 34BA(1)(a)

Insert:

(aa) the Minister is satisfied that the declaration is not inconsistent with any plan prepared for the management of the place under section 324S or as mentioned in section 324X; and

(ab) the Minister is satisfied that the declaration is not inconsistent with any agreement to which the Commonwealth is party in relation to the National Heritage place; and

92 Subsection 34BA(2)

Repeal the subsection, substitute:

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of such a declaration only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) the National Heritage management principles;

(b) any plan prepared for the management of the place under section 324S or as mentioned in section 324X;

(c) any agreement to which the Commonwealth is party in relation to the National Heritage place.

93 Paragraph 34C(1)(b)

Omit "will promote the management of the wetland in accordance", substitute "is not inconsistent".

94 After paragraph 34C(1)(b)

Insert:

(ba) the Minister is satisfied that the declaration is not inconsistent with any plan prepared for the management of the wetland as mentioned in section 333; and

95 Subsection 34C(2)

Repeal the subsection, substitute:

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of a declaration relating to a declared Ramsar wetland only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) Australia's obligations under the Ramsar Convention;

(b) the Australian Ramsar management principles;

(c) any plan prepared for the management of the wetland as mentioned in section 333.

96 Section 34D

Repeal the section, substitute:

34D Declarations relating to listed threatened species and ecological communities

Declarations under section 33

(1) The Minister may make a declaration under section 33 relating to a listed threatened species or a listed threatened ecological community only if the Minister is satisfied the declaration is not inconsistent with the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES;

(b) a threat abatement plan;

(c) a protection statement;

(d) a recovery plan.

(2) If there is a protection statement for the whole or one or more parts of the species or community:

(a) the requirement in paragraph (1)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(3) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

Accreditation of management or authorisation frameworks

(4) The Minister may accredit a management or authorisation framework under section 33 for the purposes of a declaration relating to a listed threatened species or a listed threatened ecological community only if the Minister is satisfied the framework is not inconsistent with the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or
(iii) CITES;

(b) a threat abatement plan;
(c) a protection statement;
(d) a recovery plan.

(5) If there is a protection statement for the whole or one or more parts of the species or community:
(a) the requirement in paragraph (4)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and
(b) the Minister may have regard to any such recovery plan; and
(c) the Minister may have regard to an approved conservation advice for the species or community.

(6) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

97 Paragraph 34E(1)(b)

Repeal the paragraph.

98 Subsection 34E(2)

Repeal the subsection, substitute:

(2) The Minister may accredit a management or authorisation framework under section 33 for the purposes of a declaration relating to a listed migratory species only if the Minister is satisfied that the framework is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or 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).

99 Paragraph 34F(1)(a)

Omit "will promote the management of the place in accordance", substitute "is not inconsistent".

100 Subsection 34F(2)

Omit "management arrangement or authorisation process" (first occurring), substitute "management or authorisation framework".

101 Subsection 34F(2)

Omit "management arrangement or authorisation process" (second occurring), substitute "framework".

102 Subsection 34F(2)

Omit "will promote the management of the place concerned in accordance", substitute "is not inconsistent".

103 Subdivision D of Division 2 of Part 4 (heading)

Repeal the heading, substitute:

Subdivision D—Suspension, variation and revocation of declarations

104 Section 35

Repeal the section, substitute:

35 Suspension, variation and revocation of declaration

(1) If, in relation to a declaration in force under section 33, the Minister reasonably believes that a situation mentioned in subsection (2) exists or will arise, or is satisfied that any requirements prescribed by the regulations for the purposes of this subsection are met, the Minister may, by written instrument:

(a) suspend the declaration for the purposes of this Act, or specified provisions of Part 3 of this Act, either generally or in relation to actions of a specified class, for the specified period; or

(b) vary the declaration so that the declaration no longer has effect for the purposes of this Act, or specified provisions of

Part 3 of this Act, either generally or in relation to actions of a specified class; or

(c) revoke the declaration.

(2) The situations are that the body administering a management or authorisation framework that is accredited for the purposes of the declaration:

(a) has not complied with the framework; or

(b) has not given effect to the framework in a way that:

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

(ii) promotes the discharge of Australia's obligations under any agreement with one or more other countries relevant to a matter covered by the declaration; or

(c) has given effect to the framework in a way that is inconsistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 33(3)(e) or (f); or

(d) has given effect to the framework in a way that has resulted or is likely to result in an unacceptable impact on a matter protected by a provision of Part 3 specified in the declaration; or

Note: See the definition of ***unacceptable impacts*** in section 527F.

(e) has given effect to the framework in a way that has resulted or is likely to result in approvals of actions or classes of actions that, assuming the approvals were required to pass the net gain test, would not pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have or is likely to have on a matter protected by a provision of Part 3 specified in the declaration.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

(3) A variation, revocation or period of suspension takes effect on the day specified in the instrument. The Minister must not specify a day that is earlier than the day that is 10 business days after the day the instrument is made.

(4) For the purposes of paragraph (1)(a), the specified period for a suspension may end:

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

(5) An instrument made under subsection (1) is not a legislative instrument.

35A Notice of suspension, variation or revocation

(1) As soon as practicable after suspending, varying or revoking a declaration under section 35, the Minister must give the body administering the management or authorisation framework to which the declaration relates:
(a) a copy of the instrument of suspension, variation or revocation; and
(b) a written statement of the reasons for the suspension, variation or revocation.

(2) The Minister must also publish the instrument and statement of reasons:
(a) on the Department's website; and
(b) in accordance with any other requirements prescribed by the regulations.

35B Suspension, variation or revocation does not affect some actions

If:
(a) a declaration made under section 33 is suspended, varied or revoked; and
(b) before the suspension, variation or revocation, an action was being taken that could be taken without approval under Part 9 for the purposes of a provision of Part 3 because the declaration was in force in relation to the class of actions to which the action belongs; and
(c) as a result of the suspension, variation or revocation, the action can no longer be taken without approval under Part 9 for the purposes of the provision of Part 3; and
(d) the action had not been completed before the suspension, variation or revocation;

this Act continues to operate in relation to the action as if the declaration had not been suspended, varied or revoked.

35C Variation or revocation during period of suspension

(1) Nothing in section 35 prevents the Minister varying or revoking a declaration made under section 33 while the declaration is suspended.

(2) Subsection (1) applies regardless of whether the suspension, variation or revocation has effect generally or otherwise.

35D Reinstatement of suspended declaration

(1) The Minister must, by written instrument, revoke an instrument suspending a declaration made under section 33 if, before the end of the specified period of the suspension, the Minister becomes satisfied that there is no longer a ground under subsection 35(1) for suspending the declaration.

(2) If the Minister revokes the instrument, the Minister must give the body administering the management or authorisation framework to which the declaration relates a copy of the revoking instrument.

(3) The Minister must also publish the revoking instrument:
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

(4) Suspension of the declaration ends on the day specified in the revoking instrument (which must not be earlier than the day that instrument is made).

(5) An instrument made under subsection (1) is not a legislative instrument.

35E Reinstatement of varied or revoked declaration

(1) The Minister must, by written instrument (the ***revoking instrument***), revoke an instrument varying or revoking a declaration made under section 33 if, before the variation or revocation takes effect, the Minister becomes satisfied that there is no longer a ground under subsection 35(1) for varying or revoking the declaration.

(2) If the Minister revokes the variation or revocation, the Minister must give the body administering the management or authorisation framework to which the declaration relates a copy of the revoking instrument.

(3) The Minister must also publish the revoking instrument:
  (a) on the Department's website; and
  (b) in accordance with any other requirements prescribed by the regulations.

(4) An instrument made under subsection (1) is not a legislative instrument.

105 Section 36 (heading)

Repeal the heading, substitute:

36 Minister must not give preference

106 Subsection 36(1) (heading)

Repeal the heading.

107 Subsection 36(1)

Omit "(1)".

108 Subsection 36(1)

Omit "management arrangement or authorisation process", substitute "management or authorisation framework".

109 Subsection 36(1)

After "section 33, or", insert "suspending, varying or".

110 Subsection 36(2)

Repeal the subsection.

111 Section 36A (heading)

Repeal the heading, substitute:

36A Determinations that amended management or authorisation frameworks continue to be accredited

112 Subsections 36A(1) and (2)

Repeal the subsections, substitute:

(1) If:

(a) a management or authorisation framework has been accredited for the purposes of a declaration under section 33; and

(b) the framework is amended, or is proposed to be amended; and

(c) the Minister is satisfied the amendments will not have a significant effect on the operation of the framework; and

(d) the Minister is satisfied that the requirements of the following provisions are met, or will be met, in relation to the framework as amended:

(i) paragraphs 33(3)(d) to (j);

(ii) section 33C;

(iii) section 34A;

(iv) subsection 34B(2), 34BA(2), 34C(2), 34D(4), 34E(2) or 34F(2) (as the case requires);

the Minister may, by instrument in writing, determine that this section applies to the amendments.

(2) If the Minister makes a determination under subsection (1):

(a) the framework as amended is taken to be accredited for the purposes of the declaration; and

(b) subsections 33(3) and (4), and section 33A, do not apply in relation to the amendments to the framework, or the management arrangement or authorisation process as amended; and

(c) actions taken after the determination is made in accordance with the framework as amended do not require approval under Part 9 for the purposes of a specified provision of Part 3.

113 At the end of Division 2 of Part 4

Add:

Subdivision E—Other provisions relating to section 33 declarations

36B Exclusion determination

(1) The Minister may, by written instrument, determine that, despite a declaration in force under section 33 in relation to actions in a class of actions, a specified action in the class that a person proposes to take is excluded from the declaration.

(2) For the purposes of this Act, the action specified in the determination is taken not to be an action in the class of actions specified in the declaration.

Note: The action is also taken to have been referred to the Minister under subsection 68(1) (see section 69A).

(3) As soon as practicable after the determination is made, the Minister must give the following persons a copy of it, together with a written notice that the action is taken to have been referred to the Minister under section 68:

(a) the person proposing to take the action;

(b) the body administering the management or authorisation framework to which the declaration relates.

(4) A determination made under subsection (1) is not a legislative instrument.

36C Review of declaration

(1) The CEO must arrange for a review of a declaration made under section 33 to be started:

(a) within 3 years of the declaration taking effect; and

(b) within 5 years of the day a report of the previous review was given to the Minister under subsection (2).

(2) The persons undertaking a review must give the CEO a report of the review within 6 months of the review starting or within a longer period agreed in writing by the CEO.

(3) The CEO must give a copy of the report of a review to the Minister.

(4) The Minister must publish a copy of the report:
(a) on the Department's website; and
(b) in accordance with any other requirements prescribed by the regulations.

36D Assurance reviews into declarations made under section 33

(1) The CEO may from time to time cause an authorised officer to conduct an assurance review into a declaration made under section 33.

(2) The assurance review may cover any or all of the following matters:
(a) whether the conditions mentioned in paragraphs 33(3)(d) to (j) continue to be met in relation to any management or authorisation framework accredited for the purposes of the declaration;
(b) whether the administration of any such framework is consistent with the framework as accredited;
(c) whether the administration of any such framework accords with the objects of the Act;
(d) if a matter protected by a provision of Part 3 covered by any such framework is relevant to Australia's obligations under an international agreement—whether the administration of the framework is not inconsistent with those obligations;
(e) any other matter prescribed by the regulations.

(3) Before the assurance review commences, the CEO must give the body administering any such framework a written notice setting out the matters to be covered by the review.

(4) The CEO must give the Minister a report of the assurance review as soon as possible after conducting the review.

(5) The report of the assurance review may include recommendations in relation to the declaration to which the review relates.

(6) Without limitation, recommendations under subsection (5), may include a recommendation on whether to vary, suspend or revoke the declaration to which the review relates.

36E Duty to provide all reasonable facilities and assistance

A body administering a management or authorisation framework that is accredited for the purposes of a declaration to which an assurance review under subsection 36D(1) relates must provide the CEO, and any persons assisting the CEO, with all reasonable facilities and assistance necessary for the effective exercise of the CEO's duties in relation to the review.

36F Request for information or documents

If the CEO reasonably believes that a person has information or documents relevant to the subject matter of an assurance review conducted under subsection 36D(1), the CEO may request the person, in writing, to give the CEO any such information or documents (or copies of any such documents).

114 After Division 2 of Part 4

Insert:

Division 2A—Actions covered by Ministerial declarations and NOPSEMA management or authorisation frameworks

36G Actions approved under declared framework do not need Part 9 approval

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

(a) the action has been approved in accordance with a NOPSEMA management or authorisation framework; and

(b) the action is taken in accordance with the framework; and

(c) a declaration under section 36H specifying the framework and a class of actions to which the action belongs was in operation at the time of the approval.

(2) A ***NOPSEMA management or authorisation framework*** is a management or authorisation framework that is set out in, or includes, either or both of the following:

(a) the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;

(b) regulations made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* that are prescribed by the regulations for the purposes of this paragraph.

(3) For the purposes of this Act, a reference in this Division to an action approved, or an approval of an action, under a NOPSEMA management or authorisation framework is a reference to an action approved (however described), or an approval (however described), of an action under such a framework.

36H Making declaration that actions do not need approval under Part 9

(1) The Minister may declare, in writing, in relation to a specified class of actions, that the actions do not require approval under Part 9 for the purposes of a provision of Part 3 because the taking of the actions has been approved in accordance with a specified NOPSEMA management or authorisation framework.

(2) The Minister must not make a declaration unless the Minister is satisfied that the following conditions are met in relation to the specified class of actions and the specified NOPSEMA management or authorisation framework:

(a) the framework is not inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph;

(b) approving an action in accordance with the framework will not be inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph;

(c) actions approved in accordance with the framework will not have or be likely to have unacceptable impacts on matters protected by provisions of Part 3 to which the declaration relates;

Note: See the definition of ***unacceptable impacts*** in section 527F.

(d) actions approved in accordance with the framework will not have or be likely to have a residual significant impact on a

matter protected by a provision of Part 3 to which the declaration relates;

Note: See the definition of ***residual significant impact*** in section 527J.

(e) the framework requires decision makers to not act inconsistently with any of the following in deciding whether to approve an action:

(i) Australia's obligations under a designated international agreement;

(ii) any protection statement the decision maker considers relevant;

(iii) any recovery plan the decision maker considers relevant;

Note: In considering whether a recovery plan is relevant, the decision maker may choose to have regard to whether a protection statement applies to the same species or community.

(iv) any threat abatement plan the decision maker considers relevant;

(v) a designated environmental instrument;

(f) the framework requires decision makers to have regard to the following in deciding whether to approve an action:

(i) any bioregional plan, or bioregional guidance plan, the decision maker considers relevant;

(ii) any approved conservation advice the decision maker considers relevant;

(g) the framework includes objects that are consistent with the principles of ecologically sustainable development.

(3) The declaration must specify the framework by identifying the instruments that together comprise the whole of the framework (including any part of the framework that is not set out in, or made under, the Act and regulations mentioned in paragraphs 36G(2)(a) and (b)).

(4) A declaration takes effect on the day specified in the declaration, which must not be earlier than the day the declaration is made.

(5) The Minister must, as soon as practicable after making a declaration:

(a) give a copy of the declaration to NOPSEMA and to the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and

(b) publish a copy of the declaration on the Department's website.

(6) A declaration made under subsection (1) is not a legislative instrument.

36J Declaration may apply, adopt or incorporate other instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, a declaration under section 36H may apply, adopt or incorporate (with or without modifications) any matter contained in an instrument or other writing:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time.

36K Suspension of declaration

(1) The Minister may, by written instrument, suspend a declaration in force under section 36H, either generally or in relation to a specified class of actions, if the Minister is satisfied that a condition mentioned in subsection 36H(2) is not met in relation to the declaration.

(2) As soon as practicable after suspending the declaration, the Minister must:

(a) give written notice of the suspension to NOPSEMA and to the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and

(b) publish a copy of the notice on the Department's website.

(3) The notice must specify:

(a) the reasons for the suspension; and

(b) the things that must be done for the suspension to end.

(4) The suspension takes effect:

(a) on the day that is 30 days after the notice is published under paragraph (2)(b); or

(b) if a later day is specified in the notice—on the later day.

(5) An instrument made under subsection (1) is not a legislative instrument.

36L Reinstatement of suspended declaration

(1) The Minister must, by written instrument, revoke an instrument suspending a declaration under section 36H, if the Minister is satisfied that the things that must be done for the suspension to end (see paragraph 36K(3)(b)) have been done.

(2) The Minister must:

(a) give a copy of the instrument to NOPSEMA and to the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* as soon as practicable after revoking the suspension; and

(b) publish a copy of the instrument on the Department's website.

(3) The instrument must specify the day the revocation takes effect (which must not be earlier than the day the instrument is made). The suspension of the declaration ends at the end of that day.

(4) An instrument made under subsection (1) is not a legislative instrument.

36M Revocation of suspended declaration by Minister

(1) The Minister may, by written instrument, revoke a suspended declaration, if the Minister is satisfied that the things that must be done for the suspension to end (see paragraph 36K(3)(b)) have not been done after a reasonable period.

(2) As soon as practicable after revoking the declaration, the Minister must:

(a) give written notice of the revocation to NOPSEMA and to the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and

(b) publish a copy of the notice on the Department's website.

(3) The notice must specify the reasons for the revocation.

(4) The revocation takes effect on the day specified in the instrument (which must not be earlier than the day the instrument is made).

(5) An instrument made under subsection (1) is not a legislative instrument.

36N Automatic revocation of suspended declaration

A suspended declaration is, by force of this section, revoked at the end of the period of 18 months from the day the suspension took effect.

115 Division 3 of Part 4

Repeal the Division, substitute:

Division 3—Actions covered by bioregional plans

37 Registered priority actions under bioregional plans

A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

(a) the action is taken in a development zone specified in a bioregional plan that is in force; and

(b) the action is a priority action in a priority class of actions specified for the development zone; and

(c) the matter protected by the provision is an impacted protected matter for the priority action; and

(d) the action is a registered priority action in relation to the person; and

(e) the action is taken in accordance with any conditions that:

(i) are attached by the bioregional plan to the taking of the priority action; and

(ii) relate to the impacted protected matter; and

(iii) apply to the taking of the priority action by the person.

116 Subsection 45(3)

Repeal the subsection.

117 Section 46

Repeal the section, substitute:

46 Agreement may declare actions do not need approval under Part 9

Declaration of actions not needing approval

(1) A bilateral agreement may declare, in relation to a specified class of actions, that the actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 because the taking of the actions has been approved in accordance with a management or authorisation framework that is accredited for the purposes of the agreement.

Minister may accredit management or authorisation framework

(2) The Minister may, by written instrument, ***accredit*** a management or authorisation framework for the purposes of a bilateral agreement.

Note: The Minister's power to accredit a framework is affected by other provisions of this section and sections 46A and 46B.

Requirements for accrediting management or authorisation frameworks

(3) The Minister must not accredit a management or authorisation framework for the purposes of a bilateral agreement with a State or self-governing Territory unless the Minister is satisfied that:

(a) the framework is wholly or partly set out in, or wholly or partly made under:

(i) a law of the State or Territory; or

(ii) an instrument made under a law of the State or Territory; and

(b) if subparagraph (a)(i) applies to the framework—the law mentioned in that subparagraph:

(i) is identified in the declaration; and

(ii) meets any criteria prescribed by the regulations; and

(c) if subparagraph (a)(ii) applies to the framework—the law and the instrument mentioned in that subparagraph:

(i) are identified in the declaration; and

(ii) each meet any criteria prescribed by the regulations; and

(d) the framework meets any criteria prescribed by the regulations; and

(e) the framework is not inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and

(f) approving an action or class of actions in accordance with the framework will not be inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and

(g) there has been or will be adequate assessment of the impacts that actions or classes of actions approved in accordance with the framework have, will have, or are likely to have, on each matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1) (a ***declared protected matter***); and

(h) actions or classes of actions approved or taken in accordance with the framework will not have or be likely to have unacceptable impacts on a declared protected matter; and

Note: See the definition of ***unacceptable impacts*** in section 527F.

(i) the taking of an action or class of actions will only be approved under the framework if the approval would, assuming it were required to pass the net gain test, pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have, or is likely to have, on a declared protected matter; and

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

(j) the framework provides for appropriate disclosure of the greenhouse gas emissions information for actions taken in accordance with the framework; and

(k) the bilateral agreement requires the State or Territory:

(i) to act in accordance with the framework; and

(ii) not to approve the taking of actions, or classes of actions, that would be inconsistent with the framework; and

(l) the Minister has considered any other relevant matter.

Note 1: Subdivision B sets out more prerequisites for accrediting a management or authorisation framework.

Note 2: For paragraph (l), matters that the Minister might consider relevant may include, for example, the terms of the bilateral agreement or State or Territory policies or plans.

Identification of law or instrument framework is set out in or made under

(4) The instrument accrediting the framework must identify:

(a) if subparagraph (3)(a)(i) applies to the framework—the law mentioned in that subparagraph; or

(b) if subparagraph (3)(a)(ii) applies to the framework—the law and the instrument mentioned in that subparagraph.

No preference

(5) In accrediting a management or authorisation framework for the purposes of a bilateral agreement making a declaration relating to an action:

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

(b) by a constitutional corporation;

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

Instruments are not legislative instruments

(6) The following are not legislative instruments:

(a) a declaration made under subsection (1);

(b) an instrument accrediting a management or authorisation framework under subsection (2).

Instruments to be published

(7) The Minister must publish a copy of an instrument mentioned in paragraph (6)(a) or (b):

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

46A Tabling and opposition of accreditation of management or authorisation framework

(1) If the Minister proposes to accredit a management or authorisation framework for the purposes of a bilateral agreement under subsection 46(1), the Minister must cause the following documents (the ***relevant documents***) to be tabled in each House of the Parliament:

(a) a copy of the documents that together comprise the whole of the framework (including any part of the framework that is not set out in, or made under, a law or instrument);

(b) a notice that the Minister proposes to accredit the framework for the purposes of the agreement.

When Minister must not accredit

(2) The Minister must not accredit the framework if:

(a) notice of a motion to oppose accreditation of the framework is given in a House of the Parliament within the applicable opposition period; and

(b) within 15 sitting days of the House after the giving of the notice, the House passes a resolution, in pursuance of the motion, opposing accreditation of the framework.

When Minister may accredit

(3) The Minister may accredit the framework only if:

(a) no notice of a motion to oppose accreditation of the framework is given in a House of the Parliament within the applicable opposition period; or

(b) if such a notice is given in a House of the Parliament within the applicable opposition period:

(i) the notice is withdrawn or otherwise disposed of within 15 sitting days of the House after the notice is given; and

(ii) the applicable opposition period has ended.

Extended time for opposition after dissolution, expiry or prorogation

(4) If:

(a) notice of a motion to oppose the accreditation of the framework is given in a House of the Parliament (the ***opposing House***) within the applicable opposition period; and

(b) before the end of 15 sitting days of the opposing House after the notice is given:

(i) the House of Representatives is dissolved or expires; or

(ii) the Parliament is prorogued; and

(c) at the time of the dissolution, expiry or prorogation (as the case requires):

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the relevant documents are taken, for the purposes of subsections (2) and (3), to have been tabled in the opposing House on the first sitting day of the House after the dissolution, expiry or prorogation (as the case requires).

*Meaning of **applicable opposition period***

(5) In this section:

applicable opposition period, for a House of the Parliament, means the period of 15 sitting days of the House after the relevant documents are tabled in the House under subsection (1).

46B Advice from CEO before accreditation

Before accrediting a management or authorisation framework under subsection 46(2), the Minister must:

(a) seek advice from the CEO in relation to the decision whether to accredit the framework; and

(b) have regard to that advice in making the decision.

46C Agreement must not result in approval of certain nuclear installations

(1) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement only if the Minister is satisfied the framework will not result in the approval of an action consisting of or involving the construction or operation of any of the following nuclear installations:

(a) a nuclear fuel fabrication plant;

(b) a nuclear power plant;

(c) an enrichment plant;

(d) a reprocessing facility.

(2) Paragraph (1)(b) does not apply to a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.

118 Subsection 47(2)

Repeal the subsection, substitute:

Prerequisite to declaration

(2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if the Minister is satisfied that assessment of an action in the specified manner:

(a) will include assessment of the impacts the action has or will have, or is likely to have, on each matter protected by a provision of Part 3; and

(b) will not be inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph.

119 At the end of subsection 48(1)

Add:

Note: Section 65B (exclusion determination) also deals with provisions that may be included in bilateral agreements that include the declaration mentioned in subsection 46(1).

120 After section 48

Insert:

48AAA Accreditation may apply, adopt or incorporate other instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, an accreditation of a management or authorisation framework may apply, adopt or incorporate (with or without modifications) any matter contained in an instrument or other writing:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time.

121 Section 48A

Repeal the section, substitute:

48A Mandatory undertakings for bilateral agreement that includes section 46 declaration

Agreement has no effect if required undertakings are not included

(1) A bilateral agreement with a State or self-governing Territory that includes the declaration mentioned in subsection 46(1) (declaration of actions that do not need approval), in relation to a management or authorisation framework that is accredited for the purposes of the agreement, has no effect for the purposes of this Act unless, in the agreement, the State or Territory makes the undertakings specified in this section.

Undertaking in relation to impacts on matters not protected by Part 3

(2) For the purposes of subsection (1), the undertaking is that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have on a thing that is not a matter protected by a provision of Part 3 for which the declaration has effect will be assessed to the greatest extent practicable:

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

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

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

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

Undertaking in relation to consistency with prescribed national environmental standards

(3) For the purposes of subsection (1), the undertaking is that a decision approving the taking of an action or class of actions in accordance with the framework will not be inconsistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 46(3)(e) or (f).

Undertaking in relation to unacceptable impacts

(4) For the purposes of subsection (1), the undertaking is that an action or class of actions will be approved under the framework only if the approver is satisfied that the taking of the action or class of actions, in accordance with the framework, will not have or be likely to have an unacceptable impact on a matter protected by a provision of Part 3 specified in the declaration.

Note: See the definition of ***unacceptable impacts*** in section 527F.

Undertaking in relation to residual significant impacts

(5) For the purposes of subsection (1), the undertaking is that the taking of an action or class of actions will only be approved under the framework if the approval would, assuming it were required to pass the net gain test, pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have, or is likely to have, on a matter protected by a provision of Part 3 specified in the declaration.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

48B Mandatory undertakings for bilateral agreement that includes section 46 declaration—water resources

Agreement has no effect if required undertakings are not included

(1) A bilateral agreement with a State or self-governing Territory that includes the declaration mentioned in subsection 46(1) (declaration of actions that do not need approval), in relation to a management or authorisation framework that:

(a) is accredited for the purposes of the agreement; and

(b) covers an action described in section 24D or 24E (developments with significant impact on water resources);

has no effect for the purposes of this Act unless, in the agreement, the State or Territory makes the undertaking specified in this section.

Note: Bilateral agreements that include section 46 declarations must also include the mandatory undertakings mentioned in section 48A.

Undertaking in relation to expert advice

(2) For the purposes of subsection (1), the undertaking is:

(a) that the appropriate State or Territory Minister will obtain the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development if the taking of the action, or a class of actions that includes the action, will result in or is likely to have a significant impact on water resources, including any impacts of associated salt production or salinity; and

(b) that, in deciding whether or not to approve the taking of the action or a class of actions that includes the action, the decision maker will take into account any relevant advice obtained from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development in relation to the action or class of actions.

Undertaking does not limit ability to request advice

(3) To avoid doubt, the fact that a bilateral agreement contains the undertaking mentioned in subsection (2) does not limit the ability of the appropriate State or Territory Minister to request advice from the Independent Expert Scientific Committee on

Unconventional Gas Development and Large Coal Mining Development.

Note: See subsection 505D(2).

48C Mandatory undertaking for bilateral agreement that includes section 47 declaration

Agreement has no effect if required undertakings are not included

(1) A bilateral agreement with a State or self-governing Territory that includes the declaration mentioned in subsection 47(1) (declaration of actions that do not need further assessment) has no effect for the purposes of this Act unless, in the agreement, the State or Territory makes the undertakings specified in this section.

Undertaking in relation to impacts on matters not protected by Part 3

(2) For the purposes of subsection (1), the undertaking is that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:

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

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

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

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

Undertaking in relation to consistency with prescribed national environmental standards

(3) For the purposes of subsection (1), the undertaking is that any assessment, in the specified manner, of actions in the class of actions covered by the declaration will not be inconsistent with any

national environmental standard prescribed by the regulations for the purposes of paragraph 47(2)(b).

48D Mandatory provision recognising Auditor-General role

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

122 Paragraph 51(1)(b)

Omit "will promote the management of the property in accordance", substitute "is not inconsistent".

123 After paragraph 51(1)(b)

Insert:

(ba) the Minister is satisfied that the provision is not inconsistent with any plan prepared for the management of the property under section 316 or as mentioned in section 321; and

124 Subsection 51(2)

Repeal the subsection, substitute:

(2) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared World Heritage property only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) Australia's obligations under the World Heritage Convention;

(b) the Australian World Heritage management principles;

(c) any plan prepared for the management of the property under section 316 or as mentioned in section 321.

125 Paragraph 51A(1)(a)

Omit "will promote the management of the place in accordance", substitute "is not inconsistent".

126 After paragraph 51A(1)(a)

Insert:

(aa) the Minister is satisfied that the agreement is not inconsistent with any plan prepared for the management of the place under section 324S or as mentioned in section 324X; and

(ab) the Minister is satisfied that the agreement is not inconsistent with any agreement to which the Commonwealth is party in relation to the National Heritage place; and

127 Subsection 51A(2)

Repeal the subsection, substitute:

(2) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement containing a provision relating to a National Heritage place only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) the National Heritage management principles;

(b) any plan prepared for the management of the place under section 324S or as mentioned in section 324X;

(c) any agreement to which the Commonwealth is party in relation to the National Heritage place.

128 Paragraph 52(1)(b)

Omit "will promote the management of the wetland in accordance", substitute "is not inconsistent".

129 After paragraph 52(1)(b)

Insert:

(ba) the Minister is satisfied that the agreement is not inconsistent with any plan prepared for the management of the wetland as mentioned in section 333; and

130 Subsection 52(2)

Repeal the subsection, substitute:

(2) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared Ramsar

wetland only if the Minister is satisfied that the framework is not inconsistent with any of the following:

(a) Australia's obligations under the Ramsar Convention;

(b) the Australian Ramsar management principles;

(c) any plan prepared for the management of the wetland as mentioned in section 333.

131 Section 53

Repeal the section, substitute:

53 Agreements relating to listed threatened species and ecological communities

Declarations in bilateral agreements

(1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if the Minister is satisfied the provision is not inconsistent with the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES;

(b) a threat abatement plan;

(c) a protection statement;

(d) a recovery plan.

(2) If there is a protection statement for the whole or one or more parts of the species or community:

(a) the requirement in paragraph (1)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(3) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

Accreditation of management or authorisation frameworks

(4) The Minister may accredit a management or authorisation framework for the purposes of a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if the Minister is satisfied the framework is not inconsistent with the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES;

(b) a threat abatement plan;

(c) a protection statement;

(d) a recovery plan.

(5) If there is a protection statement for the whole or one or more parts of the species or community:

(a) the requirement in paragraph (4)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(6) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

132 Paragraph 54(1)(b)

Repeal the paragraph.

133 Subsection 54(2)

Repeal the subsection, substitute:

(2) The Minister may accredit a management or authorisation framework under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed migratory species only if the Minister is satisfied that the framework is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or 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).

134 Section 55 (heading)

Omit "**nuclear**", substitute "**radiological exposure**".

135 Section 55

Omit ", or accredit for the purposes of a bilateral agreement a management arrangement or an authorisation process,", substitute "or accredit a management or authorisation framework for the purposes of a bilateral agreement,".

136 Paragraphs 55(a) and (b)

Omit "nuclear", substitute "radiological exposure".

137 Subdivision C of Division 2 of Part 5 (heading)

Omit "**Minor amendments of**", substitute "**Other matters relating to**".

138 Subparagraph 56A(2)(a)(i)

Repeal the subparagraph.

139 At the end of Subdivision C of Division 2 of Part 5

Add:

56B Determinations that amended management or authorisation frameworks continue to be accredited

(1) This section applies if a management or authorisation framework that is accredited for the purposes of a bilateral agreement with a State or self-governing Territory is amended.

Continuation of accredited management or authorisation frameworks

(2) Despite subsections 46(3) and (4) and section 46A, the Minister may determine, in writing, that the management or authorisation framework as amended continues to be accredited for the purposes of the agreement, without further accreditation, if the Minister is satisfied that:

(a) the amendment will not or is not likely to:

(i) have a significant effect on the operation of the framework; or

(ii) result in a material adverse impact on a matter protected by a provision of Part 3 specified in relation to which the agreement makes a declaration; or

(iii) have a material adverse effect on a person's ability to participate in the process provided for by the framework; and

(b) the following provisions would continue to be satisfied in respect of the framework:

(i) paragraphs 46(3)(d) to (k) and subsection 46(5);

(ii) section 46C ;

(iii) subsections 51(2), 51A(2), 52(2), 53(4) and 54(2);

(iv) section 55;

(v) section 56.

Determination to be published

(3) If the Minister makes a determination under subsection (2), the Minister must publish the determination on the Department's website as soon as practicable.

Application of determinations

(4) A determination under subsection (2) in relation to a management or authorisation framework as amended, applies in relation to an action that is approved in accordance with the framework as amended, even if the action is approved at a time when the framework has been amended but the determination has not yet been made.

Determination not a legislative instrument

(5) A determination made under subsection (2) is not a legislative instrument.

*Meaning of **amend***

(6) In this section:

amend includes repeal and remake.

56C Minister may make determinations relating to minor amendments to the manner in which actions are assessed

(1) This section applies in respect of a bilateral agreement with a State or self-governing Territory including a declaration described in section 47 if the specified manner in which actions are assessed for the purposes of the agreement is amended.

Continuation of manner of assessment for purposes of bilateral agreement

(2) Despite subsections 47(2) to (4), the Minister may determine, in writing, that the manner of assessing actions, as amended, continues to be a specified manner of assessment for the purposes of the agreement if the Minister is satisfied that:

(a) the amendment will not or is not likely to:

(i) have a significant effect on the operation of the manner of assessment; or

(ii) have a material adverse impact on the assessment of the impacts actions have, will have or are likely to have on a matter protected by a provision of Part 3 in relation to which the agreement makes a declaration; or

(iii) have a material adverse effect on a person's ability to participate in the process for assessment; and

(b) the following provisions would continue to be satisfied in respect of the amended manner of assessment:

(i) subsections 47(2), 51A(1), 52(1), 53(1) and 54(1);

(ii) sections 50, 55 and 56.

Determination to be published

(3) If the Minister makes a determination under subsection (2), the Minister must publish the determination on the Department's website as soon as practicable.

Application of determinations

(4) A determination under subsection (2) in relation to an amended manner of assessment applies in relation to an action assessed in accordance with the amended manner of assessment, even if the action was assessed before the determination is made.

(5) For the purposes of subsection (1), it does not matter when the bilateral agreement is entered into.

Determination not a legislative instrument

(6) A determination made under subsection (2) is not a legislative instrument.

*Meaning of **amend***

(7) In this section:

amend includes repeal and remake.

140 Section 58

Repeal the section, substitute:

58 Consultation before cancellation or suspension

(1) The Minister (the ***Environment Minister***) must consult the appropriate Minister of a State or Territory that is party to a bilateral agreement if the Environment Minister reasonably

believes that a situation mentioned in subsection (2) exists or will arise in relation to the agreement.

(2) The situations are that the State or Territory:

(a) has not complied with the agreement; or

(b) has not given effect to the agreement in a way that:

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

(ii) promotes the discharge of Australia's obligations under any agreement with one or more other countries relevant to a matter covered by the agreement; or

(c) for an agreement that includes the declaration mentioned in subsection 46(1)—has given effect to the agreement in a way that is inconsistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 46(3)(e) or (f); or

(d) for an agreement that includes the declaration mentioned in subsection 47(1)—has given effect to the agreement in a way that is inconsistent with any national environmental standard prescribed by the regulations for the purposes of paragraph 47(2)(b); or

(e) for an agreement that includes the declaration mentioned in subsection 46(1)—has given effect to the agreement in a way that has had or is likely to have an unacceptable impact on a matter protected by a provision of Part 3 specified in the agreement; or

Note: See the definition of ***unacceptable impacts*** in section 527F.

(f) for an agreement that includes the declaration mentioned in subsection 46(1)—has given effect to the agreement in a way that has resulted or is likely to result in approvals of actions or classes of actions that, assuming the approvals were required to pass the net gain test, would not pass the net gain test in relation to any residual significant impact the action or class of actions has had, will have, or is likely to have, on a matter protected by a provision of Part 3 specified in the agreement.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

(3) Subsection (1) operates whether the Environment Minister's belief relates to a matter referred to the Environment Minister under section 57 or not.

141 Subsection 59(1)

Repeal the subsection (not including the examples), substitute:

Minister may give notice of suspension or cancellation

(1) If, after consultation in accordance with section 58 in relation to a situation mentioned in subsection 58(2), the Environment Minister is not satisfied that the situation does not exist and will not arise, the Minister may give the appropriate Minister of the State or Territory a written notice described in subsection (2) or (3) of this section.

142 Subsections 59(2) and (3)

Omit "provisions of this Act", substitute "provisions of Part 3".

143 Subsection 59(4)

Omit "provision of this Act", substitute "provision of Part 3".

144 Subsection 60(2)

Omit "provisions of this Act", substitute "provisions of Part 3".

145 Subsection 62(1)

Repeal the subsection, substitute:

(1) This section applies if the Minister:

(a) has given the appropriate Minister of a State or Territory a notice under section 59 or 60 to suspend or cancel the effect of a bilateral agreement that the State or Territory is party to; and

(b) either:

(i) for a notice given under section 59 because the Minister was not satisfied that a situation mentioned in subsection 58(2) did not exist and would not arise—is later satisfied that the situation does not exist and will not arise; or

(ii) for a notice given under section 60—is later satisfied that the State or Territory will comply with the agreement and give effect to it in a way that accords with the objects of this Act and the objects of this Part, and promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement.

146 Subsections 63(2) and (3)

Omit "provisions of this Act", substitute "provisions of Part 3".

147 Subsection 63(4)

Omit "provision of this Act", substitute "provision of Part 3".

148 Subsection 64(1)

Omit "provision of this Act", substitute "provision of Part 3".

149 Subsection 64(2)

Omit "management arrangement or an authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process", substitute "management or authorisation framework that is accredited".

150 Section 65

Repeal the section, substitute:

65 Expiry of bilateral agreements

A bilateral agreement ceases to have effect for the purposes of this Act at the time when the agreement provides for it to cease to so have effect.

Note: The parties to a bilateral agreement may also agree to revoke it.

151 Subsection 65A(2)

Omit "management arrangement or an authorisation process that was a bilaterally accredited management arrangement or a bilaterally accredited authorisation process", substitute "management or authorisation framework that was accredited".

152 At the end of Part 5

Add:

Division 4—Other provisions relating to bilateral agreements

65B Exclusion determination

(1) A bilateral agreement that includes the declaration mentioned in subsection 46(1) in relation to actions in a class of actions may also include provisions that authorise any of the following persons to determine, in writing, that a specified action in the class that a person proposes to take is excluded from the agreement:

(a) the Minister;

(b) a Minister of the State or Territory concerned.

(2) If a determination is made in accordance with the provisions, then, for the purposes of this Act, the specified action is taken not to be an action in the class of actions to which the declaration mentioned in subsection 46(1) relates.

Note: The action is also taken to have been referred to the Minister under subsection 68(1) (see section 69A).

(3) As soon as practicable after the determination is made, the Minister must give the following persons a copy of it, together with a written notice that the action is taken to have been referred under section 68:

(a) the person proposing to take the action;

(b) unless the determination was made by a Minister of the State or Territory concerned—the appropriate Minister of the State or Territory concerned.

(4) If the determination was made by a Minister of the State or Territory concerned, that Minister must give the Commonwealth Minister a copy of the determination as soon as practicable after the determination is made.

65C Review of bilateral agreements

(1) The CEO must arrange for a review of a bilateral agreement to be started:

(a) within 3 years of the bilateral agreement commencing; and

(b) within 5 years of the day a report of the previous review was given to the Minister under subsection (3).

Note: A bilateral agreement may also provide for review of its operation.

(2) The persons undertaking a review must give the CEO a report of the review within 6 months of the review starting or within a longer period agreed in writing by the CEO.

(3) The CEO must give a copy of the report of a review to the Minister.

(4) The Minister must publish a copy of the report:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

65D Assurance reviews into bilateral agreements

(1) The CEO may from time to time cause an authorised officer to conduct an assurance review into a bilateral agreement with a State or self-governing Territory.

(2) The assurance review may cover any or all of the following matters:

(a) if the bilateral agreement includes a declaration under subsection 46(1):

(i) whether the conditions in paragraphs 46(3)(d) to (j) continue to be met in relation to any management or authorisation framework accredited for the purposes of the agreement; and

(ii) whether the administration of any such management or authorisation framework is consistent with the framework as accredited;

(b) if the bilateral agreement includes a declaration under subsection 47(1):

(i) whether the conditions in paragraphs 47(2)(a) and (b) continue to be met in relation to the manner of assessment specified in the declaration; and

(ii) whether the administration of the manner of assessment of actions is consistent with the manner as specified in the declaration;

(c) whether the State or Territory is complying with the bilateral agreement;

(d) whether the State or Territory is giving effect to the bilateral agreement in a way that accords with the objects of the Act;

(e) if a matter protected by a provision of Part 3 covered by the bilateral agreement is relevant to Australia's obligations under an international agreement—whether the State or Territory is giving effect to the bilateral agreement in a way that is not inconsistent with those obligations;

(f) any other matter prescribed by the regulations.

(3) Before the assurance review commences, the CEO must give the appropriate Minister of the State or Territory a written notice setting out the matters to be covered by the review.

(4) The CEO must give the Minister a report of the assurance review as soon as possible after conducting the review.

(5) The report of the assurance review may include recommendations in relation to the bilateral agreement to which the review relates.

(6) Without limitation, recommendations under subsection (5) may include a recommendation to the Minister on whether to vary the bilateral agreement or suspend or cancel the effect of the bilateral agreement, either generally or in relation to actions in a specified class or in relation to a specified provision of Part 3.

65E Duty to provide all reasonable facilities and assistance

The appropriate Minister of a State or self-governing Territory that is party to a bilateral agreement into which an assurance review is conducted under subsection 65D(1) must provide the CEO, and any persons assisting the CEO, with all reasonable facilities and assistance necessary for the effective exercise of the CEO's duties in relation to the review.

65F Request for information or documents

If the CEO reasonably believes that a person has information or documents relevant to the subject matter of an assurance review conducted under subsection 65D(1), the CEO may request the person, in writing, to give the CEO any such information or documents (or copies of any such documents).

153 Section 66

After:

> (b) how to assess the impacts of the action to be able to make an informed decision whether or not to approve the action.

insert:

> A proposal to take an action is taken to be referred if a determination is made excluding the action from a class of actions to which a declaration made under section 33, or a bilateral agreement, relates.

154 Section 66

Omit:

> (ca) information included in the referral; or
> (d) preliminary documentation provided by the proponent; or
> (e) a public environment report; or

substitute:

> (d) a streamlined assessment; or

155 At the end of section 66

Add:

> If approval of the taking of an action is dealt with in another way under this Act (for example, under a bilateral agreement or in a

bioregional plan), then generally the action cannot be referred for assessment and approval under Parts 7 to 9 of this Chapter.

156 Section 67

After "or 28AB,", insert "or but for a determination made under section 79E,".

157 Section 67A

Repeal the section, substitute:

67A Prohibition on taking controlled action without approval etc.

A person must not take a controlled action, unless:

(a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the relevant provision of Part 3; or

(b) there is in force a determination under section 79E that the action may continue to be taken and the action is taken in accordance with the conditions (if any) specified in the determination; or

(c) the action is an action to which subsection 74AA(1) does not apply because of subsection 74AA(2), (2A), (2C) or (2D).

Note: A person can be restrained from contravening this section by an injunction under section 475.

158 Subsection 68A(2)

After "purposes of section 68", insert "including as it applies because of section 69A".

159 After section 69

Insert:

69A Deemed referral of proposal to take action covered by exclusion determination

(1) A person proposing to take an action is taken to have referred the proposal to the Minister under subsection 68(1) if:

(a) the action is specified in a determination made under section 36B; or

(b) the action is specified in a determination made in accordance with a bilateral agreement as mentioned in section 65B.

(2) The referral is taken to have been made at the time the determination is made.

(3) Subsection 68(3) and section 72 do not apply to the referral.

(4) Section 74 applies to the referral as if subsections 74(3), (3A) and (3B) were replaced with subsections (5) and (6) of this section.

(5) As soon as practicable after the determination is made, the Minister must publish a copy of the determination, together with a statement that the action specified in the determination is taken to have been referred to the Minister under section 68:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

Note: If the action is also the subject of a permit application under section 200, 215, 237 or 257 and the application is made at or around the same time as a referral is taken to have been made under section 69A, the determination and invitation for comments that must be published under this subsection may be published together with the application and invitation for comments that must be published under section 200, 215, 237 or 257.

(6) The Minister may publish, together with the determination, an invitation for anyone to give the Minister comments, within 10 business days (measured in Canberra), on whether the action is a controlled action.

160 After section 71

Insert:

71A Relationship of Part 7 referrals to other authorisations

(1) A person must not refer a proposal to take an action to the Minister for the Minister's decision whether or not the action is a controlled action at a time when an alternate pathway applies to the action.

(2) If, at a time when no alternate pathway applies to an action, a proposal to take the action is referred to the Minister under this

Part, then, regardless of whether an alternate pathway starts to apply, or starts to apply again, to the action:

(a) this Chapter continues to apply in relation to the action; and

(b) the action is taken not to be an action to which the alternate pathway applies.

(3) Despite paragraph (2)(b), if a person withdraws the referral of the proposal to take the action under section 170C, the action is, from that time, taken to be, or taken to be again, an action to which the alternate pathway applies.

Alternate pathway—Chapter 3 declaration

(4) If:

(a) an action is in a class of actions specified in a declaration made under section 33 or 36H not to require approval under Part 9 for the purposes of any of the provisions of Part 3; and

(b) the declaration is in operation in relation to the class of actions; and

(c) the action is not specified in a determination under section 36B(exclusion determination);

then an ***alternate pathway***, which is the provisions of this Act that apply in relation to such a declaration, applies to the action.

Note: For paragraph (b), a declaration is not in operation in relation to a class of actions if, for example, the declaration is suspended either wholly or in relation to the class of actions.

(5) If:

(a) an action is in a class of actions specified in a declaration included in a bilateral agreement in accordance with section 46 not to require approval under Part 9 for the purposes of any of the provisions of Part 3; and

(b) the bilateral agreement is in operation in relation to the declaration and the class of actions; and

(c) the action is not specified in a determination under section 65B (exclusion determination);

then an ***alternate pathway***, which is the provisions of this Act that apply in relation to a bilateral agreement that includes such a declaration, applies to the action.

Note: For paragraph (b), a bilateral agreement is not operation in relation to a declaration and a class of actions if, for example, the provision of the agreement making the declaration is suspended.

(6) However, the alternate pathway in subsection (4) or (5) does not apply to an action (the ***larger action***) that a person proposes to take if a declaration mentioned in that subsection is in force that covers a component of the larger action but the larger action itself is not covered by such a declaration that is in force.

Alternate pathway—action covered by Part 10 approval

(7) If subsection 146D(2) applies in relation to an action, then an ***alternate pathway***, which is the provisions of this Act that apply in relation to actions to which an approval under section 146B applies, applies to the action.

Note: If a determination is in force under section 146N (action that is component of larger action) or 146P (exclusion determination) in relation to an action, then subsection 146D(2) does not apply and the action may be referred.

Restricted action in conservation zone

(8) If:

(a) an action is taken in a conservation zone specified in a bioregional plan; and

(b) the action is a restricted action for the bioregional plan; and

(c) subsection 177CC(1) applies to the action taken by the person;

then an ***alternate pathway***, which is the provisions of this Act that apply in relation to restricted actions taken in a conservation zone specified in a bioregional plan, applies to the action.

Priority action in bioregional plan

(9) If:

(a) an action is taken in a development zone specified in a bioregional plan; and

(b) the action is a priority action that can be taken in the development zone;

then an ***alternate pathway***, which is the provisions of this Act that apply in relation to priority actions taken in a development zone specified in a bioregional plan, applies to the action.

Note: If a determination under subsection 177CE(1) or 177CF(1) provides that an action is taken not to be a priority action, this subsection does not apply and the action may be referred.

161 At the end of section 72

Add:

(4) The referral may (but need not) include the greenhouse gas emissions information for the action.

162 Subsections 74(1) and (2)

Omit "must", substitute "may".

163 Paragraph 74AA(1)(b)

Repeal the paragraph, substitute:

(b) any of the following circumstances exist:

(i) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68 (other than a proposal that is taken to have been referred because of section 69A);

(ii) the person has been notified under subsection 36B(3) or 65B(3) that a proposal to take the action (or a larger action of which the action is a component) is taken to have been referred to the Minister under section 68;

(iii) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister under section 69 or 71 and the person has been informed of the referral under section 73; and

164 After paragraph 74AA(1)(g)

Insert:

(ga) either:

(i) no determination that the action may continue to be taken is in force under section 79E; or

(ii) such a determination is in force, but the action has been taken otherwise than in accordance with one or more of the conditions (if any) specified in the determination; and

165 Before subsection 74AA(2)

Insert:

Defences

166 Subsection 74AA(2)

Omit "an action by a", substitute "the action by the".

167 Subsection 74AA(2) (note)

Omit "subsection (1)", substitute "this subsection".

168 After subsection 74AA(2)

Insert:

(2A) Subsection (1) does not apply to the taking of the action by the person if:

(a) the action is a minor or preparatory component of a larger action; and

(b) the person has obtained the Minister's written agreement, in accordance with any regulations prescribed for the purposes of this paragraph, to take the action.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: This means that subsection (1) does not prohibit the person from taking a minor or preparatory action that is a component of a larger action that has been referred.

(2B) Regulations prescribed for the purposes of paragraph (2A)(b) may make provision for and in relation to the following:

(a) applications to the Minister for agreement to take an action;

(b) matters the Minister is to be satisfied of or have regard to in deciding whether to agree;

(c) notice and publication of the Minister's decision;

(d) when the Minister's decision has effect.

(2C) Subsection (1) does not apply to the taking of the action by the person if a decision approving the taking of the action is in operation under Part 9.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: This means that subsection (1) does not prohibit the person from taking an approved action that is a component of a larger action that has been referred.

(2D) Subsection (1) does not apply to the taking of the action by the person if:

(a) a decision that the action is not a controlled action is in operation under section 75; and

(b) 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.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: This means that subsection (1) does not prohibit the person from taking an action that the Minister has decided is not a controlled action even if the action is a component of a larger action that has been referred.

169 At the end of subsections 74B(1), 74C(2) and 74D(4)

Add:

Note: See the definition of ***unacceptable impacts*** in section 527F.

170 After section 75

Insert:

75A Action excluded from section 146B approval taken to be national interest proposal

If:

(a) a determination is in force under section 146P in relation to an action (exclusion determination in relation to approval under section 146B); and

(b) the Minister decides that the action is a controlled action;

then, from the time the Minister makes that decision, the Minister is also taken to have made a determination under section 157A that the taking of the action is a national interest proposal.

Note: The national interest proposal determination the Minister is taken to have made is taken to be revoked if the exclusion determination is revoked (see section 146V).

75B Excluded priority action taken to be national interest proposal

If:

(a) a determination is in force under section 177CF in relation to an action (exclusion determination in relation to priority action); and

(b) the Minister decides that the action is a controlled action;

then, from the time the Minister makes that decision, the Minister is also taken to have made a determination under section 157A that the taking of the action is a national interest proposal.

Note: The national interest proposal determination the Minister is taken to have made is taken to be revoked if the exclusion determination is revoked (see section 177CK).

75C Certain restricted actions taken to be national interest proposal

If:

(a) an exemption from the operation of section 177CC in relation to the taking of a restricted action by a person in a conservation zone is in force; and

(b) the exemption was granted on the basis that the Minister was satisfied as mentioned in paragraph 177BV(1)(b)(which deals with the national interest); and

(c) the Minister decides that the restricted action is a controlled action;

the Minister is also taken, from the time the Minister makes that decision, to have made a determination under section 157A that the taking of the restricted action is a national interest proposal.

171 Subsection 76(1)

Repeal the subsection, substitute:

Information for controlled action and controlling provisions decisions

(1) The Minister may, in writing, request the person proposing to take an action to provide specified further information if the Minister is satisfied that the further information is reasonably necessary in order for the Minister to make an informed decision as to:

(a) whether the action is a controlled action; or

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

172 Subsection 76(3)

Repeal the subsection, substitute:

Information for assessment approach decision

(3) The Minister may, in writing, request the person proposing to take an action to provide specified further information if the Minister is satisfied that the further information is reasonably necessary in order for the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action.

173 At the end of section 76

Add:

Requests must include reasons

(6) A request made under subsection (1) or (3) must include the Minister's reasons for being satisfied that the further information is reasonably necessary.

Requests must be published

(7) If the Minister makes a request under subsection (1) or (3), the Minister must publish a copy of the request as soon as practicable on the Department's website.

174 After subsection 77(2)

Insert:

Notice of decision that action is not a controlled action

(3) If the decision is that the action is not a controlled action, the notice must specify the date that the decision will cease to be in force if section 79F applies (lapsing of decision that action is not a controlled action).

175 Subsection 77A(1A)

Repeal the subsection.

176 Paragraphs 78(1)(ba) to (ca)

Repeal the paragraphs.

177 Subsection 78(1) (note 2)

Omit "to (ca)", substitute "to (b)".

178 At the end of subsection 78(1)

Add:

Note 4: The Minister may also revoke a first decision and substitute a new decision under section 79C (reconsideration of decision that action is not controlled action because taken in particular manner).

179 Subsection 78A(1)

After "subsection 75(1)", insert "(the ***first decision***)".

180 Subsection 78A(1)

Omit "(ca)", substitute "(b)".

181 Subsection 78A(2)

Repeal the subsection, substitute:

(1A) A request made by a person other than the designated proponent must be made within 28 business days after the day the Minister publishes notice of the first decision in accordance with the regulations (see paragraph 77(1)(b)), if the first decision is either of the following:

(a) a decision under subsection 75(1) that the action is a controlled action;

(b) a decision under subsection 75(1) as to which provisions of Part 3 are controlling provisions for the action.

(2) A request under subsection (1) is taken not to have been made unless it satisfies the following requirements:

(a) the request is in writing;

(b) the request sets out which of the matters referred to in paragraphs 78(1)(a) to (b) the request is based on and the basis on which the person thinks the decision should be reconsidered;

(c) for a request made on the basis of the matter referred to in paragraph 78(1)(a)—the Minister is satisfied that the additional requirements in subsection (2A) of this section are met;

(d) for a request made on the basis of the matter referred in paragraph 78(1)(aa)—the Minister is satisfied that the additional requirements in subsection (2B) of this section are met;

(e) for a request made on the basis of the matter referred in paragraph 78(1)(b)—the Minister is satisfied that the request includes information that establishes that the action is not being, or will not be, taken in the manner identified in the first decision.

(2A) For the purposes of paragraph (2)(c), the additional requirements are that:

(a) the request includes substantial new information that demonstrates that the impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3 are, or are likely to be, different from the impacts as assessed for the first decision; and

(b) there is a high degree of certainty associated with the quality and accuracy of the information.

(2B) For the purposes of paragraph (2)(d), the additional requirements are that:

(a) the request includes new information that:

(i) identifies a substantial change in circumstances that was not foreseen at the time of the first decision; and

(ii) sets out satisfactory reasons for the circumstances not being foreseen; and

(iii) demonstrates that, as a result of the identified substantial change in circumstances, the impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3 are, or are likely to be, different from the impacts as assessed for the first decision; and

(b) there is a high degree of certainty associated with the quality and accuracy of the information.

(2C) For the purposes of subsections (2A) and (2B), information is not new information if the Minister considered it:

(a) in making the first decision; or

(b) in deciding whether to revoke and substitute the first decision on request under subsection (1).

182 Subsection 78B(4)

Omit "must", substitute "may".

183 Paragraph 78B(4)(b)

Omit "(ca)", substitute "(b)".

184 Subsection 78B(5)

Omit "must", substitute "may".

185 Subparagraph 78B(5)(b)(i)

Omit "(ca)", substitute "(b)".

186 Paragraph 78B(6)(b)

Omit "(ca)", substitute "(b)".

187 At the end of Division 3 of Part 7

Add:

79A Application for reconsideration of decision that action is not controlled action because taken in particular manner

(1) If:

(a) a decision is in operation under subsection 75(1) that an action a person proposes to take or is taking is not a controlled action because the Minister believes the action will be taken in the manner identified under subsection 77A(1) in the notice given under section 77; and

(b) the person considers the identified manner is no longer appropriate for the action;

the person may apply to the Minister for reconsideration of the decision.

(2) The application must:

(a) be in writing; and

(b) if the person proposes to take the action in a manner different to the identified manner—set out the manner in which the person proposes to take the action; and

(c) include any other information prescribed by the regulations.

79B Minister must inform interested persons of application under section 79A and invite comments

Other Commonwealth Ministers

(1) If the Minister (the ***Environment Minister***) receives an application under section 79A, the Environment Minister may:

(a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the application; and

(b) invite each other Minister informed to give the Environment Minister, within 10 business days, any information the other Minister considers relevant to the reconsideration.

State and Territory Ministers

(2) If the application relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister may:

(a) inform the appropriate Minister of the State or Territory of the application; and

(b) invite that Minister to give the Environment Minister, within 10 business days:

(i) any comments the Minister considers relevant to the reconsideration; and

(ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

Note: Subsection (2) also applies in relation to an application that relates to an action that is to be taken in an area offshore from a State or the Northern Territory. See section 157.

Public

(3) The Environment Minister must publish on the Department's website:

(a) the application; and

(b) an invitation for anyone to give the Environment Minister, within 10 business days, comments in writing on any matters relevant to the reconsideration.

79C Reconsideration of decision on application under section 79A

(1) If the Minister receives an application under section 79A from a person for reconsideration of a decision (the ***first decision***), the Minister must reconsider the first decision and do one of the following:

(a) revoke the first decision and substitute a new decision under subsection 75(1) for the first decision;

(b) refuse the application.

(2) As soon as practicable after either revoking the first decision and substituting a new decision, or refusing the application, the Minister must:

(a) give the person written notice of the Minister's decision; and

(b) if the decision is to revoke the first decision and substitute a new decision—publish a copy of the notice on the Department's website.

(3) A provision of Part 3 letting an action be taken if the Minister has decided that a particular provision (the ***prohibiting provision***) of that Part is not a controlling provision for the action does not prevent the Minister from taking action under subsection (1) to

revoke a decision that the prohibiting provision is not a controlling provision for an action and substitute a decision that the prohibiting provision is a controlling provision for the action.

(4) If the first decision is revoked and a new decision substituted for it:

(a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and

(b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

79D Withdrawal of application under section 79A

A person who makes an application under section 79A may, by written notice, withdraw the application at any time before the Minister does one of the things mentioned in paragraph 79C(1)(a) or (b).

79E Determination that certain reconsidered actions may continue to be taken

When determination may be made

(1) If all of the following apply:

(a) the Minister makes a decision (the ***first decision***) under subsection 75(1) that an action that is the subject of a proposal (the ***original proposal***) referred to the Minister is not a controlled action;

(b) the Minister revokes the first decision under subsection 78(1) or 79C(1) and substitutes the first decision with a decision (the ***subsequent decision***) under subsection 75(1) that:

(i) the action is a controlled action; and

(ii) one or more provisions of Part 3 are controlling provisions for the action;

(c) the taking of the action commences before the subsequent decision is made;

(d) the Minister is satisfied, based on information before the Minister at the time of making the determination, that allowing the action to continue in accordance with any conditions specified under subsection (2) would not be

inconsistent with Australia's obligations under a designated international agreement;

then the Minister may determine, in writing, that the action may continue to be taken.

Note: In some cases the first decision may have been that an action is not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77.

Content of determination

(2) The determination may specify conditions to which the taking of the action is subject.

(3) The Minister must be satisfied that any conditions specified for the purposes of subsection (2) are necessary or convenient for:

(a) protecting from the action any matter protected by a provision of Part 3 of this Act that the Minister has decided is a controlling provision for the action; 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 that the Minister has decided is a controlling provision for the action.

(4) The determination must specify a day on which the determination ceases to be in force.

Note: The determination may cease to be in force earlier than the specified day (see paragraphs (7)(a) to (g)).

(5) The determination must specify a period within which the original proposal may be withdrawn and a new proposal referred.

Note: This period is relevant to the determination continuing despite withdrawal of the original proposal (see paragraph 170C(5)(b)).

Variation of determination

(6) The Minister may, in writing, vary the determination to specify:

(a) different conditions for the purposes of subsection (2); or

(b) a later day for the purposes of subsection (4) or (5).

When determination ceases to be in force

(7) The determination ceases to be in force at the time the first of the following occurs after the determination is made:

(a) the Minister decides under Part 9 whether to approve the taking of the action;

(b) if the Minister accepts a variation of the original proposal under section 156B—the Minister decides under Part 9 whether to approve the taking of the action that is the subject of the varied proposal;

(c) if subsection 170C(5) applies in relation to the determination—the Minister decides under section 75 that the new action referred to in subsection 170C(5) is not a controlled action;

(d) if subsection 170C(5) applies in relation to the determination—the Minister decides under Part 9 whether to approve the taking of the new action referred to in subsection 170C(5);

(e) if subsection 170C(5) applies in relation to the determination and a variation of the proposal to take the new action is accepted by the Minister under section 156B—the Minister decides under section 75 that the action that is the subject of the varied proposal is not a controlled action;

(f) if subsection 170C(5) applies in relation to the determination and a variation of the proposal to take the new action is accepted by the Minister under section 156B—the Minister decides under Part 9 whether to approve the taking of the action that is the subject of the varied proposal;

(g) the end of the day specified in the determination for the purposes of subsection (4).

Notice of making, or varying, determination

(8) Within 10 business days after making a determination under subsection (1), or varying a determination under subsection (6), in relation to the taking of an action, the Minister must give written notice of the making of the determination or variation to:

(a) the person taking the action; and

(b) the designated proponent of the action (if the designated proponent of the action is not the person taking the action).

Publication of determination

(9) The Minister must publish a copy of a determination made under subsection (1), or a variation made under subsection (6), on the Department's website as soon as practicable after giving notice of the determination or variation under subsection (8).

Determination or variation not a legislative instrument

(10) A determination under subsection (1), or a variation under subsection (6), is not a legislative instrument.

188 At the end of Part 7

Add:

Division 4—Lapsing of decision that action is not a controlled action

79F Lapsing of decision that action is not a controlled action

(1) A decision under section 75 that an action is not a controlled action ceases to be in force, on the fifth anniversary of the date of the notice of the decision under section 77, if the taking of the action has not substantially commenced before that anniversary.

(2) Subsection (1) applies regardless of whether the decision was made because the Minister believed the action would be taken in a particular manner.

(3) If a decision under section 75 ceases to be in force because of subsection (1), the action is taken never to have been referred to the Minister.

189 Section 80 (paragraph beginning "For actions that are to be assessed")

Omit the paragraph, substitute:

> For actions that are to be assessed under this Part, the Minister must choose one of the following approaches to assessment:
>
> (a) an accredited assessment process;

(b) a streamlined assessment (see Division 5A);
(c) an environmental impact statement (see Division 6);
(d) a public inquiry (see Division 7).

The Minister may change the chosen approach in certain circumstances.

The designated proponent must provide information about the greenhouse gas emissions for the action.

190 Division 2 of Part 8 (heading)

Repeal the heading, substitute:

Division 2—Application and general provisions

191 At the end of Division 2 of Part 8

Add:

84A Greenhouse gas emissions information

(1) The requirements in this Part that relate to giving greenhouse gas emissions information for actions apply regardless of whether the information relates to the relevant impacts of the action.

Greenhouse gas emissions information

(2) The following is the ***greenhouse gas emissions information*** for an action:
  (a) either:
    (i) a reasonable estimate of the likely amount of scope 1 greenhouse gas emissions of the action; or
    (ii) if an amount is prescribed by the regulations for the purposes of this subparagraph and a reasonable estimate of the likely amount of scope 1 greenhouse gas emissions of the action is below the amount—a statement that scope 1 greenhouse gas emissions of the action are below the prescribed amount; and
  (b) either:

(i) a reasonable estimate of the likely amount of scope 2 greenhouse gas emissions of the action; or

(ii) if an amount is prescribed by the regulations for the purposes of this subparagraph and a reasonable estimate of the likely amount of scope 2 greenhouse gas emissions of the action is below the amount—a statement that scope 2 greenhouse gas emissions of the action are below the prescribed amount; and

(c) in relation to emissions for which a reasonable estimate is provided in accordance with subparagraph (a)(i) or (b)(i)—the strategies and measures the designated proponent will implement to manage those emissions; and

(d) how those strategies and measures are consistent with the laws and relevant government policies of the Commonwealth.

Scope 1 greenhouse gas emissions

(3) The release of greenhouse gas into the atmosphere is a ***scope 1 greenhouse gas emission*** of an action if it is a direct result of taking the action.

Scope 2 greenhouse gas emissions

(4) The release of greenhouse gas into the atmosphere is a ***scope 2 greenhouse gas emission*** of an action if it is a direct result of any activity that:

(a) generates electricity, heating, cooling or steam that is used or disposed of by the taking of the action; but

(b) does not form part of the action.

Method for estimating the likely amount of emissions

(5) The regulations may prescribe a method for making a reasonable estimate of the likely amount of a type of emission mentioned in paragraph (2)(a) or (b).

(6) Regulations made for the purposes of subsection (5) may make provision in relation to a matter by applying, adopting, or incorporating, with or without modification, any instrument or other writing as in force from time to time.

(7) Subsection (6) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

(8) The designated proponent of an action must use the prescribed method (if any) in making a reasonable estimate of the likely amount of that type of emission for the action.

84B Designated report writer for recommendation reports

The Minister must, by written instrument, declare that the ***designated report writer*** for recommendation reports under Division 5A (streamlined assessment) or Division 6 (assessment by environmental impact statement) is:

(a) the Secretary; or

(b) the CEO.

192 Section 85

Repeal the section, substitute:

85 Simplified outline of this Division

The Minister must choose one of the following ways of assessing the relevant impacts of an action the Minister has decided is a controlled action:

(a) an accredited assessment process;

(b) a streamlined assessment;

(c) an environmental impact statement;

(d) a public inquiry.

193 Paragraphs 87(1)(aa), (b) and (c)

Repeal the paragraphs, substitute:

(b) assessment by streamlined assessment under Division 5A;

194 Subsections 87(4A) and (5)

Repeal the subsections, substitute:

Streamlined assessment

(5) The Minister may decide on an assessment by streamlined assessment only if the Minister is satisfied (after considering the matters in subsection (3)) that:

(a) the approach will allow the Minister to make an informed decision whether or not to approve under Part 9, for the purposes of each controlling provision, the taking of the action; and

(b) the greenhouse gas emissions information for the action has been provided.

(5A) If the greenhouse gas emissions information for the action is provided for the purposes of paragraph (5)(b) other than by being included in the referral of the action, the Secretary must publish the information on the Department's website as soon as practicable after it is provided to the Minister.

195 After section 87

Insert:

87A Additional considerations and decisions if assessment started under certain management or authorisation frameworks

(1) In making the decision under section 87 in relation to an action, the Minister must also comply with this section if, at a time before the Minister decided the action is a controlled action:

(a) an alternate pathway applied to the action as mentioned in:

(i) subsection 71A(4) (about declarations made under section 33 or 36H); or

(ii) subsection 71A(5) (about bilateral agreements that include a declaration in accordance with section 46); and

(b) an assessment of the relevant impacts of the action had started in accordance with a management or authorisation framework that was:

(i) if the alternate pathway related to a declaration made under section 33—accredited for the purposes of the declaration; or

(ii) if the alternate pathway related to a declaration made under section 36H—specified in the declaration; or

(iii) if the alternate pathway related to a declaration included in a bilateral agreement in accordance with section 46—accredited for the purposes of the bilateral agreement.

Note: An action cannot be referred under Part 7 at a time when an alternate pathway applies to it, but if it ceases to apply, even temporarily, the action may be referred (see sections 69A and 71A).

(2) If the assessment mentioned in paragraph (1)(b) was completed at a time when the alternate pathway applied to the action, then:

(a) the Minister must consider whether the completed assessment should be used for the purposes of this Part; and

(b) if the Minister is satisfied that it should be—the Minister may determine, in writing, that the completed assessment is an assessment for the purposes of this Part.

(3) The Minister must not determine, under paragraph (2)(b), that the completed assessment is an assessment for the purposes of this Part unless the Minister is satisfied that:

(a) the body that carried out the assessment has provided or will provide the Minister with an assessment report; and

(b) the report includes or will include sufficient information to enable the Minister to decide whether to approve the taking of the action for the purposes of each provision of Part 3 that is a controlling provision for the action.

(4) If the assessment mentioned in paragraph (1)(b) was not completed by the time the alternate pathway ceased to apply to the action, then:

(a) the Minister must consider the extent to which the partly completed assessment should be completed under an approach for assessment set out in this Part and used for the purposes of this Part; and

(b) if the Minister is satisfied that it should be, to any extent—the Minister may determine, in writing, that the partly completed assessment is to be completed using the approach for assessment under this Part that the Minister decides to use; and

(c) if the Minister makes the determination—the determination must specify:

(i) the steps of the partly completed assessment that are to be used for the purposes of the assessment under this Part; and

(ii) the remaining steps to be carried out to complete the partly completed assessment as an assessment under this Part.

(5) A determination made under paragraph (2)(b) or (4)(b) is not a legislative instrument.

196 Subsection 88(5)

After "proponent of the action", insert ", or person proposing to take the action,".

197 Subsection 89(1)

Repeal the subsection, substitute:

(1) The Minister may request the designated proponent of an action to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action.

198 At the end of section 89

Add:

(4) A request made under this section must include the Minister's reasons for being satisfied that the further information is reasonably necessary.

(5) If the Minister makes a request under this section, the Minister must publish a copy of the request as soon as practicable on the Department's website.

199 Section 90

Repeal the section.

200 Paragraph 91(1)(b)

Repeal the paragraph, substitute:

(b) publish notice of the decision:

(i) on the Department's website; and

(ii) in accordance with any other requirements prescribed by the regulations.

201 At the end of section 91

Add:

(3) If a determination is in force under paragraph 87A(2)(b) or (4)(b) in relation to an assessment started under a management or authorisation framework, the written notice and the published notice must include a copy of the determination.

202 At the end of Division 3 of Part 8

Add:

Subdivision C—Changing assessment approach

92 Changing assessment approach

(1) The Minister may revoke a decision under section 87 (the ***first decision***) on the approach to be used to assess the relevant impacts of an action, and substitute it with another decision (the ***new decision***) under that section on the approach to be used, if:

(a) the first decision is to use an approach specified in an item in column 1 of the table; and

(b) the new decision is to use an approach specified in that item in column 2 of the table.

Note: See subsections (2) and (3) for limitations on the Minister's powers to revoke a first decision.

Changing assessment approach

Item	Column 1: First decision approach	Column 2: Substituted decision approach
1	streamlined assessment	(a) environmental impact statement; or (b) inquiry; or

Changing assessment approach		
Item	**Column 1:** **First decision approach**	**Column 2:** **Substituted decision approach**
		(c) accredited assessment process
2	by environmental impact	(a) inquiry; or (b) accredited assessment process
3	by accredited assessment process	(a) environmental impact statement; or (b) inquiry

(2) If the first decision is to use the approach of streamlined assessment or environmental impact statement, the Minister must not revoke that decision after the time a recommendation report is given to the Minister under section 94 or 105.

(3) If the first decision is to use the approach of accredited assessment process, the Minister must not revoke that decision after the time an assessment report is given to the Minister as mentioned in subsection 87(4).

(4) Section 91 does not apply in relation to the new decision. Instead, the Minister must, as soon as practicable after making the new decision:

(a) give written notice of the revocation and the new decision to:

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

(ii) the designated proponent of the action (if the designated proponent is not the person proposing to take the action); and

(iii) if the action is to be taken in a State or self-governing Territory and a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of the State or Territory; and

(b) publish a copy of the revocation and the new decision:

(i) on the Department's website; and

(ii) in accordance with any other requirements prescribed by the regulations.

(5) From the time the first decision is revoked and substituted with the new decision:

(a) the provisions of this Part that apply in relation to the assessment approach to be used under the first decision cease to apply in relation to the action; and

(b) the provisions of this Part that apply in relation to the assessment approach to be used in the new decision apply instead.

203 Divisions 3A, 4 and 5 of Part 8

Repeal the Divisions, substitute:

Division 5A—Streamlined assessment

93 Application

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by streamlined assessment.

94 Recommendation report

(1) The designated report writer must prepare and give to the Minister a recommendation report relating to the action. The report must include recommendations on:

(a) whether the taking of the action should be approved under Part 9 for the purposes of each provision of Part 3 that is a controlling provision for the action; and

(b) if approval is recommended—any conditions that should be attached to the approval.

Note: The designated report writer will be either the Secretary or the CEO, depending on the declaration made by the Minister under section 84B.

(2) The recommendation report must be given to the Minister as soon as practicable after the Minister decides under section 87 that the relevant impacts of the action must be assessed by streamlined assessment.

204 At the end of section 101A

Add:

(5) The Secretary must, within 10 business days of the day the Minister gave the EIS guidelines to the designated proponent, publish them:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

205 After paragraph 103(1)(a)

Insert:

(aa) include in the draft environmental impact statement the greenhouse gas emissions information for the action; and

206 Subsection 103(2)

Repeal the subsection, substitute:

Approval of publication of draft statement

(2) The Minister may approve the publication of the draft statement only if the Minister is satisfied that the draft statement:

(a) is in accordance with the EIS guidelines; and

(b) includes the greenhouse gas emissions information for the action.

207 At the end of section 103

Add:

Publishing of notice by Secretary of Minister's approval and designated proponent's invitation

(4) The Secretary must publish notice of the Minister's approval of the publication of the draft statement, and the details of the designated proponent's invitation as mentioned in subparagraph (1)(c)(ii):

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

208 At the end of subsection 104(3)

Add:

Note: If the designated proponent does not do this within a reasonable time, the Minister may take action under section 155.

209 Subsection 104(4)

Repeal the subsection, substitute:

(4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the Secretary must publish the finalised statement:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

210 Subsection 105(1)

Omit "Secretary", substitute "designated report writer".

211 Paragraph 105(1)(a)

After "Part 9", insert "for the purposes of each provision of Part 3 that is a controlling provision for the action".

212 At the end of subsection 105(1)

Add:

Note: The designated report writer will be either the Secretary or the CEO, depending on the declaration made by the Minister under section 84B.

213 After section 107

Insert:

107A Greenhouse gas disclosure requirements

(1) The designated proponent of the action must give the commission the greenhouse gas emissions information for the action before the end of the period specified for the purposes of subparagraph 107(1)(b)(ii) (the period within which the commission must report to the Minister).

(2) The commission must include the greenhouse gas emissions information in the commission's report to the Minister under section 121.

214 Subsection 108(2)

Repeal the subsection, substitute:

(2) The commission need not publish the information described in paragraph (1)(b) if, before the Minister appointed the commission, the designated proponent of the action published a draft statement under section 103 (which deals with draft environmental impact statements). However, in this case the commission must publish as described in subsection (1) notice of the fact that the draft statement has already been published.

215 Paragraphs 130(1B)(a) to (d)

Repeal the paragraphs, substitute:

(a) if the action is the subject of an assessment report and paragraph (b) does not apply—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;

(b) if the Minister has made a determination under paragraph 87A(2)(b) in relation to the action—the period of 40 business days beginning on the first business day after the Minister receives the assessment report;

(c) if Division 5A of Part 8 (streamlined assessment) applies—the period of 30 business days beginning on the first business day after the day the Minister decides under section 87 that the relevant impacts of the action must be assessed by streamlined assessment;

(d) if 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 environmental impact statement;

216 At the end of subsection 130(2)

Add:

; or (d) subsection 87A(3) (about assessments under certain management or authorisation frameworks).

217 Subsection 131(1)

Omit “must”, substitute “may”.

218 Subparagraphs 131AA(2)(a)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) a recommendation report given to the Minister under section 94;

(iii) a recommendation report given to the Minister under section 105; and

219 Section 132

Before "If the Minister", insert "(1)".

220 Section 132

Omit all the words from and including "If the Minister" to and including "making the decision", substitute "The Minister may request any of the following persons to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision as to whether or not to approve the taking of an action for the purposes of a controlling provision".

221 At the end of section 132

Add:

(2) A request made under subsection (1) must include the Minister's reasons for being satisfied that the information is reasonably necessary.

(3) If the Minister makes a request under subsection (1), the Minister must publish a copy of the request as soon as practicable on the Department's website.

222 Subparagraph 132A(2)(a)(i)

Omit "nuclear", substitute "radiological exposure".

223 After subsection 133(7)

Insert:

Publication of reasons for decision on national interest proposal

(7A) If the taking of the action is a national interest proposal, the Minister must, as soon as practicable, publish on the Department's

website the Minister's reasons for the decision to approve or not to approve the taking of the action.

(7B) However, the Minister must not publish under subsection (7A) so much of the reasons 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

224 Subsection 133(8) (paragraphs (b), (c) and (d) of the definition of *assessment documentation*)

Repeal the paragraphs, substitute:

(b) if Division 5A of Part 8 (streamlined assessment) applies to the action:

(i) the referral of the proposal to take the action; and

(ii) the information provided in response to any request for further information made under section 76 or 89; and

(iii) the greenhouse gas emissions information for the action (if not covered by subparagraph (i) or (ii)); and

(iv) the recommendation report given to the Minister under section 94; or

225 Paragraphs 134(1)(b) and (2)(b)

Omit "repairing or mitigating", substitute "mitigating, repairing or compensating for".

226 Subparagraph 134(3)(aa)(ii)

Omit "repairing or mitigating", substitute "mitigating, repairing or compensating for".

227 After paragraph 134(3)(ab)

Insert:

(ac) conditions requiring the holder of the approval to pay a restoration contribution charge in relation to a residual significant impact of the action; and

228 After subsection 134(3)

Insert:

Conditions that must not be attached

(3AA) Despite paragraphs (1)(b) and (2)(b), the Minister must not attach a condition to the approval for the purposes of compensating for damage that will or may be caused by an unacceptable impact on a matter protected by a provision of Part 3 for which the approval has effect (except so far as allowed by subsection (3AB)).

Note: See the definition of ***unacceptable impacts*** in section 527F.

(3AB) The Minister may attach a condition to the approval for the purposes of compensating for damage that will or may be caused by an unacceptable impact if:

(a) the taking of the action is a national interest proposal to which the exception in subsection 136B(2) applies; and

(b) the Minister is satisfied that the condition would assist in mitigating or repairing damage as mentioned in paragraph 136B(3)(b).

(3AC) Despite paragraphs (1)(b) and (2)(b), the Minister must not attach a condition mentioned in paragraph (3F)(a) or (b) to the approval of the action in relation to a matter prescribed by the regulations for the purposes of this subsection.

229 At the end of subsection 134(3A)

Add:

; (c) a condition referred to in paragraph (3)(ac).

230 After subsection 134(3D)

Insert:

Conditions compensating for damage to ecological character of declared Ramsar wetland

(3E) A condition attached to an approval for the purposes of compensating for damage to the ecological character of a declared Ramsar wetland is not required to compensate for damage to the particular component of the ecological character that has been, is being or is likely to be damaged.

Conditions relating to residual significant impacts

(3F) In deciding whether to attach a condition to an approval of an action requiring:

(a) compensation for damage that may or will be, or has been, caused by a residual significant impact of the action on a matter protected by a provision of Part 3 for which the approval has effect; or

(b) payment of a restoration contribution charge in relation to a residual significant impact of the action on a matter protected by a provision of Part 3 for which the approval has effect;

the Minister must consider whether the designated proponent of the action has taken appropriate measures (including through the location or design of the action) to avoid, mitigate or repair the impact or damage.

(3G) In considering whether appropriate measures have been taken, the Minister may have regard to:

(a) the action as a whole; and

(b) any other impact the action will have, or is likely to have, on a matter protected by a provision of Part 3; and

(c) any other matter the Minister considers relevant.

231 Paragraph 135(1)(a)

Omit "nuclear", substitute "radiological exposure".

232 Subsections 135A(1) and (2)

Repeal the subsections, substitute:

(1) This section applies in relation to a recommendation report given to the Minister under section 94 or 105.

(2) The Secretary must publish the recommendation report:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

233 Subsection 135A(3)

Omit "provide a copy of the report under subsection (2) to anyone", substitute "publish the recommendation report".

234 Subsection 135A(4)

Omit "The Secretary may refuse to provide, under subsection (2), a copy of", substitute "Despite subsection (2), the Secretary is not required to publish".

235 Paragraphs 136(2)(ba), (bc) and (c)

Repeal the paragraphs, substitute:

(c) if Division 5A of Part 8 (streamlined assessment) applies to the action:

(i) the referral of the proposal to take the action; and

(ii) the information provided in response to any request for further information made under section 76 or 89; and

(iii) the recommendation report given to the Minister under section 94; and

236 After paragraph 136(2)(g)

Insert:

; and (h) any bioregional plan, and any bioregional guidance plan, that the Minister considers relevant.

237 After section 136

Insert:

136A Approval must not be inconsistent with prescribed national environmental standards

Approval must not be inconsistent with prescribed national environmental standards

(1) The Minister must not approve the taking of an action unless the Minister is satisfied that, taking into account any conditions to be attached to the approval, the approval of the taking of the action is not inconsistent with any national environmental standards prescribed by the regulations for the purposes of this subsection.

Exception—national interest proposals

(2) Despite subsection (1), the Minister may approve the taking of an action if:

(a) the action is a national interest proposal; and

(b) the Minister is satisfied that, so far as the approval of the taking of the action is inconsistent with one or more national environmental standards prescribed by the regulations for the purposes of subsection (1), the inconsistencies are reasonably necessary for the taking of the action to result, or be likely to result, in the intended outcome for the national interest proposal.

Note: See the definition of ***intended outcome*** in section 528.

(3) For the purposes of subsection (2), in deciding whether an inconsistency is reasonably necessary, the Minister must take into account the following:

(a) the extent to which the inconsistency could be reduced or removed without changing whether the taking of the action would be likely to result in the intended outcome;

(b) the extent to which any conditions to be attached to the approval would reduce or remove the inconsistency.

136B Action must not have unacceptable impact

Action must not have unacceptable impact

(1) The Minister must not approve the taking of an action unless the Minister is satisfied that, taking into account any conditions to be

attached to the approval, the taking of the action will not have or be likely to have an unacceptable impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action.

Note: See the definition of ***unacceptable impacts*** in section 527F.

Exception—national interest proposals

(2) Despite subsection (1), the Minister may approve the taking of an action if:

(a) the action is a national interest proposal; and

(b) the Minister is satisfied that, so far as the taking of the action will have or be likely to have any unacceptable impacts on matters protected by provisions of Part 3 that the Minister has decided are controlling provisions for the action, the impacts are reasonably necessary for the taking of the action to result, or be likely to result, in the intended outcome for the national interest proposal.

Note: See the definition of ***intended outcome*** in section 528.

(3) For the purposes of subsection (2), in deciding whether an unacceptable impact on a protected matter is reasonably necessary, the Minister must take into account the following considerations relating to the damage likely to be caused by the impact on the matter:

(a) the extent to which that damage could be reasonably mitigated or repaired without changing whether the taking of the action would be likely to result in the intended outcome;

(b) the extent to which any conditions to be attached to the approval would assist in mitigating or repairing that damage.

136C Approval for action with residual significant impact must pass net gain test

Approvals must pass net gain test

(1) The Minister must not approve the taking of an action that will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action unless the Minister is satisfied

that, taking into account any conditions to be attached to the approval, the approval passes the net gain test in relation to the residual significant impact on the matter.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

Exception—national interest proposals

(2) Despite subsection (1), the Minister may approve the taking of an action if:

(a) the action is a national interest proposal; and

(b) the Minister is satisfied that, so far as the taking of the action will have or be likely to have a residual significant impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action, requiring the approval to pass the net gain test in relation to that impact on that matter would prevent or be likely to prevent the intended outcome for the national interest proposal.

Note: See the definition of ***intended outcome*** in section 528.

(3) For the purposes of subsection (2), in determining whether the Minister is satisfied, the Minister must take into account the reasons why the approval would not pass the net gain test in relation to the residual significant impact on the protected matter.

238 Section 138

Repeal the section, substitute:

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 any of the following:

(a) Australia's obligations under the Ramsar Convention;

(b) the Australian Ramsar management principles;

(c) any plan prepared for the management of the wetland as mentioned in section 333.

239 Section 139

Repeal the subsection, substitute:

139 Requirements for decisions about threatened species and endangered communities

(1) This section applies in relation to the taking of an action that has or will have, or is likely to have, a significant impact on a listed threatened species or listed threatened ecological community.

(2) In deciding whether or not to approve the taking of an action for the purposes of a subsection of section 18 or 18A, and what conditions to attach to such an approval, the Minister must not act inconsistently with any of the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES; or

(b) a threat abatement plan;

(c) a protection statement;

(d) a recovery plan.

Effect of protection statement

(3) If there is a protection statement for the whole or one or more parts of the species or community:

(a) the requirement in paragraph (2)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(4) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

240 Division 3 of Part 9 (heading)

Omit "**and revocation**", substitute "**, revocation and surrender**".

241 After subsection 143(2)

Insert:

(2A) In deciding whether or not to revoke, vary or add to any conditions attached to the approval of the taking of an action by a person, the Minister must be satisfied that the decision the Minister is to make:

(a) will not be inconsistent with a national environmental standard prescribed by the regulations for the purposes of section 136A; and

(b) will not result in the action having or being likely to have an unacceptable impact (see section 527F) on a matter protected by a provision of Part 3 for which the approval has effect; and

(c) if the action has had, will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 for which the approval has effect—will continue to ensure that the approval passes the net gain test in relation to the residual significant impact on the matter (see section 136C).

Note: See section 143AA for modified considerations for a national interest proposal.

(2B) Sections 137 to 140 (other than subsection 139(2)) apply to the decision whether or not to revoke, vary or add to any condition attached to the approval in the same way as they apply to a decision whether or not to approve the taking of an action.

242 After section 143

Insert:

143AA Modifications affecting national interest proposals

(1) In making the following decisions in relation to an approval of a national interest proposal, the Minister must be satisfied that the decision the Minister is to make meets the requirements specified in the table:

(a) in deciding, under section 143, whether or not to revoke, vary or add to any conditions attached to the approval;

(b) in deciding, under section 145D, whether or not to extend the period for which the approval has effect.

Modifications affecting national interest proposals		
Item	**The decision the Minister is to make …**	**Except to this extent…**
1	will not be inconsistent with a national environmental standard prescribed by the regulations for the purposes of section 136A	except to the extent of any inconsistency that, in approving the taking of the action, the Minister was satisfied as to, as mentioned in paragraph 136A(2)(b)
2	will not result in the action having or being likely to have an unacceptable impact (see section 527F) on a matter protected by a provision of Part 3 for which the approval has effect	except to the extent of any unacceptable impact that, in approving the taking of the action, the Minister was satisfied as to, as mentioned in paragraph 136B(2)(b)
3	if the action has had, will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 for which the approval has effect—will continue to ensure that the approval passes the net gain test in relation to the residual significant impact on the matter (see section 136C)	except to the extent that, in approving the taking of the action, the Minister was satisfied as mentioned in paragraph 136C(2)(b) that requiring the approval to pass the net gain test in relation to a particular residual significant impact on a particular matter protected by a provision of Part 3 would prevent or be likely to prevent the intended outcome for the national interest proposal

(2) This section has effect in relation to a national interest proposal despite subsections 143(2A) and 145D(3A).

243 After subsection 144(2A)

Insert:

(2B) In deciding whether or not to suspend an approval of the taking of an action by a person, the Minister must have regard to the risks (if

any) of suspending the approval to matters protected by a provision of Part 3 for which the approval has effect.

(2C) Sections 137 to 140 (other than subsection 139(2)) apply to the decision whether or not to suspend the approval in the same way as they apply to a decision whether or not to approve the taking of an action.

244 After subsection 145(2B)

Insert:

(2C) In deciding whether or not to revoke an approval under this Part for the purposes of a specified provision of Part 3, the Minister must have regard to the risks (if any) of revoking the approval to the matter protected by the provision.

(2D) Sections 137 to 140 (other than subsection 139(2)) apply to the decision whether or not to revoke the approval in the same way as they apply to a decision whether or not to approve the taking of an action.

245 At the end of Division 3 of Part 9

Add:

145AA Surrender of approval

(1) The holder of an approval of the taking of an action may, in writing, request the Minister to accept the surrender of the approval.

(2) The Minister must decide whether or not to accept the surrender.

(3) In deciding whether or not to accept the surrender, the Minister may have regard to:

(a) whether the taking of the action has substantially commenced; and

(b) any matter mentioned in subsection 145(3); and

(c) the risks (if any) of the surrender to matters protected by a provision of Part 3 for which the approval has effect; and

(d) any other matter the Minister considers relevant.

(4) The Minister must give the holder written notice of the Minister's decision as soon as practicable after making the decision.

(5) If the Minister decides to accept the surrender, the Minister must publish the notice:

(a) on the Department's website; and

(b) in accordance with any other requirements prescribed by the regulations.

(6) If the Minister decides to accept the surrender, the approval is taken to be revoked with effect from the day specified in the notice. The day must not be earlier than the day the notice is published on the Department's website.

246 After the heading to subsection 145B(4)

Insert:

(3A) Sections 137 to 140 (other than subsection 139(2)) apply to the decision whether or not to consent to the transfer in the same way as they apply to a decision whether or not to approve the taking of an action.

247 After subsection 145D(3)

Insert:

(3A) In deciding whether or not to extend the approval period, the Minister must be satisfied that the decision the Minister is to make:

(a) will not be inconsistent with any national environmental standard prescribed by the regulations for the purposes of section 136A; and

(b) will not result in the action having or being likely to have an unacceptable impact (see section 527F) on a matter protected by a provision of Part 3 for which the approval has effect; and

(c) if the action has had, will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 for which the approval has effect—will continue to ensure that the approval passes the net gain test in relation to the matter (see section 136C).

Note: See section 143AA for modified considerations for a national interest proposal.

(3B) Sections 137 to 140 (other than subsection 139(2)) apply to the decision whether or not to extend the approval period in the same way as they apply to a decision whether or not to approve the taking of an action.

248 Subsection 146(1B)

Repeal the subsection, substitute:

(1B) The agreement may also provide for the transfer of the responsibility for the adoption or implementation of the policy, plan or program from one person to another person.

249 Before paragraph 146(2)(a)

Insert:

(aa) requirements that a draft of a report on the impacts to which the agreement relates must satisfy; and

250 After paragraph 146(2)(d)

Insert:

(da) the process for any variation of the policy, plan or program before the policy, plan or program is endorsed as mentioned in paragraph (f); and

251 After subparagraph 146(2)(f)(i)

Insert:

(ia) if any such impacts on matters protected by a provision of Part 3 are residual significant impacts (see section 527J)—the report adequately addresses measures to compensate for them; and

252 At the end of paragraph 146(2)(f)

Add:

(iii) the policy, plan or program includes a mechanism for persons taking an action in accordance with the policy, plan or program to be registered by the responsible person; and

(iv) the policy, plan or program requires persons taking an action in accordance with the policy, plan or program to be registered by the responsible person; and

(v) the policy, plan or program requires persons taking an action in accordance with the policy, plan or program to provide the responsible person with information relating to the matters mentioned in paragraph (2B)(b); and

(vi) the policy, plan or program requires the responsible person to provide the Minister with information relating to the matters mentioned in subsection (2B); and

253 Subsection 146(2) (note 2)

Omit "management arrangement or an authorisation process, the Minister may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the management arrangement or authorisation process", substitute "management or authorisation framework, the Minister may declare under section 33, or make a bilateral agreement declaring, that actions approved in accordance with the framework".

254 After subsection 146(2)

Insert:

(2A) Subparagraphs (2)(f)(iii) and (iv) do not apply in relation to a policy, plan or program that specifies the persons who may take an action in accordance with the policy, plan or program.

(2B) For the purposes of subparagraphs (2)(f)(v) and (vi), the matters are the following:

(a) the persons who are registered by the responsible person as persons taking an action in accordance with the policy, plan or program;

(b) the greenhouse gas emissions information for actions taken in accordance with the policy, plan or program.

255 At the end of Subdivision A of Division 1 of Part 10

Add:

146AA Publication of greenhouse gas emissions information provided in accordance with endorsed policy, plan or program

If the greenhouse gas emissions information for an action taken in accordance with an endorsed policy, plan or program is provided to the Minister in accordance with a requirement included in the policy, plan or program as mentioned in subparagraph 146(2)(f)(v), the Secretary must publish the information on the Department's website as soon as practicable after it is provided.

256 Section 146A (heading)

Repeal the heading, substitute:

146A Definitions

257 Section 146A

Before "In", insert "(1)".

258 Section 146A

Omit "Subdivision and Subdivision C", substitute "Division".

259 Section 146A (at the end of the definition of *endorsed policy, plan or program*)

Add "(including any variation of the policy, plan or program approved by the Minister under section 146DI)".

260 At the end of section 146A

Add:

(2) A reference in this Division (except subsection 146D(1) and paragraphs 146E(a) and (b)) to an approval under section 146B includes a reference to an approval under section 146B as varied.

261 Subsection 146B(1) (note)

Omit "Note", substitute "Note 1".

262 At the end of subsection 146B(1)

Add:

Note 2: See sections 146DJ and 146DK for variation of the approval.

263 After paragraph 146B(2)(b)

Insert:

(ba) name the person to whom the approval is granted; and

264 At the end of subsection 146B(2A)

Add "(which may include the holder of the approval)".

265 Subsection 146B(3)

Repeal the subsection, substitute:

(3) The Minister must:

(a) give a copy of the approval to:

(i) the holder of the approval; and

(ii) the responsible person for the endorsed policy, plan or program; and

(b) publish a copy of the approval:

(i) on the Department's website; and

(ii) in accordance with any other requirements prescribed by the regulations.

266 Subsection 146B(4)

Omit "must not provide", substitute "must not give or publish".

267 After section 146B

Insert:

146BA Exclusion of certain actions

Despite anything in an approval under section 146B, the approval does not apply in relation to an action if:

(a) an approval of the taking of the action is in operation under Part 9; or

(b) there is in force a decision of the Minister under Division 2 of Part 7 that the action is not a controlled action and, if the decision was made because the Minister believed the action

would be taken in a particular manner, the action is being taken in that manner; or

(c) Part 4 lets the person who is taking the action take the action without an approval under Part 9; or

(d) a national interest exemption that allows the action to be taken without an approval is in force; or

(e) the action was referred to the Minister under section 68, 69 or 71 before the approval came into force and, immediately before the approval was granted:

(i) the Minister has not yet decided under section 75 whether the action is a controlled action; or

(ii) the Minister has not decided whether to approve the taking of the action under section 133; or

(f) the taking of the action commenced before the approval was granted.

268 Section 146C (heading)

Repeal the heading, substitute:

146C Inviting comments from other Ministers about decisions relating to endorsed policy, plan or program

269 Subsection 146C(1)

Omit "he or she must", substitute "or to make a variation covered by paragraph 146DJ(2)(a), (b), (c) or (d) of an approval under section 146B, the Environment Minister may".

270 Paragraph 146C(1)(a)

Omit "of the decision the Environment Minister proposes to make", substitute "to which the proposed decision relates".

271 After section 146C

Insert:

146CA Minister must obtain advice from Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development

(1) This section applies if:

(a) the Minister is deciding whether or not to approve, under section 146B, the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and

(b) the taking of the action or class of actions involves:

(i) unconventional gas development; or

(ii) large coal mining development; and

(c) the Minister believes that the taking of the action or class of actions is likely to have a significant impact on water resources, including any impacts of associated salt production or salinity.

(2) Before the Minister decides whether or not to approve the taking of the action or class of actions, the Minister must obtain the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development.

272 Subsection 146D(1)

Omit "If an", substitute "Subject to section 146DL, if an".

273 After subparagraph 146D(1)(b)(i)

Insert:

(ia) if subparagraph (i) does not apply to the holder of the approval—the holder of the approval;

274 Subsections 146D(3) and (4)

Repeal the subsections, substitute:

(3) Subsection (2) does not apply in relation to an action in respect of which a determination is in force under section 146N (action that is a component of a larger action) or 146P (exclusion determination).

275 At the end of Subdivision B of Division 1 of Part 10

Add:

146DA Initial conditions attached to approval under section 146B

(1) For the purposes of paragraph 146B(2)(e), section 134 (conditions of approval) (except subsection 134(1A) and paragraph 134(3)(e)) applies in relation to an approval under section 146B in a way corresponding to the way in which it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 134 applies as if a reference to an action were a reference to one or more actions covered by the approval under section 146B.

(3) For the purposes of paragraph 134(3)(ac) as applied by subsection (1), the conditions attached to the approval may specify that a person specified in the approval is the person required to pay a restoration contributions charge.

(4) For the purposes of paragraph 134(3A)(c) as applied by subsection (1), the consent of the person specified in the approval as the person required to pay restoration contributions charge is required.

146DB Compliance with conditions attached to approval under section 146B

Division 2 of Part 9 (requirement to comply with conditions) applies in relation to an approval under section 146B in a way corresponding to the way in which that Division applies in relation to an approval under Part 9.

146DC Variation of conditions attached to approval under section 146B

(1) Section 143 (variation of conditions attached to approval) (except subsections 143(1A), (2A) and (2B)) applies in relation to an approval under section 146B in a way corresponding to the way it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 143 applies as if:

(a) a reference to the holder of the approval included a reference to the responsible person for the relevant endorsed policy, plan or program; and

(b) a reference to an action were a reference to one or more actions covered by the approval under section 146B.

Consultation before revocation, variation or addition of conditions

(3) If, under section 143 as applied by subsection (1), the Minister proposes to revoke, vary or add a condition attached to an approval under section 146B, the Minister must:

(a) give the holder of the approval written notice of the proposed decision (unless the holder has agreed to or requested the revocation, variation or addition); and

(b) give the responsible person for the relevant endorsed policy, plan or program written notice of the proposed decision (unless that responsible person has agreed to or requested the revocation, variation or addition); and

(c) if the Minister proposes to make the revocation, variation or addition because a condition attached to the approval has been contravened—give the person who contravened the condition written notice of the proposed decision; and

(d) in a notice under paragraph (a), (b) or (c), invite the person given the notice to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed decision; and

(e) publish on the Department's website an invitation for anyone to give the Minister, within the period specified in the invitation (which must be at least 10 business days after the day the invitation is given), written comments on the proposed decision; and

(f) take into account any relevant comments received in response to an invitation under paragraph (d) or (e).

Note: For ***holder*** and ***responsible person***, see section 528.

(4) Subsection (3) is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision whether or not to revoke, vary or add any conditions attached to an approval under section 146B.

Revocation, variation or addition of conditions does not apply to actions substantially commenced

(5) The revocation, variation or addition of any condition attached to an approval under section 146B does not apply in relation to an action covered by the approval if the taking of the action has substantially commenced by the time the revocation, variation or addition would, apart from this subsection, take effect, unless the action is specified in a determination made under subsection (6).

(6) The Minister may, in writing, determine that the revocation, variation or addition of a condition attached to an approval under section 146B applies to a specified action if the Minister is satisfied that it is appropriate for it to apply to the action despite the taking of the action having substantially commenced.

Consultation before making determination

(7) Before making a determination under subsection (6), the Minister must:

(a) give written notice to each person taking the action to which the contravention relates that the Minister is proposing to make the determination; and

(b) invite the person to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed determination; and

(c) take into account any relevant comments received in response to an invitation under paragraph (b).

(8) Subsection (7) is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision to make a determination under subsection (6).

Notification of determination

(9) The Minister must as soon as possible after making a determination under subsection (6):

(a) give each person taking the specified action:

(i) a copy of the determination; and

(ii) if a copy of the revocation, variation or addition was not given to the person under section 143—a copy of the revocation, variation or addition; and

(b) give the holder of the approval a copy of the determination; and

(c) give the responsible person for the relevant endorsed policy, plan or program a copy of the determination; and

(d) publish the determination on the Department's website.

The Minister may give notice of the determination in any other way that the Minister thinks fit.

Determination not a legislative instrument

(10) A determination under subsection (6) is not a legislative instrument.

146DD Suspension and revocation of approval under section 146B

(1) Sections 144 (suspension of approval) and 145 (revocation of approval) (except subsections 144(2C) and 145(2D)) apply in relation to an approval under section 146B in a way corresponding to the way they apply in relation to an approval under Part 9, with the modifications set out in this section.

(2) Sections 144 and 145 apply as if a reference to an action were a reference to one or more actions covered by the approval under section 146B.

(3) Sections 146G to 146L apply in relation to the Minister's decision, under section 144 or 145 as applied by subsection (1), whether or not to suspend or revoke an approval, in a way corresponding to the way in which they apply in relation to a decision whether or not to revoke, vary or add to any conditions attached to an approval under section 146B.

146DE Reinstating suspended or revoked approval under section 146B

(1) Section 145A (reinstating suspended or revoked approval) (except subsection 145A(4)) applies in relation to an approval under section 146B in a way corresponding to the way it applies in

relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 145A applies as if a reference to an action were a reference to one or more actions covered by the approval under section 146B.

(3) Subdivision C of this Division (relevant considerations) applies to a decision under section 145A whether or not to reinstate an approval under section 146B in the same way as it applies to a decision whether or not to give an approval under section 146B.

146DF Surrender of approval under section 146B

(1) Section 145AA (surrender of approval) applies in relation to an approval under section 146B in a way corresponding to the way in which it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 145AA applies as if:

(a) a reference in that section to the holder of the approval included a reference to the responsible person for the relevant endorsed policy, plan or program; and

(b) a reference to an action were a reference to one or more actions covered by the approval under section 146B.

Consultation before accepting surrender

(3) If, under section 145AA as applied by subsection (1), the Minister proposes to accept the surrender of an approval under section 146B, the Minister must:

(a) give the holder of the approval written notice of the proposed decision (unless the holder made the request to accept the surrender); and

(b) give the responsible person for the relevant endorsed policy, plan or program written notice of the proposed decision (unless the responsible person made the request to accept the surrender); and

(c) in a notice under paragraph (a) or (b), invite the person given the notice to give the Minister, within the period specified in the notice (which must be at least 10 business days after the

day the notice is given), written comments on the proposed decision; and

(d) publish on the Department's website an invitation for anyone to give the Minister, within the period specified in the invitation (which must be at least 10 business days after the day the invitation is given), written comments on the proposed decision; and

(e) take into account any relevant comments received in response to an invitation under paragraph (c) or (d).

Note: For ***holder*** and ***responsible person***, see section 528.

(4) Subsection (3) is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision whether or not to accept the surrender of an approval under section 146B.

146DG Transfer of approval under section 146B

(1) Section 145B (transfer of approval) (except subsection 145B(3A)) applies in relation to an approval under section 146B in a way corresponding to the way in which it applies in relation to an approval under Part 9, with the modifications set out in this section.

(2) Section 145B applies as if a reference to an action were a reference to one or more actions covered by the approval under section 146B.

(3) Sections 146G to 146L apply in relation to the Minister's decision, under section 145B as applied by this section, whether or not to consent to the transfer of the approval, in a way corresponding to the way in which they apply in relation to a decision whether or not to revoke, vary or add to any conditions attached to an approval under section 146B.

276 Before Subdivision C of Division 1 of Part 10

Insert:

Subdivision BA—Minor variations to policies, plans or programs

146DH Request to approve minor variation of a policy, plan or program

(1) If a policy, plan or program has been endorsed by the Minister in accordance with an agreement as mentioned in paragraph 146(2)(f), the responsible person for the policy, plan or program may, in writing, request the Minister to approve a minor variation of the policy, plan or program.

Note: For ***responsible person***, see section 528.

Content of request

(2) The request:

(a) must include details of the proposed variation; and

(b) must include the reasons for the request; and

(c) must include the reasons why the responsible person considers the proposed variation is minor; and

(d) may include any other matters the responsible person considers appropriate.

When a variation is minor

(3) For the purposes of this Subdivision, a variation of a policy, plan or program is minor if:

(a) the adverse impacts (if any) on matters protected by a provision of Part 3 of actions under the policy, plan or program, as proposed to be varied, would not be greater than the adverse impacts on those matters of actions under the policy, plan or program as in force at the time of the request; and

(b) the measures in the policy, plan or program, as proposed to be varied, to mitigate, repair, or compensate for, damage to matters protected by a provision of Part 3 would not be reduced as compared with such measures in the policy, plan or program as in force at the time of the request.

(4) For the purposes of paragraph (3)(a), disregard any proposed compensation for damage caused by impacts to matters protected by a provision of Part 3.

146DI Minister's decision on request

(1) If:

(a) a request is made under section 146DH; and

(b) the Minister is satisfied that the proposed variation is minor;

the Minister may, by written notice (the ***variation approval***), approve the variation.

(2) If the Minister approves the variation, the Minister must do the following as soon as practicable:

(a) give the responsible person a copy of the variation approval;

(b) if an approval under section 146B is in force in relation to the policy, plan or program—give a copy of the variation approval to:

(i) the holder of the approval; and

(ii) each person specified in the approval under section 146B as a person who may take an action covered by that approval; and

(c) publish a copy of the variation approval on the Department's website.

The Minister may give notice of the variation approval in any other way that the Minister thinks fit.

Note: For ***holder*** and ***responsible person***, see section 528.

(3) If the Minister approves the variation, the approval takes effect on the day specified in the notice of the approval (which must not be earlier than the day the notice is published).

(4) The Minister must refuse to approve the variation if the Minister is not satisfied that the proposed variation is minor. If the Minister refuses to approve the variation, the Minister must give the responsible person written notice of the refusal and the reasons for the refusal as soon as practicable.

(5) A notice under subsection (1) is not a legislative instrument.

Subdivision BB—Variations of approvals under section 146B

146DJ Variation of approval under section 146B as a result of a variation of a policy, plan or program

(1) If under section 146DI the Minister approves a variation of an endorsed policy, plan or program, the Minister may, by written notice, vary an approval under section 146B that is in force in relation to the policy, plan or program in a way that the Minister considers appropriate as a result of the approval of the variation of the policy, plan or program.

(2) Without limiting subsection (1), the variation of the approval may be one or more of the following:

(a) a variation of an action specified in the approval as an action that may be taken in accordance with the endorsed policy, plan or program;

(b) specifying another action, or removing an action, that may be taken in accordance with the endorsed policy, plan or program;

(c) a variation of a class of actions specified in the approval as a class of actions that may be taken in accordance with the endorsed policy, plan or program;

(d) specifying another class of actions, or removing a class of actions, that may be taken in accordance with the endorsed policy, plan or program;

(e) a variation of the persons who may take an action in accordance with the endorsed policy, plan or program;

(f) the revocation, variation or addition of a condition attached to the approval.

Note: The Minister may invite comments from other relevant Ministers before making a variation covered by paragraph (a), (b), (c) or (d): see section 146C.

Consultation

(3) Before making the variation of the approval the Minister must:

(a) give the holder of the approval written notice of the proposed variation; and

(b) give the responsible person for the endorsed policy, plan or program written notice of the proposed variation; and

(c) in a notice under paragraph (a) or (b), invite the person given the notice to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed variation; and

(d) publish on the Department's website an invitation for anyone to give the Minister, within the period specified in the invitation (which must be at least 10 business days after the day the invitation is given), written comments on the proposed variation; and

(e) take into account any relevant comments received in response to an invitation under paragraph (c) or (d).

Note: For ***holder*** and ***responsible person***, see section 528.

Notification of variation

(4) The Minister must do the following as soon as practicable after making the variation of the approval:

(a) give a copy of the variation to the holder of the approval;

(b) give a copy of the variation to the responsible person for the endorsed policy, plan or program;

(c) give a copy of the variation to each person specified in the approval as a person who may take an action covered by the approval;

(d) publish the variation on the Department's website.

The Minister may give notice of the variation in any other way that the Minister thinks fit.

Effect of variation

(5) The variation takes effect on the day specified in the variation (which must not be earlier than the day the variation is published).

(6) The variation does not take effect in relation to an action covered by the approval if the taking of the action has substantially commenced by the time the variation would, apart from this subsection, take effect, unless the action is specified in a determination made under subsection (7).

(7) The Minister may, in writing, determine that the variation applies to a specified action if the Minister is satisfied that it is appropriate for it to apply to the action despite the taking of the action having substantially commenced.

Consultation before making determination

(8) Before making a determination under subsection (7), the Minister must:

(a) give written notice to the person taking the specified action; and

(b) invite the person to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed determination; and

(c) take into account any relevant comments received in response to an invitation under paragraph (b).

Notification of determination

(9) The Minister must as soon as possible after making a determination under subsection (7):

(a) give the person taking the specified action:

(i) a copy of the determination; and

(ii) if a copy of the variation was not given to the person under subsection (4)—a copy of the variation; and

(b) give the holder of the approval a copy of the determination; and

(c) give the responsible person for the relevant endorsed policy, plan or program a copy of the determination; and

(d) publish the determination on the Department's website.

The Minister may give notice of the determination in any other way that the Minister thinks fit.

Exhaustive statement of natural justice hearing rule

(10) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision to make a variation under subsection (1) or a determination under subsection (7).

Notice not a legislative instrument

(11) The following instruments made under this section are not legislative instruments:

(a) a notice made under subsection (1);

(b) a determination made under subsection (7).

146DK Variation of approval under section 146B on request

(1) If an approval under section 146B is in force in relation to the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, the Minister may, on request under subsection (2) of this section, by written notice, vary the approval by:

(a) if the approval does not specify the person or persons who may take the action or an action in the class of actions—specifying the person or persons who may take the action or an action in the class of actions; or

(b) if the approval specifies the person or persons who may take the action or an action in the class of actions—specifying one or more additional persons who may take the action or an action in the class of actions.

Note: Subsection 146B(2A) deals with specifying the person or persons who may take the action or an action in the class of actions.

(2) A request for a variation under subsection (1) may be made, in writing, by:

(a) the holder of the approval; or

(b) the responsible person for the endorsed policy, plan or program.

Note: For ***holder*** and ***responsible person***, see section 528.

Consultation

(3) Before making the variation the Minister must:

(a) if the request was under paragraph (2)(a)—give the responsible person for the endorsed policy, plan or program written notice of the proposed variation; and

(b) if the request was under paragraph (2)(b)—give the holder of the approval written notice of the proposed variation; and

(c) in a notice under paragraph (a) or (b), invite the person given the notice to give the Minister, within the period specified in the notice (which must be at least 10 business days after the day the notice is given), written comments on the proposed variation; and

(d) take into account any relevant comments received in response to an invitation under paragraph (c).

Notification of variation

(4) The Minister must do the following as soon as practicable after making the variation:

(a) give a copy of the variation to the holder of the approval;

(b) give a copy of the variation to the responsible person for the endorsed policy, plan or program;

(c) give a copy of the variation to each person who, after the variation is made, is specified in the approval as a person who may take an action covered by the approval;

(d) give a copy of the variation to a person who asks for it;

(e) publish the variation on the Department's website.

The Minister may give notice of the variation in any other way that the Minister thinks fit.

Effect of variation

(5) The variation takes effect on the day specified in the variation (which must not be earlier than the day the variation is published).

Exhaustive statement of natural justice hearing rule

(6) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision to make a variation under subsection (1).

Notice not a legislative instrument

(7) A notice under subsection (1) is not a legislative instrument.

Subdivision BC—Effect of actual decisions on decisions the Minister is taken to have made

146DL Effect of actual decisions on decisions the Minister is taken to have made

Decisions taken to have been made under Division 2 of Part 7

(1) If:

(a) the Minister, under section 146DJ, varies an approval under section 146B; and

(b) the effect of the variation is to vary an action, or vary a class of actions, that may be taken in accordance with the endorsed policy, plan or program;

then, at the time the variation of the approval takes effect, the Minister is taken to have decided under Division 2 of Part 7 that:

(c) the action as varied, or each action in the class of actions as varied, is a controlled action; and

(d) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action.

(2) If:

(a) the Minister, under section 146DJ, varies an approval under section 146B; and

(b) the variation specifies another action, or another class of actions, that may be taken in accordance with the endorsed policy, plan or program;

then, at the time the variation of the approval takes effect, the Minister is taken to have decided under Division 2 of Part 7 that:

(c) the action, or each action in the class of actions, is a controlled action; and

(d) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action.

Approval taken to have been given under Part 9

(3) The following things done in relation to an approval under section 146B are also taken to have been done in relation to the approval that is taken to have been given under Part 9 because of paragraph 146D(1)(b):

(a) a thing done under section 134 or Division 3 or 4 of Part 9 (as applied by Subdivision B);

(b) a variation under section 146DJ or 146DK.

277 Subdivision C of Division 1 of Part 10 (heading)

Repeal the heading, substitute:

Subdivision C—Relevant considerations

278 Paragraph 146E(b)

After "actions", insert "under section 134 (as applied by section 146DA)".

279 After paragraph 146E(b)

Insert:

; and (c) whether or not, under section 143 (as applied by section 146DC), to revoke, vary or add to any conditions attached to the approval; and

(d) whether or not to make a variation of the approval covered by paragraph 146DJ(2)(a), (b), (c), (d) or (f).

280 Section 146E (note)

Omit "Note", substitute "Note 1".

281 At the end of section 146E

Add:

Note 2: This Subdivision also applies if the Minister is deciding whether to reinstate a suspended or revoked approval (see section 146DE).

Note 3: Some provisions in this Subdivision also apply if the Minister is deciding whether to suspend or revoke an approval (see subsection 146DD(3)) or whether to consent to a transfer of an approval (see subsection 146DG(3)).

282 Subsection 146F(2)

Repeal the subsection, substitute:

(2) In considering those matters, the Minister must take into account:

(a) the principles of ecologically sustainable development; and

(b) any bioregional plan, and any bioregional guidance plan, that the Minister considers relevant; and

(c) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development in accordance with section 146CA.

283 After section 146F

Insert:

146FA No inconsistency with prescribed national environmental standards

(1) The Minister must not approve, under section 146B, the taking of an action or a class of actions unless the Minister is satisfied that, taking into account any conditions to be attached to the approval, the decision is not inconsistent with any national environmental standard prescribed by the regulations for the purposes of this section.

(2) In deciding whether or not to revoke, vary or add to any conditions attached to an approval under section 146B, the Minister must be satisfied that the decision the Minister is to make will not be inconsistent with any national environmental standard prescribed by the regulations for the purposes of this section.

146FB No unacceptable impact

(1) The Minister must not approve, under section 146B, the taking of an action or a class of actions unless the Minister is satisfied that, taking into account any conditions to be attached to the approval, the taking of the action, or the class of actions as a whole, will not have or be likely to have an unacceptable impact on a matter protected by a provision of Part 3 for which the approval has effect.

Note: See the definition of ***unacceptable impacts*** in section 527F.

(2) In deciding whether or not to revoke, vary or add to any conditions attached to an approval under section 146B, the Minister must be satisfied that the decision the Minister is to make will not result in the action, or the class of actions as a whole, having or being likely to have an unacceptable impact on a matter protected by a provision of Part 3 for which the approval has effect.

Note: See the definition of ***unacceptable impacts*** in section 527F.

146FC Approval for action or class of actions with residual significant impact must pass net gain test

Approvals and initial conditions

(1) The Minister may approve, under section 146B:

(a) the taking of an action that will have, or is likely to have, a residual significant impact on a matter protected by a provision of Part 3 for which the approval will have effect; or

(b) the taking of a class of actions that as a whole will have, or are likely to have, a residual significant impact on a matter protected by a provision of Part 3 for which the approval will have effect;

only if the Minister is satisfied that, taking into account any conditions to be attached to the approval, the approval will pass the net gain test in relation to the residual significant impact.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

Revocation, variation and addition of conditions

(2) In deciding whether or not to revoke, vary or add to any conditions attached to an approval under section 146B of the taking of an action or a class of actions that has had, will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 for which the approval has effect, the Minister must be satisfied that the decision the Minister is to make will continue to ensure that the approval passes the net gain test in relation to the residual significant impact.

Note: See the definitions of ***residual significant impact*** and ***passes the net gain test*** in sections 527J and 527K.

284 Section 146J

Repeal the section, substitute:

146J Approvals relating to declared Ramsar wetlands

If the approval relates to a declared Ramsar wetland, the Minister must not act inconsistently with:

(a) Australia's obligations under the Ramsar Convention; or

(b) the Australian Ramsar management principles; or

(c) any plan prepared for the management of the wetland as mentioned in section 333.

285 Subsections 146K(2) and (3)

Repeal the subsections, substitute:

(2) The Minister must not act inconsistently with any of the following:

(a) Australia's obligations under:

(i) the Biodiversity Convention; or

(ii) the Apia Convention; or

(iii) CITES;

(b) a threat abatement plan;

(c) a protection statement;

(d) a recovery plan.

Effect of protection statement

(3) If there is a protection statement for the whole or one or more parts of the species or community:

(a) the requirement in paragraph (2)(d) for the Minister to not act inconsistently with a recovery plan does not apply to the extent that the recovery plan is for the whole or a relevant part of the species or community; and

(b) the Minister may have regard to any such recovery plan; and

(c) the Minister may have regard to an approved conservation advice for the species or community.

(4) If there is no protection statement for the whole or one or more parts of the species or community, the Minister must have regard to an approved conservation advice for the species or community.

286 Section 146M (heading)

Omit "**actions**", substitute "**installations**".

287 At the end of Division 1 of Part 10

Add:

Subdivision D—Determination in relation to action that is a component of a larger action

146N Determination in relation to action that is a component of larger action

(1) A person who proposes to take an action (the ***larger action***) may apply to the Minister for a determination that subsection 146D(2) does not apply to an action (the ***component action***) that is a component of the larger action, if:

(a) the component action is covered by an approval in force under section 146B of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program; and

(b) the larger action is not covered by the approval.

(2) The application must:

(a) be made in writing; and

(b) be made in the approved form (if any); and

(c) include the information or documents prescribed by the regulations (if any).

(3) If the Minister is satisfied that it is appropriate for Parts 7 and 8 and paragraph 170A(c) to apply in relation to the larger action, the Minister may, in writing, determine that subsection 146D(2) does not apply to the component action.

(3A) If the Minister makes a determination, the determination takes effect on the day specified in the determination (which must not be earlier than the day it is made).

(4) If the Minister makes a determination, the Minister must give the following persons a copy of the determination as soon as practicable:

(a) the person proposing to take the larger action;
(b) the holder of the approval;
(c) the responsible person for the policy, plan or program.

(5) If a determination is in force under subsection (3) in relation to a component action, the component action is taken not to be specified in the approval under section 146B.

Note: This also has the effect that there is no deemed approval under Part 9 of the component action (see paragraph 146D(1)(b)).

(6) If the Minister decides not to make a determination, the Minister must, as soon as practicable, give the person proposing to take the larger action written notice of the Minister's decision and the reasons for it.

(7) A determination made under subsection (3) is not a legislative instrument.

Subdivision E—Exclusion determination

146P Exclusion determination

(1) The Minister may, by written instrument, determine that, despite an approval in force under section 146B in relation to actions in a class of actions, a specified action in the class that a person proposes to take is excluded, if the Minister is satisfied that:
(a) the taking of the action has not substantially commenced; and
(b) the taking of the action would result or be likely to result in an outcome; and
(c) that outcome is in Australia's national interest.

That outcome is the ***intended outcome*** for the national interest proposal that, under section 75A, the action is taken to be.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

(2) The Minister may make the determination:
(a) if the person proposing to take the action agrees in writing—on the Minister's initiative; or
(b) on application under section 146Q.

(3) The Minister must, as soon as practicable after making the determination:

(a) give a copy of the determination to:

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

(ii) the holder of the approval under section 146B; and

(iii) the responsible person for the endorsed policy, plan or program to which the approval relates; and

(iv) the applicant (if different from the person mentioned in subparagraph (i)); and

(b) publish a copy of the determination on the Department's website.

(4) The determination takes effect on the day specified in the determination (which must not be earlier than the day the determination is made).

(5) A determination made under subsection (1) is not a legislative instrument.

146Q Application for exclusion determination

(1) Any of the following persons may apply to the Minister for a determination under section 146P:

(a) the person proposing to take the action as mentioned in subsection 146P(1);

(b) if the person proposing to take the action agrees in writing:

(i) another Minister; or

(ii) a Minister of a State or Territory.

(2) The application must:

(a) be made in writing; and

(b) be made in the approved form (if any); and

(c) include the information or documents prescribed by the regulations (if any).

(3) The Minister must decide whether to make the determination, or refuse the application, within 20 business days of the day the application is made.

(4) If the Minister decides to refuse the application, the Minister must give the applicant written notice of the Minister's decision, and the reasons for it, as soon as practicable.

146R Request for information

(1) The Minister may, in writing, request any person to provide specified information that the Minister reasonably believes is necessary in order to make an informed decision whether or not to make a determination under section 146P.

(2) If the Minister makes a request under subsection (1) in respect of a decision in which there is an applicant, a day is not to be counted as a business day for the purposes of subsection 146Q(3) if it is:

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

(b) on or before the day the Minister receives the last of the information requested.

146S Effect of exclusion determination

If a determination is in force under section 146P in relation to an action, then the action specified in the determination is taken not to be an action in the class of actions specified in the approval under section 146B.

Note: This means that no alternate pathway applies to the action under section 71A (because subsection 146D(2) does not apply in relation to the action), which in turn means that the action may be referred under Part 7 for assessment and approval under Parts 8 and 9.

146T Revocation of exclusion determination

Revocation on request

(1) The Minister must, by written instrument, revoke a determination under section 146P in relation to an action if:

(a) the person proposing to take the action, or the designated proponent (if any), has made a written request for the revocation; and

(b) the Minister has not decided whether to approve the taking of the action under section 133; and

(c) the Minister has not made a decision under Division 2 of Part 7 that the action is not a controlled action.

Revocation on Minister's initiative

(2) The Minister must, on the Minister's initiative, by written instrument, revoke a determination under section 146P in relation to an action if:

(a) the Minister is no longer satisfied that the taking of the action would result or be likely to result in the intended outcome mentioned in subsection 146P(1); and

(b) the Minister has not decided whether to approve the taking of the action under section 133; and

(c) the Minister has not made a decision under Division 2 of Part 7 that the action is not a controlled action.

Timing

(3) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

Not legislative instrument

(4) A revocation made under subsection (1) is not a legislative instrument.

146U Notice of revocation of exclusion determination

As soon as practicable after revoking, under section 146T, a determination under section 146P in relation to an action, the Minister must:

(a) give a copy of the revocation to:

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

(ii) the holder of the approval under section 146B; and

(iii) the responsible person for the policy, plan or program to which the approval relates; and

(iv) the designated proponent (if any); and

(b) publish a copy of the revocation on the Department's website.

146V Effect of revocation of exclusion determination if Minister has decided action is a controlled action

At the time a determination under section 146P in relation to an action is revoked under section 146T, any determination that, under section 75A, was taken to have been made in relation to the action is also taken to be revoked.

288 At the end of section 156A

Add:

(5) Despite subsection (4):

(a) any determination in force under section 79E at the time the request is made in relation to the action that is the subject of the original proposal continues in force, and section 79E continues to apply in relation to any such determination; and

(b) any such determination continues to have effect for the purposes of sections 67, 67A and 74AA, and those sections continue to apply, in relation to the action that is the subject of the original proposal.

289 At the end of subsection 156D(1)

Add:

Note: Provisions of this Chapter that relate to section 79E (determination that certain reconsidered actions may continue to be taken) do not cease to apply in relation to the original proposal (see subsection 156A(5)).

290 At the end of subsection 156D(2)

Add:

Note: Provisions of this Chapter that relate to section 79E (determination that certain reconsidered actions may continue to be taken) do not cease to apply in relation to the original proposal (see subsection 156A(5)).

291 After Division 2 of Part 11

Insert:

Division 2A—National interest proposals

157A Determination that an action etc. is a national interest proposal

(1) The Minister may, by written instrument, determine that the taking of a specified action is a national interest proposal if:

(a) the Minister has decided, under subsection 75(1), that the action is a controlled action; and

(b) the Minister has not decided whether to approve the taking of the action under section 133.

Note: The Minister is taken to have made a determination under this section in certain circumstances (see sections 75A, 75B and 75C).

(2) The Minister may make the determination:

(a) if the designated proponent of the action agrees in writing—on the Minister's initiative; or

(b) on application under section 157B.

Note: The Minister may request information to make an informed decision under subsection 157G(1).

(3) A determination made under subsection (1) is not a legislative instrument.

157B Application for determination

(1) The following persons may apply to the Minister (the ***Environment Minister***) for a determination that the taking of an action is a national interest proposal:

(a) the designated proponent of the action;

(b) if the designated proponent of the action agrees in writing—a Minister (other than the Environment Minister), or a Minister of a State or Territory.

(2) The application must:

(a) be in writing; and

(b) include the information (if any) prescribed by the regulations.

(3) The Minister must decide whether to make a determination under section 157A within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 157G, days between the request and receipt of the information do not count towards this timeframe (subsection 157G(3)).

(4) If the Minister decides not to make the determination, the Minister must give the applicant written notice of the Minister's decision, and the reasons for it, as soon as practicable after the decision is made.

Note: If the Minister makes the determination, the Minister must give the persons listed in subsection (1) a copy of the determination (see section 157D).

157C Grounds for determination

(1) Before determining that the taking of an action is a national interest proposal, the Minister must be satisfied that:

(a) the taking of the action would result or be likely to result in an outcome; and

(b) that outcome is in Australia's national interest.

That outcome is the ***intended outcome*** for the national interest proposal.

(2) In determining Australia's national interest for the purposes of a provision listed in subsection (3), the Minister may consider:

(a) Australia's defence, security or strategic interests; or

(b) Australia's obligations under an agreement with one or more other countries.

This does not limit the matters the Minister may consider.

(3) For the purposes of subsection (2), the following provisions are listed:

(a) subsection (1) of this section;

(b) paragraph 133(7B)(b) (non-disclosure of reasons);

(c) paragraph 146P(1)(c) (exclusion determination for approval under section 146B);

(d) paragraph 157D(2)(b) (non-disclosure of determination and reasons);

(e) paragraph 157E(2)(a) (revocation of determination);

(f) paragraph 157N(2)(b) (non-disclosure of exemption and reasons);

(g) paragraph 157R(2)(b) (non-disclosure of variation and reasons);
(h) paragraph 177BV(1)(b) (exemption for restricted actions);
(i) paragraph 177BW(3)(b) (non-publication of application);
(j) paragraph 177BX(4)(b) (non-publication of reasons);
(k) paragraph 177CF(1)(c) (exclusion determination for priority actions under bioregional plan);
(l) paragraph 302F(2)(b) (non-disclosure of exemption and reasons);
(m) paragraph 302J(2)(b) (non-disclosure of variation and reasons).

157D Notice of determination

(1) As soon as practicable after making a determination under section 157A that the taking of an action is a national interest proposal, the Minister must:
(a) give a copy of the determination to:
(i) the designated proponent of the action; and
(ii) if a different person applied for the determination under subsection 157B(1)—that person (if any); and
(b) publish a copy of the determination together with the Minister's reasons for making the determination on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the determination or reasons 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

157E Revocation of determination

Revocation on request

(1) The Minister must, by written instrument, revoke a determination under section 157A that the taking of an action is a national interest proposal, if:

(a) the Minister has not decided whether to approve the taking of the action under section 133; and

(b) the designated proponent of the action has made a written request for the revocation.

Note: The Minister may request information to make an informed decision under subsection 157G(1).

Revocation on Minister's initiative

(2) The Minister may, on the Minister's initiative, by written instrument, revoke a determination under section 157A that the taking of an action is a national interest proposal, if:

(a) the Minister is no longer satisfied that the taking of the action would result or be likely to result in the intended outcome for the national interest proposal; and

(b) the Minister has not decided whether to approve the taking of the action under section 133.

Note 1: The Minister may request information to make an informed decision under subsection 157G(1).

Note 2: For paragraph (a), subsection 157C(2) applies in relation to determining the national interest.

Timing

(3) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

Not legislative instrument

(4) A revocation made under subsection (1) is not a legislative instrument.

157F Notice of revocation of determination

(1) As soon as practicable after revoking, under section 157E, a determination that the taking of an action is a national interest proposal, the Minister must:

(a) give a copy of the revocation to the designated proponent of the action; and

(b) publish a copy of the revocation together with the Minister's reasons for making the revocation on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the revocation or reasons 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

157G Minister may request further information for making decision

(1) The Minister may, in writing, request any person to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision as to whether to:

(a) make a determination under section 157A that the taking of an action is a national interest proposal; or

(b) revoke, under section 157E, such a determination.

(2) If the Minister has requested information under subsection (1) in respect of a decision for which there is an applicant, a day is not to be counted as a business day for the purposes of subsection 157B(3) (application for determination) 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.

292 Division 3 of Part 11

Repeal the Division, substitute:

Division 3—National interest exemption

157H National interest exemption from provisions of Part 3 or this Chapter

(1) The Minister may, by written instrument, grant an exemption (a ***national interest exemption***) for an action from a provision of Part 3 or this Chapter:

(a) on the Minister's initiative; or

(b) on application under section 157K.

Note: The Minister may request information to make an informed decision under subsection 157V(1).

(2) To avoid doubt, the Minister may do so whether or not the action has been referred to the Minister under a provision of Part 7.

Content of exemption

(3) The exemption must specify:

(a) the action; and

(b) each provision from which the action is exempt; and

(c) the person to whom the exemption applies; and

(d) the period for which the exemption is in force; and

(e) any conditions imposed on the exemption under section 157M.

(4) The Minister must be satisfied that the period specified for the purposes of paragraph (3)(d) is reasonably necessary to address the national interest that is the basis for the exemption.

When exemption comes into force

(5) An exemption comes into force at the start of the period specified for the purposes of paragraph (3)(d) (which must not be earlier than the day the exemption is made).

Not a legislative instrument

(6) An exemption made under subsection (1) is not a legislative instrument.

157J Effect of national interest exemption

While a national interest exemption from a provision of Part 3 or this Chapter is in force for an action, the provision does not apply in relation to the taking of the action if:

(a) the action is taken by the person to whom the exemption applies; and

(b) the person takes the action in accordance with the conditions (if any) of the exemption.

Note 1: For conditions of an exemption, see section 157M.

Note 2: To the extent a defendant seeks to rely on this section as a defence to an offence, the defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

157K Application for national interest exemption

(1) The following may apply to the Minister (the ***Environment Minister***) for a national interest exemption for an action:

(a) the person who proposes to take the action;

(b) the designated proponent of the action;

(c) if a person mentioned in paragraph (a) or (b) agrees in writing—a Minister (other than the Environment Minister), or a Minister of a State or Territory.

(2) The application must:

(a) be in writing; and

(b) specify the provision or provisions from which the person is applying for an exemption for the action.

Timeframe for decision

(3) The Minister must decide whether to grant the exemption under section 157H within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 157V, days between the request and receipt of the information do not count towards this timeframe (subsection 157V(2)).

Notice if Minister decides not to grant exemption

(4) If the Minister decides not to grant the exemption, the Minister must give the applicant written notice of the Minister's decision as soon as practicable after the decision is made.

Note: If the Minister grants the exemption, the Minister must give each person to whom the exemption applies a copy of the exemption (see section 157N).

157L Grounds for grant of national interest exemption

(1) Before granting a national interest exemption for an action from a provision of Part 3 or this Chapter, the Minister must be satisfied that:

(a) the action is, or is likely to be, a controlled action; and

(b) for an exemption from a provision of Part 3—the provision is, or is likely to be, a controlling provision for the action; and

(c) it is in the national interest that the provision not apply to the taking of the action by the person to whom the exemption is to apply.

(2) In deciding whether the Minister is satisfied as required by paragraph (1)(a) or (b), the Minister:

(a) if the action has been referred under a provision of Part 7—must have regard to the information provided in relation to the referral; and

(b) whether or not the action has been referred under a provision of Part 7—may have regard to any other information the Minister considers relevant.

(3) In determining the national interest for the purposes of a provision of this Division, the Minister may consider:

(a) Australia's defence or security; or

(b) a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.

This does not limit the matters the Minister may consider.

Note: The following provisions of this Division require the Minister to consider the national interest:

(a) paragraph (1)(c) of this section;

(b) subsection 157P(3);

(c) paragraph 157S(1)(a).

157M Conditions of national interest exemption

(1) The Minister may impose one or more conditions on a national interest exemption for an action.

(2) The Minister must be satisfied that any condition imposed is necessary or convenient for:

(a) protecting, from the action, any matter protected by a provision of Part 3 that the Minister is satisfied is, or is likely to be, a controlling provision for the action; or

(b) repairing or mitigating damage that has been, will be, or may be caused by the action on a matter protected by a provision of Part 3 that the Minister is satisfied is, or is likely to be, a controlling provision for the action.

157N Notice of national interest exemption

(1) As soon as practicable after granting a national interest exemption under section 157H, the Minister must:

(a) give a copy of the exemption to:

(i) the person to whom the exemption applies; and

(ii) if a different person applied for the exemption under subsection 157K(1)—that person; and

(b) publish a copy of the exemption together with the Minister's reasons for granting the exemption on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the exemption or reasons 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

157P Variation of national interest exemption

(1) The Minister may, by written instrument, vary a national interest exemption:

(a) on the Minister's initiative; or

(b) on application under section 157Q.

Note: The Minister may request information to make an informed decision under subsection 157V(1).

(2) The variation may vary any one or more of the following:

(a) the specified action;

(b) the provisions from which the action is exempt, but not in a way that results in the action being exempt from additional provisions;

(c) the person to whom the exemption applies;

(d) the period for which the exemption is in force;

(e) the conditions of the exemption, including by imposing additional conditions.

Grounds for variation

(3) The Minister must not vary the exemption as mentioned in paragraph (2)(a), (b) or (c) unless the Minister is satisfied that the exemption as varied is in the national interest.

Note: Subsection 157L(3) applies in relation to determining the national interest.

(4) The Minister must not vary the exemption as mentioned in paragraph (2)(d) unless the Minister is satisfied that the variation is reasonably necessary to address the national interest that is the basis for the exemption as varied.

(5) The Minister must not vary the exemption as mentioned in paragraph (2)(e) unless the Minister is satisfied that the conditions as varied are necessary or convenient for a purpose mentioned in subsection 157M(2).

When variation comes into force

(6) A variation comes into force on the day specified in the variation (which must not be earlier than the day the variation is made).

Not a legislative instrument

(7) A variation made under subsection (1) is not a legislative instrument.

157Q Application to vary national interest exemption

(1) The following may apply to the Minister to vary a national interest exemption:

(a) the person to whom the exemption applies (the ***exempt person***);

(b) if a different person applied for the exemption under subsection 157K(1)—that person, with the agreement in writing of the exempt person.

(2) The application must:

(a) be in writing; and

(b) specify the variation applied for.

Note: For the types of variations that may be made, see subsection 157P(2).

Timeframe for decision

(3) The Minister must decide whether to vary the exemption under section 157P within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 157V, days between the request and receipt of the

information do not count towards this timeframe (subsection 157V(2)).

Notice if Minister decides not to vary exemption

(4) If the Minister decides not to vary the exemption, the Minister must give the applicant written notice of the Minister's decision as soon as practicable after the decision is made.

Note: If the Minister varies the exemption, the Minister must give the applicant a copy of the variation (see section 157R).

157R Notice of variation of national interest exemption

(1) As soon as practicable after varying a national interest exemption under section 157P, the Minister must:

(a) give a copy of the variation to:

(i) the person to whom the exemption, as varied, applies; and

(ii) if a different person applied for the variation—that person; and

(b) publish a copy of the variation together with the Minister's reasons for varying the exemption on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the variation or reasons 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

157S Revocation of national interest exemption

(1) The Minister may, by written instrument, revoke a national interest exemption, on the Minister's initiative, if the Minister reasonably believes that:

(a) the exemption is no longer in the national interest; or

(b) a condition of the exemption has been contravened.

Note 1: The Minister may request information to make an informed decision under subsection 157V(1).

Note 2: For paragraph (a), subsection 157L(3) applies in relation to determining the national interest.

Note 3: A national interest exemption is taken to be revoked if the Minister decides to accept the surrender of the exemption under section 157U.

(2) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

(3) A revocation made under subsection (1) is not a legislative instrument.

157T Notice of revocation of national interest exemption

As soon as practicable after revoking a national interest exemption under section 157S, the Minister must:

(a) give a copy of the revocation to:

(i) the person to whom the exemption applied immediately before the revocation; and

(ii) if a different person applied for the exemption under subsection 157K(1)—that person; and

(b) publish a copy of the revocation together with the Minister's reasons for revoking the exemption on the Department's website.

157U Surrender of national interest exemption

(1) A person to whom a national interest exemption applies may, in writing, request the Minister to accept the surrender of the exemption.

(2) The Minister must decide whether or not to accept the surrender within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 157V, days between the request and receipt of the information do not count towards this timeframe (subsection 157V(2)).

(3) In deciding whether or not to accept the surrender, the Minister may have regard to any matter the Minister considers relevant.

Notice of decision

(4) As soon as practicable after the decision is made, the Minister must:

(a) give written notice of the decision to:

(i) the person who made the request; and

(ii) if a different person applied for the exemption under subsection 157K(1)—that person; and

(b) if the Minister decides to accept the surrender—publish the notice on the Department's website.

Effect of surrender

(5) If the Minister decides to accept the surrender, the exemption is taken to be revoked with effect from the day specified in the notice (which must not be earlier than the day the notice is published under paragraph (4)(b)).

157V Minister may request further information for making decision

(1) The Minister may request any of the following persons to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision as to whether to grant, vary, revoke or accept the surrender of a national interest exemption for an action:

(a) the applicant for the decision (if any);

(b) if there is no applicant—the person who proposes to take, is taking or has taken the action, or who is the designated proponent of the action;

(c) in any case—the person to whom the exemption applies or is proposed to apply;

(d) any other person the Minister considers appropriate.

(2) If the Minister has requested information under subsection (1) in respect of a decision for which there is an applicant, a day is not to be counted as a business day for the purposes of subsection 157K(3) (application for exemption), 157Q(3) (application to vary exemption) or 157U(2) (application to surrender exemption) 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.

293 Subsection 158A(1) (after paragraph (c) of the definition of *approval process decision*)

Insert:

(ca) a decision under section 79C in relation to a decision referred to in paragraph (a) or (b) of this definition;

294 Subsection 158A(1) (after paragraph (d) of the definition of *approval process decision*)

Insert:

(da) a determination under paragraph 87A(2)(b) that an assessment completed under a management or authorisation framework accredited for the purposes of a declaration under section 33 or accredited for the purposes of a bilateral agreement is an assessment for the purposes of Part 8;

295 Subsection 158A(1) (after paragraph (g) of the definition of *approval process decision*)

Insert:

(ga) a decision under section 146DJ to vary an approval under section 146B;

296 Paragraph 158A(2)(a)

After "not a controlled action)", insert "or the Minister has made a decision (also the ***primary decision***) under section 146B to give an approval".

297 Subsection 158A(3)

After "in relation to the relevant action", insert "or the approval under section 146B".

298 Paragraphs 158A(4)(a) and (b)

After "in relation to the relevant action" (wherever occurring), insert "or the approval under section 146B".

299 Subdivision A of Division 4 of Part 11

Repeal the Subdivision, substitute:

Subdivision A—Duties in relation to certain authorisations

159 Duties in relation to certain authorisations

(1) The Commonwealth, or a Commonwealth agency, must not do a thing specified in subsection (2), if doing the thing, or a result of doing the thing, would be inconsistent with Australia's international obligations under a designated international agreement.

(2) For the purposes of subsection (1), the things are the following:

(a) entering into a contract, agreement or arrangement, under Australia's foreign aid program, for the implementation of a project that has, will have or is likely to have a significant impact on the environment anywhere in the world;

(b) a prescribed activity.

160 Seeking the Minister's advice

(1) The Minister administering the *Airports Act 1996* (the ***Transport Minister***) may request the advice of the Minister administering this Act in relation to an authorisation relating to the adoption or implementation of a major development plan (within the meaning of that Act), including a variation or renewal of such an authorisation.

(2) If the Minister administering this Act receives a request for advice under subsection (1), the Minister must either:

(a) provide the requested advice; or

(b) provide advice to the Transport Minister that the requested advice is not required.

300 Paragraphs 168(1)(a)(i), (ii) and (iii)

Repeal the subparagraphs, substitute:

(i) Division 5A of Part 8;

301 Paragraph 168(1)(b)

Omit "3A, 4, 5", substitute "5A".

302 Subsection 168(3)

Repeal the subsection.

303 Subsection 169(3)

Repeal the subsection.

304 Section 170A

Omit "on the internet", substitute "on the Department's website".

305 Paragraph 170A(a)

Repeal the paragraph.

306 Paragraphs 170A(da), (e) and (f)

Repeal the paragraphs.

307 Paragraphs 170A(g) and (h)

Omit "5 or".

308 Paragraph 170A(i)

Repeal the paragraph.

309 Paragraph 170A(ia)

Omit "95C, 100", substitute "94".

310 Subsection 170BA(1)

Omit "4, 5 or".

311 After subsection 170BA(2)

Insert:

(2A) To avoid doubt, the greenhouse gas emissions information for the action is not commercial-in-confidence.

312 Subsection 170BA(6)

Omit "4, 5 or".

313 Subsection 170BA(7) (definition of *assessment documentation*)

Omit "4, 5 or".

314 Subsection 170BA(7) (paragraphs (a) and (b) of the definition of *assessment documentation*)

Repeal the paragraphs.

315 At the end of section 170C

Add:

(5) Despite subsection (4), if:

(a) at the time the referral (the ***original referral***) is withdrawn, a determination is in force under section 79E in relation to the action (the ***original action***); and

(b) before the end of the period specified in the determination for the purposes of subsection 79E(5), the person refers another proposal to take an action (the ***new action***) to the Minister under section 68; and

(c) either:

(i) the new action is the same as the original action; or

(ii) a component of the new action is the same as the original action;

then:

(d) any determination in force under section 79E at the time of the withdrawal in relation to the action that is the subject of the original proposal continues in force, and section 79E continues to apply in relation to any such determination; and

(e) any such determination continues to have effect for the purposes of sections 67, 67A and 74AA, and those sections continue to apply, in relation to the action that is the subject of the original proposal.

316 After Division 6 of Part 11

Division 6A—Advanced restoration actions

170CAA Advanced restoration actions

(1) The regulations may make provision for and in relation to advanced restoration actions. ***Advanced restoration actions*** are restoration actions that are:

(a) carried out or intended to be carried out by a person before referring a proposal to take an action under section 68; and

(b) directed at the protection, conservation or restoration of a matter protected by a provision of Part 3.

(2) Without limiting subsection (1), the regulations may make provision for and in relation to the following matters:

(a) registration of advanced restoration actions, including the publishing of any register;

(b) applications for registration of advanced restoration actions, including fees for applications;

(c) decisions by the Minister as to whether to register advanced restoration actions, including the nature of the actions that may be registered and any other requirements;

(d) circumstances (not inconsistent with section 134) in which advanced restoration actions may satisfy conditions that may be attached to approvals under Part 9;

(e) variation, suspension, revocation and transfer of registration of advanced restoration actions;

(f) monitoring of registered advanced restoration actions;

(g) record keeping and reporting in relation to registered advanced restoration actions.

317 Paragraph 170CA(2)(c)

Omit "person responsible for the adoption or implementation of", substitute "responsible person for".

318 Part 12 (heading)

Omit "**bioregional plans**", substitute "**bioregional guidance plans**".

319 Division 2 of Part 12 (heading)

Omit "**Bioregional plans**", substitute "**Bioregional guidance plans**".

320 Section 176

Repeal the section, substitute:

176 Minister may make bioregional guidance plans

(1) The Minister may make a written instrument under this subsection (a ***bioregional guidance plan***).

(2) A bioregional guidance plan must specify the area (the ***region***) to which it relates, which must be in one or more of the following:

(a) a Commonwealth area;

(b) a State;

(c) a Territory.

(3) A bioregional guidance plan may include provisions about one or more of the matters specified in section 176A.

(4) The Minister may, by written instrument, vary a bioregional guidance plan.

(5) The Minister may, on behalf of the Commonwealth, cooperate with one or more of the following in preparing to make or vary, or in implementing, a bioregional guidance plan:

(a) a State or a self-governing Territory;

(b) an agency of a State or of a self-governing Territory;

(c) any other person.

(6) The cooperation may include giving financial or other assistance.

176A Contents of bioregional guidance plans

A bioregional guidance plan for a region may include provisions about one or more of the following:

(a) the components of biodiversity, and their distribution and conservation status in the region;

(b) important economic and social values relevant to the region;

(c) heritage values of places;

(d) threats to matters that are protected by a provision of Part 3;

(e) areas in the region that may be suitable for protection, conservation or restoration measures;

(f) areas in the region that may be suitable for ecologically sustainable development (whether generally or for specified classes of action);

(g) areas in the region that may be unsuitable for ecologically sustainable development (whether generally or for specified classes of action);

(h) guidance on suitable management actions for listed threatened species or listed ecological communities in the region;

(i) objectives relating to biodiversity and other values;

(j) priorities, strategies and actions to achieve the objectives;

(k) mechanisms for community involvement in implementing the bioregional guidance plan;

(l) measures for monitoring and reviewing the bioregional guidance plan;

(m) any other matters the Minister considers relevant.

176B Requirements for making or varying bioregional guidance plans

(1) The Minister must not make or vary a bioregional guidance plan that relates to an area that is wholly or partly within a particular State or Territory unless the State or Territory has agreed to its making or variation.

(2) The Minister must not make or vary a bioregional guidance plan unless the Minister is satisfied that the bioregional guidance plan, or the bioregional guidance plan as varied, is not inconsistent with

any national environmental standards prescribed by the regulations for the purposes of this subsection.

(3) For purposes of making or varying a bioregional guidance plan, the Minister must have regard to any comments received in response to a notice under paragraph 176C(1)(b) in relation to the draft bioregional guidance plan or the proposed variation.

(4) Subsection (1) does not apply to a variation of a minor or machinery nature.

(5) A bioregional guidance plan is not a legislative instrument.

176C Public consultation

(1) Before making or varying a bioregional guidance plan, the Minister must publish on the Department's website:

(a) a draft of the bioregional guidance plan or the proposed variation, as applicable; and

(b) a notice inviting comments on the draft bioregional guidance plan or the proposed variation within the period specified in the notice, which must be a period of at least 30 business days.

(2) The Minister must not make a bioregional guidance plan until after the end of the period specified in the notice.

(3) Subsection (1) does not apply to a variation of a minor or machinery nature.

176D Minister must publish bioregional guidance plans

The Minister must publish each bioregional guidance plan, and each bioregional guidance plan as varied, on the Department's website as soon as practicable after the plan is made or varied, as the case requires.

176E Incorporation of instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, a bioregional guidance plan may apply, adopt or incorporate (with or without modifications) an instrument or other writing:

(a) as in force at a particular time; or
(b) as is in force or existing from time to time.

321 Section 177 (heading)

After "**bioregional**", insert "**guidance**".

322 Section 177

After "bioregional", insert "guidance".

323 After Part 12

Insert:

Part 12A—Bioregional plans

Division 1—General requirements about contents of bioregional plans

Subdivision A—Minister may make bioregional plans

177AA Minister may make bioregional plans

(1) The Minister may, by written instrument, make a plan (a ***bioregional plan***) under this section in accordance with the requirements of this Part.

Note: Division 2 sets out the consultation requirements and decision making processes for making bioregional plans.

(2) A bioregional plan must specify the area (the ***region***) to which it relates, which must be in one or more of the following:
(a) a Commonwealth area;
(b) a State;
(c) a Territory.

(3) A bioregional plan must:
(a) include the objectives of the bioregional plan; and
(b) specify development zones and related matters in accordance with Subdivision B of this Division; and

(c) specify bioregional restoration measures and related matters in accordance with Subdivision C of this Division; and

(d) specify conservation zones and related matters in accordance with Subdivision D of this Division.

(4) A bioregional plan must specify the day on which it commences, which must not be earlier than the day on which it is published on the Department's website under section 177AR.

(5) A bioregional plan must include any other matters prescribed by the regulations.

(6) A bioregional plan for a region may include information about the environment in the region including, but not limited to, information about the biodiversity, heritage or cultural heritage of the region.

(7) A bioregional plan is not a legislative instrument.

177AB Incorporation of instruments

Despite section 46AA of the *Acts Interpretation Act 1901*, information included in a bioregional plan as mentioned in subsection 177AA(6) may apply, adopt or incorporate (with or without modifications) an instrument or other writing:

(a) as in force at a particular time; or

(b) as is in force or existing from time to time.

177AC When a bioregional plan is in force

A bioregional plan is in force throughout the period:

(a) beginning on the day on which it commences under subsection 177AA(4); and

(b) ending on the day on which it is revoked under section 177BG.

Subdivision B—Bioregional plans must specify development zones and actions

177AD Development zones

(1) A bioregional plan for a region must specify one or more areas in the region that are development zones.

(2) The boundary of a development zone must be specified having regard to each of the following:

(a) the world heritage values of any declared World Heritage property;

(b) the national heritage values of any National Heritage place;

(c) the ecological characteristics of any declared Ramsar wetland;

(d) the location and habitat of any of the following:

(i) any listed threatened species;

(ii) any listed threatened ecological communities;

(iii) any listed migratory species;

(e) the environment in the Great Barrier Reef Marine Park;

(f) the environment in any part of a Commonwealth marine area.

177AE Priority actions and impacted protected matters for development zones

(1) A bioregional plan must specify, for each development zone specified in the bioregional plan, one or more classes of actions (a ***priority class of actions***) that can be taken in the development zone. Each action in such a class is a ***priority action*** in the class.

Note: It is an offence not to comply with a condition attached to taking a priority action in a development zone, subject to specified exceptions: see section 177BZ.

(2) Before a priority class of actions is specified, the Minister must be satisfied that, taken as a whole, the actions in the class have, will have or are likely to have a significant impact on one or more matters protected by a provision of Part 3. Each such matter is an ***impacted protected matter*** for the priority actions in the class.

(3) The bioregional plan must specify, for each priority class of actions specified under subsection (1), the impacted protected matters for the priority actions in the class.

(4) Priority actions must not include any action of a kind mentioned in section 140A.

177AF Bioregional plan registration charge for priority actions

A bioregional plan may specify the persons taking priority actions in a development zone specified in the plan who are exempt from paying a bioregional plan registration charge in accordance with the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*.

177AG Conditions about taking priority actions

(1) A bioregional plan may attach conditions to the taking by a person of a priority action included in a priority class of actions in a development zone specified in the plan.

Note: Section 177BZ provides for offences and civil penalties for failure to comply with conditions.

(2) Before a condition is attached to the taking by a person of a priority action, the Minister must be satisfied that the condition relates to an impacted protected matter for priority actions in the priority class of actions, in either or both of the following ways:

(a) the condition is necessary or convenient to protect the impacted protected matter (whether or not the protection is protection from priority actions in the class);

(b) the condition is necessary or convenient to mitigate or repair damage to the impacted protected matter (whether or not the damage has been, will be or may be caused by the priority actions in the class).

(3) The bioregional plan must specify, for each condition, the impacted protected matters to which the condition relates.

(4) A condition that relates to an impacted protected matter for a priority action does not apply to the taking of the priority action by a person for whom the priority action is a designated priority action for the impacted protected matter.

(5) If an impacted protected matter to which a condition relates ceases to be a matter protected by a provision of Part 3, the condition ceases to have effect to the extent that the condition relates to the impacted protected matter.

Subdivision C—Bioregional plans must specify bioregional restoration measures

177AH Bioregional restoration measures

(1) A bioregional plan for a region must specify measures for the region (***bioregional restoration measures***) that the Minister is satisfied are necessary or convenient to mitigate, repair or compensate for likely damage to one or more impacted protected matters that has been, will be or may be caused by priority actions.

(2) A bioregional plan for a region may specify measures for the region (also ***bioregional restoration measures***) that the Minister is satisfied are appropriate to protect or conserve one or more matters protected by a provision of Part 3 (whether or not the protection or conservation relates to priority actions).

(3) A bioregional restoration measure may include (without limitation) a measure providing for the payment of a specified amount (a ***bioregional plan restoration contribution***).

(4) For each bioregional restoration measure, the bioregional plan must specify one or more of the following persons to be responsible for ensuring delivery of the measure:

(a) the Commonwealth;

(b) a Commonwealth agency;

(c) if a State has consented to be specified—the State;

(d) if a Territory has consented to be specified—the Territory;

(e) any other person who has consented to be specified.

(5) To avoid doubt, a bioregional plan may specify that the Restoration Contributions Holder is responsible for delivering a bioregional restoration measure on behalf of the Commonwealth.

177AI Conditions about delivery of bioregional restoration measures

(1) A bioregional plan for a region may include the following conditions relating to bioregional restoration measures:

(a) conditions requiring the delivery of a bioregional restoration measure by a person specified in the bioregional plan to be responsible for the delivery;

(b) conditions relating to the delivery of such a bioregional restoration measure by the person (including, but not limited to, how it is to be delivered).

Note: Division 7 provides for offences and civil penalties for failure to comply with conditions.

(2) However, a condition must not require the delivery of a bioregional restoration measure by a person other than the Commonwealth or a Commonwealth agency unless the person has consented to the condition.

(3) If an impacted protected matter to which a condition relates ceases to be a matter protected by a provision of Part 3, the condition ceases to have effect to the extent that the condition relates to the impacted protected matter.

Subdivision D—Bioregional plans must specify conservation zones

177AJ Conservation zones

(1) A bioregional plan for a region must specify one or more areas in the region that are conservation zones.

(2) The boundary of a conservation zone must be specified having regard to:

(a) the following:

(i) a declared World Heritage property;

(ii) a National Heritage place;

(iii) a declared Ramsar wetland;

(iv) a Commonwealth marine area;

(v) the Great Barrier Reef Marine Park; and

(b) the location and habitat of any of the following:
(i) any listed threatened species;
(ii) any listed threatened ecological communities;
(iii) any listed migratory species.

177AK Restricted actions and restricted protected matters

(1) A bioregional plan must specify, for each conservation zone in the bioregional plan, one or more classes of actions that are prohibited in the conservation zone. Each action in such a class is a ***restricted action*** in the class.

(2) Before a class of actions is specified, the Minister must be satisfied that, taken as a whole, the actions in the class have, will have, or are likely to have, a significant impact on one or more matters protected by a provision of Part 3. Each such matter is a ***restricted protected matter*** for the restricted actions in the class.

(3) The bioregional plan must specify, for each class of actions, the restricted protected matters for the restricted actions in the class.

Division 2—Process for making a bioregional plan

177AL Minister must notify and seek comments on draft of a bioregional plan before it is made

(1) Before the Minister makes a bioregional plan, the Minister must publish on the Department's website:
(a) a draft of the bioregional plan; and
(b) a notice inviting comments on the draft bioregional plan within the period specified in the notice, which must be a period of at least 30 business days.

(2) Before the Minister makes a bioregional plan that specifies priority actions that involve unconventional gas development or large coal mining development, the Minister must, in addition to complying with subsection (1), seek the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development in relation to the bioregional plan.

(3) Before the Minister makes a bioregional plan, the Minister must seek the advice of the CEO.

(4) Before the Minister makes a bioregional plan, the Minister may obtain advice from the following:

(a) the Australian Heritage Council;

(b) a committee established under Part 19.

(5) The Minister must not make a bioregional plan until after the latest of the following:

(a) the end of the period specified in the notice given under paragraph (1)(b);

(b) if the Minister seeks the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development under subsection (2)—the day on which that advice is received;

(c) the day on which the advice of the CEO is received.

177AM Matters to which the Minister must have regard in deciding whether to make a bioregional plan

For the purposes of deciding whether or not to make a bioregional plan, the Minister must have regard to the following:

(a) the principles of ecologically sustainable development;

(b) social and economic matters that the Minister considers relevant;

(c) any bioregional guidance plans that the Minister considers relevant;

(d) comments received in response to a notice on the draft bioregional plan that the Minister considers relevant;

(e) any advice obtained from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development;

(f) any advice obtained from the CEO;

(g) any advice obtained from the following:

(i) the Australian Heritage Council;

(ii) a committee established under Part 19;

(h) any approved conservation advice that the Minister considers relevant;

(i) any recovery plan that the Minister considers relevant;

(j) any matters prescribed by the regulations.

Note: These matters are also relevant to variations of bioregional plans (see section 177AX).

177AN Matters of which the Minister must be satisfied before making a bioregional plan—agreement of persons

The Minister must not make a bioregional plan for a region unless the Minister is satisfied:

(a) that the bioregional plan has been agreed to by each relevant State and relevant Territory for the bioregional plan; and

(b) if the bioregional plan includes one or more conditions relating to the delivery of bioregional restoration measures by a person other than the Commonwealth or a Commonwealth agency—that the person has consented to the imposition of the conditions.

177AO Matters of which the Minister must be satisfied before making a bioregional plan—protection statements and recovery plans

(1) If the Minister considers that there is a protection statement that is relevant to a bioregional plan that the Minister proposes to make, the Minister must not make the bioregional plan unless the Minister is satisfied that the bioregional plan is not inconsistent with the protection statement.

(2) If the Minister does not consider that there is a protection statement that is relevant to a bioregional plan that the Minister proposes to make, but considers that there is a recovery plan that is relevant to the bioregional plan, the Minister must not make the bioregional plan unless the Minister is satisfied that the bioregional plan is not inconsistent with the recovery plan.

(3) If the Minister considers that there is a protection statement and a recovery plan that are relevant to a bioregional plan that the Minister proposes to make, the Minister must not make the bioregional plan unless the Minister is satisfied that the bioregional plan is not inconsistent with the protection statement, but is not

required to be satisfied that the bioregional plan is not inconsistent with the recovery plan.

177AP Matters of which the Minister must be satisfied before making a bioregional plan—outcomes of the bioregional plan

The Minister must not make a bioregional plan for a region unless the Minister is satisfied of the following:

(a) that making the bioregional plan will promote the objects of this Act;

(b) that threats to matters protected by a provision of Part 3 in the region have been identified and addressed as appropriate, being threats arising other than from priority actions;

(c) that the bioregional plan includes objectives directed at promoting the protection, conservation or restoration of the following (to the extent relevant to the bioregional plan):

(i) listed threatened species;

(ii) listed threatened ecological communities;

(iii) listed migratory species;

(iv) the world heritage values of a declared World Heritage property;

(v) the National Heritage values of a National Heritage place;

(vi) the ecological character of a declared Ramsar wetland;

(vii) the environment, in respect of the impact of a radiological exposure action;

(viii) the environment in a Commonwealth marine area;

(ix) the environment in the Great Barrier Reef Marine Park;

(x) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development;

(xi) the environment on Commonwealth land;

(d) that the bioregional plan will not have, or be likely to have, an unacceptable impact on a matter protected by a provision of Part 3;

(e) that the bioregional plan will, or will be likely to, result in the residual significant impacts of each priority class of actions

(taken as a whole) on impacted protected matters being compensated to a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires);

(f) that the bioregional plan includes consideration of:

(i) the expected impacts of climate change; and

(ii) appropriate adaptation and resilience measures to protect matters protected by a provision of Part 3 in response to those impacts.

Note: See the definition of ***unacceptable impacts*** in section 527F.

177AQ Matters of which the Minister must be satisfied before making a bioregional plan—consistency with international conventions and other instruments

The Minister must not make a bioregional plan unless the Minister is satisfied that making the bioregional plan would not be inconsistent with any of the following:

(a) Australia's obligations under a designated international agreement;

(b) any threat abatement plan the Minister considers relevant;

(c) a designated environmental instrument;

(d) any national environmental standards prescribed by the regulations for the purposes of this paragraph.

177AR Minister must publish bioregional plan

The Minister must publish each bioregional plan, and the reasons for the decision to make the bioregional plan, on the Department's website as soon as practicable after the plan is made.

Division 3—Variation of bioregional plans

Subdivision A—Process for varying bioregional plans

177AS Minister may vary a bioregional plan in certain circumstances

(1) The Minister may vary a bioregional plan for a region if the Minister is satisfied that one or more of the following applies:

(a) a review of the bioregional plan has recommended the bioregional plan be varied;

(b) the objectives of the bioregional plan are not being met;

(c) both:

(i) an ecological event has occurred that has had, will have, or is likely to have, a significant impact on a matter protected by a provision of Part 3; and

(ii) varying the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(d) there has been a change in development pressures in the region and varying the bioregional plan is appropriate in the circumstances;

(e) both:

(i) significant new information about a threat to a matter protected by a provision of Part 3 is available; and

(ii) having regard to the new information, varying the bioregional plan is reasonably necessary to protect, or lessen the threat to, a matter protected by a provision of Part 3;

(f) one or more priority actions taken has had, will have, or is likely to have, an unacceptable impact on a matter protected by a provision of Part 3;

Note: See the definition of ***unacceptable impacts*** in section 527F.

(g) the bioregional plan has not resulted, or is not likely to result, in the residual significant impacts of each priority class of actions (taken as a whole) on one or more impacted protected matters being compensated to a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires);

(h) both:

(i) there has been a change in a matter protected by a provision of Part 3, or in the status of a matter protected by a provision of Part 3, or in the importance of the population of a matter protected by a provision of Part 3; and

(ii) varying the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(i) both:

(i) an action taken within or outside the region has had, or is likely to have, a significant impact on a matter protected by a provision of Part 3 in the region; and

(ii) varying the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(j) a condition of the bioregional plan relating to the delivery of a bioregional restoration measure has been, or is likely to be, contravened;

(k) a bioregional restoration measure is no longer appropriate to achieve its purpose;

(l) both:

(i) an existing condition of the bioregional plan in relation to the taking of a priority action by a person is no longer necessary or convenient to protect, or to mitigate or repair damage to, an impacted protected matter to which the existing condition relates; and

(ii) the variation of the bioregional plan is to vary or revoke the existing condition;

(m) the variation has been agreed to by:

(i) each relevant State and relevant Territory for the bioregional plan; or

(ii) if the region is wholly located in one or more Commonwealth areas—the Commonwealth;

(n) the variation is to a part of the bioregional plan that does not have regulatory effect;

(o) the variation is necessary to ensure that the bioregional plan is not inconsistent with a national environmental standard prescribed by the regulations for the purposes of paragraph 177AQ(d);

(p) a ground prescribed by the regulations exists.

(2) The Minister may vary a bioregional plan for a region during a period when the bioregional plan is suspended under Division 4.

(3) Without limiting paragraph (1)(j), a reference to a change in a matter protected by a provision of Part 3 includes the occurrence of

a listing event (within the meaning of subsection 158A(1)) in relation to the matter.

177AT Scope of variations of a bioregional plan

(1) Without limiting this Division, a variation of a bioregional plan may relate to one or more of the following:

(a) development zones;

(b) conservation zones;

(c) priority actions;

(d) impacted protected matters;

(e) restricted actions;

(f) restricted protected matters;

(g) bioregional restoration measures;

(h) conditions of the bioregional plan.

(2) A variation of a bioregional plan may:

(a) be minor or machinery in nature; or

(b) relate to a provision of the bioregional plan that does not have regulatory effect.

177AU Requirements for variation to specify new impacted protected matters

The Minister must not vary a bioregional plan to specify a new impacted protected matter for an existing priority class of actions, without varying the existing priority class of actions, unless the Minister is satisfied that, taken as a whole, the actions in the class have, will have, or are likely to have, a significant impact on the new impacted protected matter.

Note: If the priority class of actions is also being varied in such a way that impacted protected matters are varied because of the application of section 177AE, the significant impact tests in those provisions will apply because of the operation of paragraph 177AX(1)(f).

177AV Requirements for variation to specify new restricted protected matters

The Minister must not vary a bioregional plan to specify a new restricted protected matter for an existing class of actions unless

the Minister is satisfied that, taken as a whole, the actions in the class have, will have, or are likely to have, a significant impact on the new restricted protected matters.

Note: If the class of actions is also being varied in such a way that restricted protected matters are varied because of the application of section 177AE, the significant impact tests in those provisions will apply because of the operation of paragraph 177AX(1)(f).

177AW Consent requirements for variation of conditions of a bioregional plan

The Minister must not vary a bioregional plan in such a way that:

(a) an existing condition requiring, or otherwise relating to, the delivery of a bioregional restoration measure by a person (other than the Commonwealth or a Commonwealth agency) is varied; or

(b) a new condition requiring or otherwise relating to the delivery of a bioregional restoration measure by a person (other than the Commonwealth or a Commonwealth agency) is included;

unless the person has consented to the variation.

177AX Other matters relating to variations of a bioregional plan

(1) In addition to the matters specified in this Division, for the purposes of deciding whether or not to vary a bioregional plan, the Minister must:

(a) have regard to the matters specified in section 177AM (other than paragraphs 177AM(d) to (g)) in relation to the bioregional plan as proposed to be varied; and

(b) have regard to any advice obtained from the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development under subsection 177AY(4); and

(c) have regard to any advice obtained from the CEO; and

(d) have regard to any advice obtained from the following:

(i) the Australian Heritage Council;

(ii) a committee established under Part 19; and

(e) have regard to any comments received in response to a notice on the draft variation under section 177AY that the Minister considers relevant; and

(f) ensure that the requirements in Division 1 and sections 177AN (agreement of persons), 177AP (outcomes) and 177AQ (consistency with instruments etc.) in relation to the bioregional plan as proposed to be varied are satisfied in relation to the bioregional plan as varied.

Note: The requirement for the Minister to ensure the matters in Division 1 are satisfied means, for example, that the Minister must ensure that:

(a) any new or varied class of priority actions that can be taken in a development zone is specified in accordance with section 177AE, including that the bioregional plan specifies the impacted protected matters for the new or varied class; and

(b) any new or varied development zone is specified in accordance with section 177AD and that the bioregional plan specifies classes of priority actions that can be taken in the zone and the impacted protected matters for each class in accordance with section 177AE; and

(c) any new or varied condition in relation to the taking of a priority action by a person is attached in accordance with section 177AG, including that the bioregional plan specifies the condition and the impacted protected matters that the condition relates to.

(2) Subsection (1) does not apply to a variation of a bioregional plan to the extent that the variation:

(a) is minor or machinery in nature; or

(b) relates to a provision of the bioregional plan that does not have regulatory effect.

177AY Minister must publish, notify and seek comments on a proposed variation of a bioregional plan

(1) Before the Minister varies a bioregional plan for a region under section 177AS, the Minister must give a notice to the following:

(a) each relevant State and relevant Territory for the bioregional plan;

(b) each person who must comply with a condition of the bioregional plan in relation to the delivery of a bioregional restoration measure;

(c) each registered person for the bioregional plan.

(2) A notice under subsection (1) must:

(a) state that the Minister proposes to vary the bioregional plan; and

(b) include a draft of the proposed variation; and

(c) specify the grounds on which the Minister proposes to vary the bioregional plan; and

(d) invite comments on the draft variation within the period specified in the notice, which must be a period of at least 30 business days.

(3) The Minister must:

(a) publish a copy of a notice under subsection (1) on the Department's website as soon as practicable after giving it; and

(b) invite public comments on the draft variation within the period specified in the notice, which must be a period of at least 30 business days.

(4) Before the Minister varies a bioregional plan to specify priority actions that involve unconventional gas development or large coal mining development, the Minister must, in addition to complying with subsections (1) and (3), seek the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development in relation to the proposed variation of the bioregional plan.

(5) Before the Minister varies a bioregional plan, the Minister must seek the advice of the CEO.

(6) The Minister must not vary a bioregional plan until after the latest of the following:

(a) the end of the period specified in the notice given under paragraph (2)(d);

(b) the end of the period specified in the notice given under paragraph (3)(b);

(c) if the Minister seeks the advice of the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development under subsection (4)—the day on which that advice is received;

(d) the day on which the advice of the CEO is received.

(7) The Minister is not required to publish, notify or invite comments under this section on a draft of a proposed variation:

(a) if the Minister reasonably believes that the variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment; or

(b) to the extent that the variation is minor or machinery in nature, or relates to a provision of the bioregional plan that does not have regulatory effect.

(8) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to a decision under section 177AS to vary a bioregional plan.

177AZ Variation of a bioregional plan must be in writing, etc.

(1) A variation of a bioregional plan must be in writing.

(2) A variation of a bioregional plan must specify the day on which the variation commences, which must not be earlier than the day on which it is published on the Department's website under section 177BA.

(3) A variation of a bioregional plan is not a legislative instrument.

177BA Minister must publish, etc. bioregional plan as varied

(1) The Minister must publish each varied bioregional plan for a region on the Department's website as soon as practicable after varying the plan.

(2) The Minister must also give a copy of the varied bioregional plan to the following:

(a) each relevant State and relevant Territory for the bioregional plan;

(b) each person who must comply with a condition of the bioregional plan in relation to the delivery of a bioregional restoration measure;

(c) each registered person for the bioregional plan.

Subdivision B—Application of variations of bioregional plans to existing actions

177BB Variation of conditions—persons who have already registered priority actions

(1) If the Minister varies a bioregional plan by attaching a new condition, or varying an existing condition, in relation to the taking of a priority action by a person, the new or varied condition does not apply to the taking of the priority action by the person if, immediately before the variation, the priority action was a registered priority action in relation to the person.

(2) If a new or varied condition does not apply to the taking of a priority action by a person because of subsection (1), the Minister may, if the Minister considers it appropriate to do so, determine that the condition applies despite that subsection.

(3) If the Minister makes a determination under subsection (2), the Minister must give the person written notice of the determination and the reasons for it.

(4) The notice must specify the day the condition starts to apply to the taking of the priority action by the person (which must not be earlier than the day after the day the notice is given to the person).

177BC Variation of development zones—persons who have already commenced actions

(1) This section applies to the taking of an action by a person if:

(a) the Minister varies a bioregional plan by specifying a new development zone or varying an existing development zone; and

(b) the new or varied development zone covers an area (the ***new area***) that was not a development zone immediately before the variation; and

(c) before the variation:

(i) the person commenced taking the action in the new area; or

(ii) the action was referred to the Minister under section 68, 69 or 71; and

(d) immediately after the variation, the action is a priority action in relation to the new or varied development zone.

(2) On and after the variation, a condition of the bioregional plan that would, but for this subsection, apply to the taking of the action by the person in the new area, is taken not to apply to the taking of the action by the person in the new area.

Note: The person is also not required to register the action (see subsection 177CB(4)).

177BD Variation of development zones—persons who have already registered priority actions

(1) This section applies if:

(a) the Minister varies a bioregional plan by removing or varying an existing development zone; and

(b) as a result of the variation, an area (the ***old area***) that was covered by the existing development zone is no longer a development zone; and

(c) immediately before the variation, a priority action in relation to the existing development zone was a registered priority action in relation to a person.

(2) The bioregional plan as in force immediately before the variation (including any conditions of the plan) continues to apply to the person in relation to the taking of the action on and after the variation as if the variation had not happened.

177BE Variation of priority actions—persons who have already commenced actions

(1) This section applies to the taking of an action by a person if:

(a) the Minister varies a bioregional plan by specifying a new priority class of actions, or varying an existing priority class of actions, that can be taken in a development zone; and

(b) before the variation:

(i) the person commenced taking the action; or

(ii) the action was referred to the Minister under section 68, 69 or 71; and

(c) immediately before the variation, the action was not a priority action; and

(d) immediately after the variation, the action becomes a priority action because it is included in the new or varied class.

(2) On and after the variation, a condition of the bioregional plan that would, but for this subsection, apply to the taking of the action by the person, is taken not to apply to the taking of the action by the person.

Note: The person is also not required to register the action (see subsection 177CB(4)).

177BF Variation of actions—persons who have already registered actions

(1) This section applies if:

(a) the Minister varies a bioregional plan by removing or varying an existing priority class of actions that can be taken in a development zone; and

(b) as a result of the variation, an action that was included in the existing class is no longer included in any priority class of actions that can be taken in the development zone; and

(c) before the variation, a priority action in relation to the development zone was a registered priority action in relation to a person.

(2) The bioregional plan as in force immediately before the variation (including any conditions of the plan) continues to apply to the taking of the action by the person on and after the variation as if the variation had not happened.

Division 4—Suspension and revocation of bioregional plans

Subdivision A—Process for suspending or revoking bioregional plans

177BG Minister may suspend or revoke a bioregional plan

Power to suspend or revoke

(1) The Minister may suspend or revoke a bioregional plan for a region if the Minister is satisfied that one or more of the following apply:

(a) a review of the bioregional plan has recommended the bioregional plan be suspended or revoked;

(b) the objectives of the bioregional plan are not being met;

(c) there has been a change in development pressures in the region and suspending or revoking the bioregional plan is appropriate in the circumstances;

(d) both:

(i) an ecological event has occurred that has had, will have, or is likely to have, a significant impact on a matter protected by a provision of Part 3; and

(ii) suspending or revoking the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(e) both:

(i) significant new information about a threat to a matter protected by a provision of Part 3 is available; and

(ii) having regard to the new information, suspending or revoking the bioregional plan is reasonably necessary to protect, or lessen the threat to, a matter protected by a provision of Part 3;

(f) one or more priority actions taken has had, will have, or are likely to have, an unacceptable impact on a matter protected by a provision of Part 3;

Note: See the definition of ***unacceptable impacts*** in section 527F.

(g) the bioregional plan has not resulted, or is not likely to result, in the residual significant impacts of each priority class of

actions (taken as a whole) on one or more impacted protected matters being compensated to a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires);

(h) both:

(i) there has been a change in a matter protected by a provision of Part 3, in the status of a matter protected by a provision of Part 3, or in the importance of the population of a matter protected by a provision of Part 3; and

(ii) suspending or revoking the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(i) both:

(i) an action taken within or outside the region has had, or is likely to have, a significant impact on a matter protected by a provision of Part 3 in the region; and

(ii) suspending or revoking the bioregional plan is reasonably necessary to protect, or lessen any threats to, a matter protected by a provision of Part 3;

(j) a condition of the bioregional plan relating to the delivery of bioregional restoration measures has been, or is likely to be, contravened;

(k) the suspension or revocation has been agreed to by:

(i) each relevant State and relevant Territory for the bioregional plan; or

(ii) if the region is wholly located in one or more Commonwealth areas—the Commonwealth;

(l) a ground prescribed by the regulations exists.

Effect of suspension of a bioregional plan—no new registrations

(2) The effect of a suspension of a bioregional plan is that the Minister must not register a priority action under section 177BN, or transfer a registration under section 177BO, in a development zone specified in the bioregional plan during the period of suspension.

(3) The suspension of a bioregional plan does not otherwise affect the operation of the bioregional plan, which remains in effect for all other purposes.

Meaning of change in a matter

(4) Without limiting subparagraph (1)(h)(i), a reference to a change in a matter protected by a provision of Part 3 includes, but is not limited to, a reference to the occurrence of a listing event (within the meaning of subsection 158A(1)) in relation to the matter.

177BH Minister must notify and seek comments on proposed suspension or revocation of a bioregional plan

(1) Before the Minister suspends or revokes a bioregional plan for a region under section 177BG, the Minister must give a notice to the following:

(a) each relevant State and relevant Territory for the bioregional plan;

(b) each person who must comply with a condition included in the bioregional plan in relation to the delivery of a bioregional restoration measure by the person;

(c) each registered person for the bioregional plan.

(2) A notice under subsection (1) must:

(a) state that the Minister proposes to suspend or revoke the bioregional plan; and

(b) specify the grounds on which the Minister proposes to suspend or revoke the bioregional plan; and

(c) invite comments on the proposed suspension or revocation within the period specified in the notice, which must be a period of at least 30 business days.

(3) The Minister must:

(a) publish a copy of a notice under subsection (1) on the Department's website as soon as practicable after giving it; and

(b) invite public comments on the proposed suspension or revocation within the period specified in the notice, which must be a period of at least 30 business days.

(4) The Minister must not suspend or revoke a bioregional plan under section 177BG until after the end of the period specified in paragraph (2)(c) or (3)(b) of this section, whichever is later.

(5) Before suspending or revoking a bioregional plan, the Minister must seek the advice of the CEO.

(6) Before suspending or revoking a bioregional plan, the Minister may obtain advice from the following:

(a) the Australian Heritage Council;

(b) a committee established under Part 19.

(7) Despite subsections (1) to (4), the Minister is not required to publish, notify or invite comments on a draft of a proposed suspension or revocation of a bioregional plan if the Minister reasonably believes that the suspension or revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

(8) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to a decision under section 177BG to suspend or revoke a bioregional plan.

177BI Minister must publish and notify suspension of a bioregional plan

(1) If the Minister suspends a bioregional plan for a region under section 177BG, the Minister must give written notice of the suspension (a ***suspension notice***) to the following as soon as practicable after the suspension:

(a) each relevant State and relevant Territory for the bioregional plan;

(b) each person who must comply with a condition of the bioregional plan in relation to the delivery of a bioregional restoration measure;

(c) each registered person for the bioregional plan.

(2) The suspension notice must specify:

(a) the grounds for the suspension; and

(b) the day the suspension takes effect (which must not be earlier than the day after the day the last notice is given under subsection (1)); and

(c) either:

(i) the things that must be done for the suspension to end (see subsection (3)); or

(ii) a fixed period for the suspension.

(3) For the purposes of subparagraph (2)(c)(i), the things may be one or more specified things to be done by the Commonwealth, a relevant State or a relevant Territory for the bioregional plan.

(4) The Minister must publish a copy of a notice under subsection (1) on the Department's website as soon as practicable after giving it.

177BJ Period of suspension

Suspension notices specifying fixed period

(1) If a suspension notice specifies a fixed period for the suspension, the suspension ceases to have effect immediately after the end of the fixed period.

Suspension notices requiring things to be done

(2) If a suspension notice specifies things that a person must do for the suspension to end:

(a) the Minister must give the person a written notice as soon as practicable after the Minister is satisfied the person has done those things; and

(b) the suspension ceases to have effect at the start of the day the Minister gives the person the notice under paragraph (a).

(3) As soon as practicable after giving a notice under paragraph (2)(a), the Minister must:

(a) give each person mentioned in subsection 177BI(1) a copy of the notice; and

(b) publish a copy of the notice on the Department's website.

177BK Minister must publish and notify revocation of a bioregional plan

(1) If the Minister revokes a bioregional plan under section 177BG, the Minister must give written notice of the revocation to the following as soon as practicable after the revocation:

(a) each relevant State and relevant Territory for the bioregional plan;
(b) each person who must comply with a condition of the bioregional plan in relation to the delivery of a bioregional restoration measure;
(c) each registered person for the bioregional plan.

(2) The notice must specify:
(a) the grounds for the revocation; and
(b) the day the revocation takes effect (which must not be earlier than the day after the day the last notice is given under subsection (1)).

(3) The Minister must publish a copy of a notice under subsection (1) on the Department's website as soon as practicable after giving it.

Subdivision B—Application of suspended or revoked bioregional plans to existing actions

177BL Application of bioregional plan to actions commenced during suspension period

(1) This section applies to an action taken by a person if, during the period starting when a bioregional plan is suspended and ending when the suspension ceases:
(a) the person commences taking the action in a development zone specified in the bioregional plan; or
(b) the action is referred to the Minister under section 68, 69 or 71.

(2) If, as a result of the suspension ceasing, the action would, but for this subsection, become a priority action in relation to a development zone specified in the bioregional plan, the action is taken not to be a priority action in relation to the development zone, to the extent that the action is taken by the person.

177BM Continuation of a revoked bioregional plan in relation to certain matters

(1) This section applies if:

(a) before the revocation of a bioregional plan:

(i) a person commences an action that is a priority action in relation to a development zone; and

(ii) the action is still a priority action in relation to the development zone under the bioregional plan as in force immediately before its revocation; or

(b) immediately before the revocation of a bioregional plan, a priority action in relation to a development zone is registered in relation to a person.

(2) On and after the revocation:

(a) the bioregional plan as in force immediately before the revocation; and

(b) any conditions included in the bioregional plan under section 177AG; and

(c) section 37;

continue to apply to the taking of the action by the person as if the revocation had not happened (despite section 177AC) but, to avoid doubt, cannot be varied after that revocation.

(3) On and after the revocation, any conditions included in the bioregional plan under section 177AI continue to apply as if the revocation had not happened (despite section 177AC) but, to avoid doubt, cannot be varied after that revocation.

Division 5—Registering priority actions

177BN Registering priority actions

(1) A person proposing to take a priority action in a development zone specified in a bioregional plan may request that the Minister register the priority action in relation to the person.

Note: A person who takes a priority action that is not registered may commit an offence (see section 177CB).

(2) A request under subsection (1) must:

(a) be in writing; and

(b) be in the approved form (if any); and

(c) be accompanied by the greenhouse gas emissions information for the priority action; and

(d) be accompanied by the following:

(i) the information or documents (if any) that the approved form specifies are required;

(ii) the information or documents (if any) prescribed by the regulations.

Note: For ***greenhouse gas emissions information***, see subsection 84A(2).

(3) If a person makes a request under subsection (1) for the Minister to register a priority action, the Minister must, as soon as practicable after receiving the request:

(a) decide to register the priority action in relation to the person; or

(b) refuse to register the priority action in relation to the person.

Note 1: The Minister must not decide to register a priority action during a period when the bioregional plan is suspended (see subsection 177BG(2)).

Note 2: The Minister is not required to make a decision until further information requested has been provided (see subsection 177BR(2)).

(4) The Minister must not decide to register a priority action in relation to a person unless the Minister is satisfied:

(a) that the priority action would not be a designated priority action for the person for any impacted protected matter; and

(b) that all of the impacted protected matters for the priority action have not ceased to be protected matters; and

(c) that the person is capable of complying with the conditions of the bioregional plan that would apply to the taking of the priority action by the person; and

(d) that any other matters prescribed by the regulations are satisfied.

(5) In deciding whether or not to register a priority action specified in a development zone in a bioregional plan, the Minister may consider whether the person is a suitable person to take the priority action in the development zone, 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.

(6) As soon as practicable after making a decision under subsection (3), the Minister must give the person:

(a) written notice of the decision; and

(b) if the decision is to register the priority action—the day on which the registration will cease to have effect under section 177BQ (cessation of registration if action has not substantially commenced); and

(c) if the decision is to refuse to register the priority action—the reasons for the decision.

(7) If the Minister decides to register the priority action, the priority action:

(a) becomes registered in relation to the person on the day the Minister makes the decision; and

(b) remains registered in relation to the person until any of the following events occurs:

(i) the day on which a transfer of the registration takes effect under subsection 177BO(7);

(ii) the day on which a revocation of the registration takes effect under subsection 177BP(3);

(iii) the day on which the registration ceases to have effect under section 177BQ (cessation of registration if priority action not commenced within 5 years).

(8) As soon as practicable after making the decision, the Minister must publish, on the Department's website:

(a) a copy of the decision; and

(b) if the decision is to register the priority action—the greenhouse gas emissions information for the priority action.

177BO Transfer of registration

(1) A person (the ***transferor***) in relation to whom a priority action is registered may request that the Minister transfer the registration of the priority action to another person (the ***transferee***).

(2) The request must:

(a) be in writing; and
(b) be in the approved form (if any); and
(c) be accompanied by the following:
(i) the information or documents (if any) that the approved form specifies are required;
(ii) the information or documents (if any) prescribed by the regulations;
(iii) a copy of the written agreement of the transferee to the transfer.

(3) The Minister must, as soon as practicable after receiving the request:
(a) consent to the transfer of the registration to the transferee; or
(b) refuse to consent to the transfer of the registration.

(4) The Minister must not consent to the transfer unless the Minister is satisfied of the matters specified in paragraphs 177BN(4) (a), (b), (c) and (d) in relation to the transferee.

(5) In considering whether to consent to the transfer, the Minister may consider whether the transferee is a suitable person to take the priority action in the development zone specified in the bioregional plan, having regard to the matters specified in paragraphs 177BN(5)(a), (b) and (c) in relation to the transferee.

(6) As soon as practicable after making a decision under subsection (3), the Minister must give the transferor and the transferee:
(a) written notice of the decision; and
(b) if the decision is to refuse to consent to the transfer—the reasons for the decision.

(7) If the Minister decides to consent to the transfer, the notice under paragraph (6)(a) must specify the day on which the transfer takes effect, which must not be earlier than the day on which the notice is given.

(8) If the Minister decides to consent to the transfer then, on and after the day specified by the Minister in accordance with subsection (7) as the day on which the transfer takes effect:

(a) the priority action becomes registered in relation to the transferee; and

(b) the priority action ceases to be registered in relation to the transferor; and

(c) any conditions attached to the taking of the priority action that applied to the transferor immediately before that day cease to apply to the transferor on that day and apply to the transferee on and after that day.

(9) If the Minister decides to consent to the transfer, the priority action remains registered in relation to the transferee until either of the following events occurs:

(a) the day on which a transfer of the registration takes effect under subsection (7);

(b) the day on which the registration ceases to have effect under section 177BQ (cessation of registration if priority action not commenced within 5 years).

(10) The Minister must publish a copy of the decision on the Department's website as soon as reasonably practicable after making the decision.

177BP Revocation of registration

(1) The Minister may, by written instrument, revoke the registration of a priority action in relation to a person if the Minister is satisfied that:

(a) the action is a priority action for an impacted protected matter; and

(b) the person has failed to comply with a condition that relates to the impacted protected matter that is attached by the bioregional plan to the taking of the priority action; and

(c) the condition applies to the taking of the priority action by the person.

(2) The Minister must, as soon as practicable after revoking the registration:

(a) give the person a notice that includes:

(i) a copy of the instrument of revocation; and

(ii) the reasons for the revocation; and

(b) publish the instrument of revocation, and the reasons for the revocation, on the Department's website.

(3) The revocation takes effect on the day specified in the instrument (which must not be earlier than the day the instrument is given to the person).

(4) An instrument made under subsection (1) is not a legislative instrument.

177BQ Cessation of registration of priority actions

(1) This section applies if:

(a) the Minister decides under paragraph 177BN(3)(a) to register a priority action in a development zone in a bioregional plan; and

(b) as at the end of the period of 5 years beginning when the Minister made the decision, the priority action has not substantially commenced.

(2) The registration ceases to have effect at the end of the period.

177BR Minister may request further information for making decision

(1) The Minister may:

(a) request a person to provide any additional information that the Minister considers is relevant to making a decision on a request made by the person under subsection 177BN(1) that the Minister register a priority action in a development zone; or

(b) request a person who is a transferor or transferee, in relation to a request under subsection 177BO(1), to provide any additional information the Minister considers is relevant to making a decision.

(2) There is no limit to the number of times the Minister may request information under subsection (1) from a person in relation to a request.

(3) If the Minister has requested more information under subsection (1), the Minister is not required to make the decision concerned until the information is provided.

177BS Withdrawal of request

A person may withdraw the following requests made by the person by written notice given to the Minister:

(a) a request under subsection 177BN(1) that the Minister register a priority action in a development zone;

(b) a request under subsection 177BO(1) that the registration of a priority action be transferred.

Division 6—Exemptions for restricted actions

177BT Minister may grant exemptions for restricted actions taken in a conservation zone in certain circumstances

(1) The Minister may, by written instrument, grant an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone by a person:

(a) on the Minister's initiative; or

(b) on application under section 177BU.

Note: The Minister may request information to make an informed decision under subsection 177BY(1).

Content of exemption

(2) The exemption must specify:

(a) the restricted action; and

(b) the person to whom the exemption applies; and

(c) the period for which the exemption is in force.

(3) The Minister must be satisfied that the period specified for the purposes of paragraph (2)(c) is reasonably necessary having regard to the basis for the exemption.

When exemption comes into force

(4) An exemption comes into force at the start of the period specified for the purposes of paragraph (2)(c) (which must not be earlier than the day the exemption is made).

Not a legislative instrument

(5) An exemption made under subsection (1) is not a legislative instrument.

(6) An exemption under this section may be made even if the bioregional plan for the conservation zone is suspended.

177BU Application for exemption

(1) A person may apply to the Minister for an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone by the person.

Note: Section 177CC imposes penalties for taking a restricted action in a conservation zone.

(2) An application under subsection (1) must:

(a) be in the approved form (if any) for the application; and

(b) be accompanied by the following:

(i) the information or documents (if any) that the approved form specifies are required;

(ii) the information or documents (if any) prescribed by the regulations.

Note: The requirements under this subsection are in addition to any other requirements under this Act for an application.

(3) The Minister must decide whether or not to grant the exemption after taking any steps required by section 177BW (consultation).

177BV Grounds for grant of exemption

(1) Before granting an exemption under section 177BT in relation to the taking of a restricted action in a conservation zone by a person, the Minister must be satisfied:

(a) that exceptional circumstances exist that justify granting the exemption; or

(b) that:

(i) the taking of the action would result or be likely to result in an outcome; and

(ii) that outcome is in Australia's national interest.

That outcome is the ***intended outcome*** for the national interest proposal that, under section 75C, the action is taken to be.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

(2) If the Minister proposes to grant the exemption on the Minister's initiative, the Minister must also be satisfied that the person proposing to take the action has agreed to the granting of the exemption.

Exceptional circumstances

(3) In deciding for the purposes of paragraph (1)(a) whether or not exceptional circumstances exist that justify granting the exemption, the Minister must have regard to:

(a) the extent to which the proposed restricted action would be consistent with the objectives of the relevant bioregional plan; and

(b) the extent to which the proposed restricted action would achieve a conservation outcome; and

(c) the extent to which the proposed restricted action is important for human safety; and

(d) the extent to which the proposed restricted action would provide an essential economic, social or cultural outcome that cannot be achieved elsewhere; and

(e) any comments made in response to a notice under paragraph 177BW(1)(a)(iii); and

(f) any matters prescribed by the regulations; and

(g) any other matters the Minister considers relevant.

177BW Consultation

(1) Before deciding whether or not to grant an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone, the Minister must:

(a) publish the following (as applicable) on the Department's website:

(i) if an application has been made for the exemption—a copy of the application for the exemption (unless subsection (3) applies);

(ii) if the Minister proposes to grant the exemption on the Minister's initiative—a copy of the draft of the exemption;

(iii) in any case (unless subsection (4) applies)—a notice inviting comments on the proposed exemption within the period specified in the notice, which must be a period of at least 30 business days; and

(b) notify each State or Territory in which the whole or a part of the conservation zone is located.

(2) Subject to subsection (4), the Minister must not decide whether or not to grant the exemption until after the end of the period specified in the notice published under subparagraph (1)(a)(iii).

(3) The Minister must not publish under subparagraph (1)(a)(i) so much of the application 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

(4) If the Minister is satisfied that granting the exemption is necessary to prevent or lessen a serious and imminent threat to human health or the environment:

(a) the Minister is not required to publish a notice under subparagraph (1)(a)(iii); and

(b) the Minister may make a decision to grant the exemption at any time.

177BX Notice of exemption decisions

(1) This section applies if the Minister decides to grant an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone by a person.

(2) The Minister must, as soon as practicable after making a decision, give written notice of the decision and the reasons for the decision to the following (as applicable):

(a) if the decision relates to an application under subsection 177BU(1)—the applicant;

(b) if the decision is made on the Minister's initiative—the person proposing to take the action;

(c) in all cases—each State or Territory in which the whole or a part of the conservation zone is located.

(3) The Minister must, as soon as practicable after giving written notice to the applicant or the person, as the case requires, publish a copy of the notice, and the reasons for the decision, on the Department's website.

(4) However, the Minister must not publish under subsection (3) so much of the reasons 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

177BY Minister may request information in relation to exemptions

(1) The Minister may, by written notice, request any of the following persons (as applicable) to give the Minister information the Minister reasonably believes is relevant to making a decision on whether or not to grant an exemption from the operation of section 177CC in relation to the taking of a restricted action in a conservation zone:

(a) if the decision relates to an application under subsection 177BU(1)—the applicant;

(b) if the Minister is considering making the decision on the Minister's initiative—the person proposing to take the action.

(2) The notice given under subsection (1) must specify:

(a) the information requested by the Minister; and

(b) the day by which the information must be given to the Minister (which must be at least 10 business days after the day the notice is given to the person).

(3) There is no limit to the number of times the Minister may request information under subsection (1) from a person.

(4) If the Minister has requested more information under subsection (1), the Minister is not required to make the decision concerned until the information is provided.

Division 7—Offences and civil penalties

177BZ Non-compliance with general conditions of bioregional plans

(1) A person contravenes this subsection if:

(a) the person does an act or omits to do an act; and

(b) doing the act, or omitting to do the act, contravenes a condition of a bioregional plan that is attached to the taking of a priority action (the ***relevant priority action***); and

(c) the relevant priority action is a registered priority action in relation to the person; and

(d) the condition applies to, or in relation to, the taking of the relevant priority action by the person.

Exception—approval granted under Part 9 or such an approval is not required

(2) Subsection (1) does not apply to an act or omission if:

(a) an approval of the taking of the relevant priority action by the person is in operation under Part 9; or

(b) a national interest exemption that allows the relevant priority action to be taken without an approval is in force; or

(c) a provision of Part 4 allows the person to take the relevant priority action without an approval.

Exception—decision of Minister

(3) Subsection (1) does not apply to an act or omission if:

(a) there is in force a decision of the Minister under Division 2 of Part 7 that the relevant priority action is not a controlled action; and

(b) if the decision of the Minister was made because the Minister believed that the relevant priority action would be taken in a manner specified in the notice of the decision given under section 77—the relevant priority action is taken in this manner.

Exception—relevant priority action commenced before bioregional plan came into effect

(4) Subsection (1) does not apply to an act or omission if the person commences taking the relevant priority action before the bioregional plan came into effect.

Exception—relevant priority action referred to the Minister before bioregional plan came into effect

(5) Subsection (1) does not apply to an act or omission if:

(a) at any time before the bioregional plan came into effect, the relevant priority action was referred to the Minister under section 68, 69 or 71; and

(b) immediately before the bioregional plan came into effect:

(i) the Minister had not yet decided under Division 2 of Part 7 whether the relevant priority action was a controlled action; or

(ii) the Minister had decided that the relevant priority action was a controlled action, but had not yet decided whether to approve the taking of the relevant priority action under section 133.

Fault-based offence

(6) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,000 penalty units.

Strict liability offence

(7) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

(8) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

177CA Non-compliance with conditions about bioregional restoration measures

(1) A person contravenes this subsection if:

(a) a bioregional plan includes a condition requiring, or relating to, the delivery of a bioregional restoration measure by the person; and

(b) the person contravenes the condition.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,000 penalty units.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

177CB Requirement to register priority actions

(1) A person contravenes this subsection if:

(a) the person takes an action; and

(b) the action is a priority action for a development zone specified in a bioregional plan; and

(c) the action is a priority action for an impacted protected matter; and

(d) the action is not a registered priority action in relation to the person.

Exception—action in accordance with approval or approval not required

(2) Subsection (1) does not apply to the taking of an action by a person if:

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

(b) a national interest exemption that allows the action to be taken without an approval is in force; or

(c) a provision of Part 4 allows the person to take the action without an approval.

Exception—action in accordance with decision of Minister

(3) Subsection (1) does not apply to the taking of an action by a person if:

(a) there is in force a decision of the Minister under Division 2 of Part 7 that the action is not a controlled action; and

(b) if the decision was made because the Minister believed that the action would be taken in a manner specified in the notice of the decision given under section 77—the action is taken in this manner.

Exception—action commenced before bioregional plan came into effect

(4) Subsection (1) does not apply to the taking of an action by a person if the person commenced taking the action before the bioregional plan came into effect.

Exception for actions referred to the Minister before bioregional plan came into effect

(5) Subsection (1) does not apply to the taking of an action by a person if:

(a) at any time before the bioregional plan came into effect, the action was referred to the Minister under section 68, 69 or 71; and

(b) immediately before the bioregional plan came into effect:

(i) the Minister had not yet decided under Division 2 of Part 7 whether the action was a controlled action; or

(ii) the Minister had decided that the action was a controlled action, but had not yet decided whether to approve the taking of the action under section 133.

Other exceptions

(6) Subsection (1) does not apply to the taking of an action by a person that is a designated priority action for the person for all impacted protected matters.

(7) Subsection (1) does not apply to the taking of an action by a person if the impacted protected matter for which the action is a priority action has ceased to be a matter protected by a provision of Part 3.

Fault-based offence

(8) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,000 penalty units.

Strict liability offence

(9) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

(10) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

177CC Restricted actions must not be taken in conservation zones

(1) A person contravenes this subsection if:

(a) the person takes an action; and

(b) the action is a restricted action for a conservation zone specified in a bioregional plan; and

(c) the action is a restricted action for an impacted protected matter.

Exception—action in accordance with approval or approval not required

(2) Subsection (1) does not apply to the taking of an action by a person if:

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

(b) a national interest exemption that allows the action to be taken without an approval is in force; or

(c) a provision of Part 4 allows the person to take the action without an approval.

Exception—action in accordance with decision of Minister

(3) Subsection (1) does not apply to the taking of an action by a person if:

(a) there is in force a decision of the Minister under Division 2 of Part 7 that the action is not a controlled action; and

(b) if the decision was made because the Minister believed that the action would be taken in a manner specified in the notice of the decision given under section 77—the action is taken in this manner.

Exception—action covered by an exemption

(4) Subsection (1) does not apply to the taking of an action by a person if the person is covered by an exemption prescribed by the regulations made for the purposes of this subsection in accordance with subsection (12).

(5) Subsection (1) does not apply to the taking of an action by a person if:

(a) the action is a restricted action in relation to the conservation zone as a result of a variation of the bioregional plan that specified a new conservation zone or varied an existing conservation zone; and

(b) the new or varied conservation zone covers an area (the ***new area***) that was not a conservation zone immediately before the variation; and

(c) the person commenced taking the action in the new area before the variation.

(6) Subsection (1) does not apply to the taking of an action by a person if:

(a) the action is a restricted action in relation to the conservation zone as a result of a variation to the bioregional plan that specified a new class of actions, or varied an existing class of actions, that are prohibited in the conservation zone; and

(b) the person commenced taking the action before the variation.

Exception—action commenced before bioregional plan came into effect

(7) Subsection (1) does not apply to the taking of an action by a person if the person commenced taking the action before the bioregional plan came into effect.

Exception for actions referred to the Minister before bioregional plan came into effect

(8) Subsection (1) does not apply to the taking of an action by a person if:

(a) at any time before the bioregional plan came into effect, the action was referred to the Minister under section 68, 69 or 71; and

(b) immediately before the bioregional plan came into effect:

(i) the Minister had not yet decided under Division 2 of Part 7 whether the action was a controlled action; or

(ii) the Minister had decided that the action was a controlled action, but had not yet decided whether to approve the taking of the action under section 133.

Other exceptions

(9) Subsection (1) does not apply to the taking of an action by a person if the action is a designated restricted action for the person for all restricted protected matters.

(10) Subsection (1) does not apply to the taking of an action by a person if the restricted protected matter for which the action is a restricted action has ceased to be a matter protected by a provision of Part 3.

(11) Subsection (1) does not apply to the taking of an action by a person if an exemption under section 177BT in relation to the taking of the action by the person is in force.

Exemption prescribed by the regulations

(12) Before making regulations prescribing an exemption for the purposes of subsection (4), the Minister must be satisfied that prescribing the exemption would not be inconsistent with:

(a) the objects of this Act; and

(b) the objectives of any bioregional plans that are in force; and

(c) Australia's obligations under a designated international agreement.

Fault-based offence

(13) A person commits an offence if the person contravenes subsection (1).

Penalty: 1,000 penalty units.

Strict liability offence

(14) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

(15) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

Division 8—Review of bioregional plans

177CD Review of a bioregional plan

(1) The Minister must cause reviews of each bioregional plan to be undertaken in accordance with this section.

(2) The first review of a bioregional plan must commence within 5 years of the day on which the bioregional plan commences.

(3) Subsequent reviews of a bioregional plan must commence within 5 years of the day on which a report of the previous review of the bioregional plan is given to the Minister under subsection (6).

(4) A review of a bioregional plan must deal with the following matters:

(a) the extent to which the bioregional plan has promoted the objects of this Act;

(b) the extent to which the bioregional plan has resulted in a net gain for impacted protected matters in the region to which the bioregional plan relates;

(c) the extent to which the bioregional plan has achieved its objectives;

(d) any other matters prescribed by the regulations for the purposes of this paragraph;

(e) any other matters directed in writing by the Minister.

(5) A review of a bioregional plan may make recommendations in relation to the matters with which it deals.

(6) The person conducting a review of a bioregional plan must give a written report of the review to the Minister as soon as practicable after the review is completed.

(7) The Minister must prepare and publish the Government's response to a review of a bioregional plan on the Department's website as soon as practicable after the report of the review is given to the Minister under subsection (6).

(8) If the review made any recommendations, the response prepared under subsection (7) must give reasons for accepting or rejecting the recommendations.

Division 9—Priority actions that are components of larger actions

177CE Determination in relation to priority action that is a component of larger action

(1) A person who proposes to take an action (the ***larger action***) that includes a component that is a priority action, other than a

component that is a registered priority action, may apply to the Minister for a determination that the component (the ***component action***) is taken not to be a priority action.

(2) The application must:

(a) be made in writing; and

(b) be made in the approved form (if any); and

(c) include the information or documents prescribed by the regulations (if any).

(3) If the Minister is satisfied that it is appropriate to do so, the Minister may, in writing, determine that the component action is taken not to be a priority action.

(4) If the Minister makes a determination, the determination takes effect on the day specified in the determination (which must not be earlier than the day it is made).

(5) If the Minister makes a determination, the Minister must, as soon as practicable:

(a) give the person a copy of the determination; and

(b) publish a copy of the determination on the Department's website.

(6) While a determination is in force under subsection (3) in relation to a component action, the component action is taken not to be a priority action despite any other provision of this Part.

Note: This has the effect that the larger action, including the priority action, may be referred under Part 7 for approval under Part 9—see section 71A.

(7) If the Minister decides not to make a determination, the Minister must, as soon as practicable, give the person written notice of the Minister's decision and the reasons for it.

(8) A determination made under subsection (3) is not a legislative instrument.

Division 10—Exclusion determinations

177CF Exclusion determination

(1) The Minister may, by written instrument, determine that, despite any other provision of this Part, a specified priority action, other than a registered priority action, that a person proposes to take is taken not to be a priority action if the Minister is satisfied that:

(a) the taking of the action has not substantially commenced; and

(b) the taking of the action would result or be likely to result in an outcome; and

(c) that outcome is in Australia's national interest.

That outcome is the ***intended outcome*** for the national interest proposal that, under section 75B, the action is taken to be.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

(2) The Minister may make the determination:

(a) if the person proposing to take the action agrees in writing—on the Minister's initiative; or

(b) on application under section 177CG.

(3) The Minister must, as soon as practicable after making the determination:

(a) give a copy of the determination to:

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

(ii) the applicant (if different from the person mentioned in subparagraph (i)); and

(b) publish a copy of the determination on the Department's website.

(4) The determination takes effect on the day specified in the determination (which must not be earlier than the day the determination is made).

(5) While a determination is in force under subsection (1) in relation to an action, the action is taken not to be a priority action despite any other provision of this Part.

Note: This has the effect that the action may be referred under Part 7 for approval under Part 9—see section 71A.

(6) A determination made under subsection (1) is not a legislative instrument.

177CG Application for exclusion determination

(1) Any of the following persons may apply to the Minister for a determination under section 177CF:
  (a) the person proposing to take the action as mentioned in subsection 177CF(1);
  (b) if the person proposing to take the action agrees in writing:
    (i) another Minister; or
    (ii) a Minister of a State or Territory.

(2) The application must:
  (a) be made in writing; and
  (b) be made in the approved form (if any); and
  (c) include the information or documents prescribed by the regulations (if any).

(3) The Minister must decide whether to make the determination, or refuse the application, within 20 business days of the day the application is made.

(4) If the Minister decides to refuse the application, the Minister must give the applicant written notice of the Minister's decision, and the reasons for it, as soon as practicable.

177CH Request for information

(1) The Minister may, in writing, request any person to provide specified information that the Minister reasonably believes is necessary in order to make an informed decision about whether or not to make a determination under section 177CF.

(2) If the Minister makes a request under subsection (1) in respect of a decision in which there is an applicant, a day is not to be counted as a business day for the purposes of subsection 177CG(3) if it is:
  (a) on or after the day the Minister requested the information; and
  (b) on or before the day the Minister receives the last of the information requested.

177CI Revocation of exclusion determination

Revocation on request

(1) The Minister must, by written instrument, revoke a determination under section 177CF in relation to an action if:

(a) the person proposing to take the action, or the designated proponent (if any), has made a written request for the revocation; and

(b) the Minister has not decided whether to approve the taking of the action under section 133; and

(c) the Minister has not made a decision under Division 2 of Part 7 that the action is not a controlled action.

Revocation on Minister's initiative

(2) The Minister must, on the Minister's initiative, by written instrument, revoke a determination under section 177CF in relation to an action if:

(a) the Minister is no longer satisfied that the taking of the action would result or be likely to result in the intended outcome mentioned in subsection 177CF(1); and

(b) the Minister has not decided whether to approve the taking of the action under section 133; and

(c) the Minister has not made a decision under Division 2 of Part 7 that the action is not a controlled action.

Timing

(3) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

Not legislative instrument

(4) A revocation made under subsection (1) is not a legislative instrument.

177CJ Notice of revocation of exclusion determination

As soon as practicable after revoking, under section 177CI, a determination under section 177CF in relation to an action, the Minister must:

(a) give a copy of the revocation to:

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

(ii) the designated proponent (if any); and

(b) publish a copy of the revocation on the Department's website.

177CK Effect of revocation of exclusion determination if Minister has decided action is a controlled action

At the time a determination under section 177CF in relation to an action is revoked under section 177CI, any determination that, under section 75B, was taken to have been made in relation to the action is also taken to be revoked.

Part 12B—The Restoration Contributions Holder, Restoration Contributions Special Account and related matters

Division 1—Restoration Contributions Holder

177CL Establishment

There is to be a Restoration Contributions Holder.

177CM Appointment

(1) The Restoration Contributions Holder is to be engaged under the *Public Service Act 1999*.

(2) The Restoration Contributions Holder is to be an SES employee in the Department.

Note: The expression ***SES employee*** is defined in section 2B of the *Acts Interpretation Act 1901*.

177CN Staff

The staff assisting the Restoration Contributions Holder are to be APS employees in the Department who are made available for the purpose by the Secretary.

177CO Delegation

(1) The Restoration Contributions Holder may, in writing, delegate all or any of the Restoration Contributions Holder's functions or powers under this Act to an SES employee or acting SES employee in the Department.

Note: The expression ***SES employee*** is defined in section 2B of the *Acts Interpretation Act 1901*.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Restoration Contributions Holder.

177CP Functions of the Restoration Contributions Holder

(1) The functions of the Restoration Contributions Holder are, on behalf of the Commonwealth:

(a) to deliver restoration actions in accordance with Subdivisions A and B of Division 2; and

(b) to deliver bioregional restoration actions in accordance with Subdivision C of Division 2; and

(c) to engage in activities (including, but not limited to, delivering restoration actions) in accordance with Subdivision D of Division 2; and

(d) to develop management plans in accordance with Division 3; and

(e) to monitor and evaluate the progress and outcomes of restoration actions and bioregional restoration actions on which the Restoration Contributions Holder has spent amounts; and

(f) to maintain a public register in accordance with Division 4; and

(g) to prepare annual reports in accordance with Division 5; and

(h) if requested to do so by the Minister—to provide advice to the Minister relating to restoration contribution charge, including in relation to proposed conditions of approvals that would require the payment of such charge; and

(i) if requested to do so by the Minister—to provide advice to the Minister relating to bioregional restoration measures, and bioregional plan registration charge; and

(j) to perform any other functions that are conferred on it by this Act or any other law of the Commonwealth; and

(k) to perform any other functions prescribed by the regulations.

(2) The functions of the Restoration Contributions Holder include doing any of the following on behalf of the Commonwealth:

(a) exercising any powers of the Commonwealth to enter into contracts for such purposes;

(b) maintaining up to date records.

177CQ Powers of the Restoration Contributions Holder

(1) The Restoration Contributions Holder has power to do all things necessary or convenient to be done for or in connection with the performance of the Restoration Contributions Holder's functions.

(2) The Restoration Contributions Holder may invest money that:

(a) is mentioned in paragraph 177DK(a), (b), (c) or (d); and

(b) is not immediately required for the performance of the functions of the Restoration Contributions Holder;

in an investment of any of the following kinds:

(c) securities of, or securities guaranteed by, the Commonwealth, a State or a Territory;

(d) a deposit with a bank (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), including a deposit evidenced by a certificate of deposit;

(e) any other form of investment prescribed by rules made for the purposes of subparagraph 58(8)(a)(iii) of the *Public Governance, Performance and Accountability Act 2013*.

177CR Limitation on directions to Restoration Contributions Holder

The Restoration Contributions Holder is not subject to the direction of the Minister or the Secretary in relation to the functions of the Restoration Contributions Holder mentioned in paragraphs 177CP(1)(a) to (c).

Division 2—Delivering restoration actions and bioregional restoration actions

Subdivision A—Restoration actions—general

177CS Spending on restoration actions

Application of this section

(1) This section applies if an amount of restoration contribution charge is imposed in relation to a particular residual significant impact (the ***primary impact***) of an approved action, or an approved class of actions, on a matter (the ***affected matter***) protected by a provision of Part 3 for which the approval has effect.

Default requirement for general restoration action

(2) The Restoration Contributions Holder must spend an amount that reasonably relates to the amount of restoration contribution charge imposed to deliver a restoration action that the Restoration Contributions Holder is satisfied:

(a) is directed towards protecting, conserving or restoring the affected matter in the bioregion where the affected matter is located; and

(b) will result in a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires) for the affected matter in that bioregion; and

(c) complies with the requirements (if any) prescribed by the regulations.

Note 1: For example, if an amount of restoration contribution charge is imposed in relation to the primary impact on a particular listed threatened species in a particular bioregion, an amount that reasonably

relates to that amount must be spent on that listed threatened species in that bioregion (subject to subsection (4)).

Note 2: If an amount of restoration contribution charge has not yet been received, top-up amounts can be used: see section 177DB.

(3) A restoration action that satisfies paragraphs (2)(a), (b) and (c) is a ***general restoration action*** for the primary impact of the approved action or approved class of actions on the affected matter.

Alternative restoration action if default requirement is not met

(4) Subject to section 177CT (which covers the situation in which subsection (2) is partly satisfied but not wholly satisfied), if:

(a) the Restoration Contributions Holder has considered under subsection (2) whether the Restoration Contributions Holder must spend an amount to deliver a general restoration action for the primary impact of the approved action or approved class of actions on the affected matter; and

(b) the Restoration Contributions Holder is satisfied that:

(i) a general restoration action is not feasible for the primary impact of the action or the class of actions, as the case requires; or

(ii) a general restoration action would not provide the best environmental outcome for the primary impact of the action or the class of actions, as the case requires; and

(c) if the regulations prescribe requirements that must be met in order for the Restoration Contributions Holder to deliver an alternative restoration action in relation to the primary impact of an approved action or approved class of actions—Restoration Contributions Holder is satisfied that those requirements are met;

the Restoration Contributions Holder must spend an amount that reasonably relates to the amount of restoration contribution charge imposed to deliver a restoration action (an ***alternative restoration action***) for the primary impact of the approved action or approved class of actions on the affected matter, being a restoration action that meets the requirements of subsection (5).

(5) A restoration action meets the requirements of this subsection for the primary impact of the approved action or approved class of

actions on the affected matter if the Restoration Contributions Holder is satisfied that the restoration action:

(a) will benefit a matter protected by the same provision of Part 3 as the affected matter; and

(b) so far as is reasonably practicable, is directed towards protecting, conserving or restoring a matter protected by the same provision of Part 3 as the affected matter in the bioregion where the affected matter is located; and

(c) provides a net gain (within the meaning of paragraph 527K(1)(b) or (2)(b), as the case requires) for the matter protected by the same provision of Part 3 as the affected matter; and

(d) complies with the requirements (if any) prescribed by the regulations.

Note: A restoration action under this subsection could be a restoration action that benefits a matter that is the same as the affected matter but in a different bioregion from the affected matter.

Minister must be notified if no general restoration action

(6) The Restoration Contributions Holder must notify the Minister, in writing, if the Restoration Contributions Holder is satisfied that subsection (4) applies to the approved action or approved class of actions.

Section subject to sections 177CT and 177CV

(7) This section has effect subject to sections 177CT (combining general restoration actions and alternative restoration actions) and 177CV (pooling amounts).

177CT Combination of general restoration action and alternative restoration action

(1) This section applies if the Restoration Contributions Holder is satisfied that subsection 177CS(2) is partly, but not wholly, satisfied in relation to a particular residual significant impact (the ***primary impact***) of an approved action, or an approved class of actions, on a matter protected by a provision of Part 3.

(2) The Restoration Contributions Holder must:

(a) first—to the extent that the Restoration Contributions Holder is satisfied as mentioned in subsection 177CS(2), spend an amount that reasonably relates to the amount of restoration contribution charge imposed in relation to the primary impact on delivering a general restoration action for the primary impact; and

(b) secondly—to the extent that the Restoration Contributions Holder is satisfied as mentioned in subsection 177CS(4), spend any remaining amount that reasonably relates to the amount of restoration contribution charge imposed in relation to the primary impact on delivering an alternative restoration action for the primary impact.

Note: If an amount of restoration contribution charge has not yet been received, top-up amounts can be used: see section 177DB.

177CU No requirement to spend restoration contribution charge if residual significant impact already compensated

The Restoration Contributions Holder is not required by section 177CS or 177CT to spend an amount that reasonably relates to the amount of restoration contribution charge imposed in relation to a residual significant impact (the ***primary impact***) of an approved action, or an approved class of actions, on an affected matter if the Restoration Contributions Holder is satisfied that the primary impact has already been compensated for by previous expenditure from money standing to the credit of the Restoration Contributions Special Account.

177CV Pooling amounts to cover multiple residual significant impacts

(1) The Restoration Contributions Holder may spend an amount (the ***aggregated amount***) that is the sum of amounts that reasonably relate to amounts of restoration contribution charge imposed in relation to the residual significant impacts of one or more approved actions, or one or more approved classes of actions, on a matter or matters protected by a provision of Part 3, if:

(a) the aggregated amount is spent to deliver one or more restoration actions to compensate for those impacts; and

(b) the Restoration Contributions Holder is satisfied that there will be a better environmental outcome for each of the matters if the aggregated amount were spent than would otherwise be achieved.

Note: If an amount of restoration contribution charge has not yet been received, top-up amounts can be used: see section 177DB.

(2) The aggregated amount must be spent in accordance with sections 177CS and 177CT.

177CW Consultation with the Restoration Contributions Advisory Committee on proposed restoration actions

Consultation not required if general restoration action feasible etc.

(1) If the Restoration Contributions Holder is satisfied that the Restoration Contributions Holder may deliver a general restoration action to compensate for a residual significant impact of one or more approved actions, or one or more approved classes of actions, on a matter or matters protected by a provision of Part 3, the Restoration Contributions Holder may, but is not required to, seek advice from the Restoration Contributions Advisory Committee on appropriate restoration actions in relation to that impact.

Consultation required if general restoration action not available

(2) If the Restoration Contributions Holder is satisfied as mentioned in subsection 177CS(4) in relation to a residual significant impact of one or more approved actions, or one or more approved classes of actions, on a matter or matters protected by a provision of Part 3, the Restoration Contributions Holder must seek advice from the Restoration Contributions Advisory Committee on:

(a) whether a general restoration action to compensate for the residual significant impact is feasible and would provide the best environmental outcome; and

(b) if a general restoration action is not feasible or would not provide the best environmental outcome—an appropriate alternative restoration action for the residual significant impact.

(3) The Restoration Contributions Holder may also consult the following in relation to restoration actions:

(a) any other committee established under Part 19;

(b) the Australian Heritage Council.

177CX Other matters to which the Restoration Contributions Holder must have regard

In spending an amount that reasonably relates to a restoration contribution charge on a restoration action (see paragraph 177CP(1)(a)), the Restoration Contributions Holder must have regard to the following:

(a) any advice given by the Restoration Contributions Advisory Committee in relation to the restoration action;

(b) any advice given by:

(i) any other committee established under Part 19; or

(ii) the Australian Heritage Council;

(c) any approved conservation advice the Restoration Contributions Holder considers relevant;

(d) any bioregional plan or bioregional guidance plan the Restoration Contributions Holder considers relevant;

(e) any other matters the Restoration Contributions Holder considers relevant;

(f) any other matters prescribed by the regulations.

Subdivision B—Restoration actions—exemption amounts

177CY Spending exemption amounts on restoration actions

(1) The Restoration Contributions Holder may spend amounts that reasonably relate to one or more amounts of exemption charge imposed on one or more restoration actions if:

(a) the Restoration Contributions Holder is satisfied that the restoration action or actions are:

(i) for the purpose of protecting or conserving a matter or matters protected by a provision of Part 3; or

(ii) for the purpose of mitigating, repairing or compensating for damage to a matter or matters protected by a provision of Part 3; and

(b) the spending of the amounts complies with the requirements (if any) prescribed by the regulations.

Note 1: The Restoration Contributions Holder must also be satisfied of the matters specified in section 177DC.

Note 2: If an amount of exemption charge has not yet been received, top-up amounts can be used: see section 177DB.

(2) For the purposes of subsection (1), it is not necessary that the matter or matters protected by a provision of Part 3 are likely to be impacted by an action for which the exemption concerned was granted.

(3) The Restoration Contributions Holder:

(a) may consult the Restoration Contributions Advisory Committee in relation to appropriate restoration actions on which to spend amounts mentioned in subsection (1); and

(b) if the Restoration Contributions Holder does so—must have regard to any advice given by the Restoration Contributions Advisory Committee in spending such amounts.

Subdivision C—Bioregional restoration actions

177CZ Spending on bioregional restoration actions

(1) The Restoration Contributions Holder must, in performing functions relating to bioregional restoration actions that relate to spending amounts mentioned in subsection (2):

(a) comply with the requirements (if any) prescribed by the regulations; and

(b) be satisfied of the matters (if any) prescribed by the regulations.

Note: The Restoration Contributions Holder must also be satisfied of the matters specified in section 177DC.

(2) The amounts are as follows:

(a) amounts that reasonably relate to amounts of bioregional plan registration charge imposed on the registration of one or more priority actions;

(b) amounts that reasonably relate to amounts of bioregional plan restoration contribution required to be paid by a condition of a bioregional plan.

Note: If an amount of charge has not yet been received, top-up amounts can be used: see section 177DB.

(3) The Restoration Contributions Holder:

(a) may consult the following in relation to appropriate bioregional restoration actions:

(i) the Restoration Contributions Advisory Committee;

(ii) any other committee established under Part 19;

(iii) the Australian Heritage Council; and

(b) if the Restoration Contributions Holder does so—must have regard to any advice given by the Restoration Contributions Advisory Committee, the other committee or the Australian Heritage Council in making the decision.

Subdivision D—Top-up amounts

177DA Spending top-up amounts for activities

(1) The Restoration Contributions Holder may spend top-up amounts on one or more activities (including but not limited to restoration actions) if:

(a) the Restoration Contributions Holder is satisfied that the activities are:

(i) for the purpose of protecting or conserving a matter or matters protected by a provision of Part 3; or

(ii) for the purpose of mitigating, repairing or compensating for damage to a matter or matters protected by a provision of Part 3; and

(b) the spending of the amounts complies with the requirements (if any) prescribed by the regulations.

Note: The Restoration Contributions Holder must also be satisfied of the matters specified in section 177DC.

(2) The Restoration Contributions Holder:

(a) may consult the Restoration Contributions Advisory Committee in relation to appropriate activities on which to spend amounts mentioned in subsection (1); and

(b) if the Restoration Contributions Holder does so—must have regard to any advice given by the Restoration Contributions Advisory Committee in spending such amounts.

177DB Spending top-up amounts for other purposes

The Restoration Contributions Holder may spend top-up amounts for the purposes of delivering restoration actions or bioregional restoration actions under Subdivision A, B, or C if:

(a) the Restoration Contributions Holder is satisfied that:

(i) the spending of the top-up amounts is for the purpose of delivering restoration actions or bioregional restoration actions before amounts of charge have been received; or

(ii) it is otherwise appropriate to spend the top-up amounts; and

(b) the spending of the top-up amounts complies with the requirements of Subdivision A, B or C before amounts of charge have been received.

Note: The Restoration Contributions Holder must also be satisfied of the matters specified in section 177DC.

Subdivision E—General

177DC Other matters of which the Restoration Contributions Holder must be satisfied

The Restoration Contributions Holder must not spend an amount on a restoration action, a bioregional restoration action, or any other activity unless the Restoration Contributions Holder is satisfied that spending the amount:

(a) would promote the objects of the Act; and

(b) would not be inconsistent with any national environmental standard that is prescribed by the regulations for the purposes of this paragraph; and

(c) would not be inconsistent with Australia's obligations under a designated international agreement; and

(d) satisfies any other matters prescribed by the regulations.

Division 3—Management plans

177DD Management plans for restoration actions—restoration contribution charge

(1) The Restoration Contributions Holder must develop a management plan for each restoration action on which one or more amounts that reasonably relate to amounts of restoration contribution charge imposed have been spent by the Restoration Contributions Holder under Subdivision A of Division 2.

(2) The Restoration Contributions Holder must complete the management plan within the time period specified in the regulations (if any).

(3) A management plan for a restoration action must specify the following:

(a) each residual significant impact of an action or class of actions for which the restoration action is intended to compensate;

(b) the action or class of actions for each such residual significant impact;

(c) the holder of the approval for each such action or class of actions;

(d) each matter protected by a provision of Part 3 that is likely to be damaged by each such residual significant impact;

(e) whether restoration contribution charge imposed in relation to each such residual significant impact has been paid;

(f) the restoration action that will be delivered;

(g) the amounts that have been, or are being, spent on the restoration action;

(h) the intended outcome or outcomes resulting from the restoration action;

(i) the period within which the restoration action is to be delivered;

(j) identification of risks and mitigation strategies in relation to the restoration action;

(k) a schedule specifying monitoring, evaluation, reporting and adaptive management mechanisms, in order to ensure that the

net gain for each matter protected by a provision of Part 3 that is likely to be damaged by each residual significant impact mentioned in paragraph (a):

(i) is likely to be achieved within the required period; and

(ii) will be maintained;

which must be developed having regard to likely risks including, but not limited to, the likely effects of climate change;

(l) evidence to support the restoration action as the preferred option.

(m) any other matters prescribed by the regulations.

(4) The Restoration Contributions Holder must monitor progress and evaluate the outcomes of restoration actions delivered, having regard to the management plan for the restoration action.

177DE Management plans for bioregional restoration actions—bioregional plan registration charge and bioregional plan restoration contribution

(1) The Restoration Contributions Holder must develop a management plan for each bioregional restoration action on which one or more of the following amounts have been spent by the Restoration Contributions Holder:

(a) amounts that reasonably relate to amounts of bioregional plan registration charge imposed on the registration of priority actions;

(b) amounts that reasonably relate to amounts of bioregional plan restoration contribution required to be paid by a condition of a bioregional plan;

(c) top-up amounts.

(2) The Restoration Contributions Holder must complete the management plan within the time period specified in the regulations (if any).

(3) A management plan for a bioregional restoration action under this section must include the matters (if any) prescribed by the regulations.

(4) The Restoration Contributions Holder must monitor progress and evaluate the outcomes of bioregional restoration actions delivered, having regard to the management plan for the bioregional restoration action.

177DF Management plans for restoration actions—exemption charge

(1) The regulations may require the Restoration Contributions Holder to develop a management plan for each restoration action on which one or more amounts that reasonably relate to amounts of exemption charge imposed have been spent by the Restoration Contributions Holder.

(2) Regulations made for the purposes of subsection (1) may make provision for and in relation to the following:

(a) the matters to be included in a management plan;

(b) the time period within which the Restoration Contributions Holder must complete a management plan;

(c) other relevant matters.

(3) If regulations made for the purposes of subsection (1) require the Restoration Contributions Holder to develop a management plan, the Restoration Contributions Holder must monitor progress and evaluate the outcomes of restoration actions delivered, having regard to the management plan.

177DG Management plans for activities covered by section 177DA—certain top-up amounts

(1) The regulations may require the Restoration Contributions Holder to develop a management plan for each activity on which one or more top-up amounts have been spent by the Restoration Contributions Holder.

(2) Regulations made for the purposes of subsection (1) may make provision for and in relation to the following:

(a) the matters to be included in a management plan;

(b) the time period within which the Restoration Contributions Holder must complete a management plan;

(c) other relevant matters.

(3) If regulations made for the purposes of subsection (1) require the Restoration Contributions Holder to develop a management plan, the Restoration Contributions Holder must monitor progress and evaluate the outcomes of restoration actions delivered, having regard to the management plan.

Division 4—Register

177DH Register to be established

(1) The Restoration Contributions Holder must establish and maintain a register of the following:

(a) all approved actions, and approved classes of actions, in relation to which amounts of restoration contribution charge have been imposed;

(b) all bioregional plans in relation to which amounts of bioregional plan registration charge have been imposed on the registration of a priority action;

(c) all bioregional plans that include a condition that requires a person to pay a bioregional plan restoration contribution;

(d) all actions in relation to which amounts of exemption charge have been imposed.

Restoration contribution charge

(2) The register must contain the following details in relation to each approved action, and each approved class of actions, in relation to which an amount of restoration contribution charge has been imposed:

(a) details of each residual significant impact of the approved action, or approved class of actions, in relation to which an amount of restoration contribution charge has been imposed;

(b) for each such residual significant impact:

(i) each matter protected by a provision of Part 3 that is likely to be damaged by the residual significant impact; and

(ii) the amount of restoration contribution charge imposed in relation to the residual significant impact; and

(iii) whether the restoration contribution charge has been paid;

(c) each restoration action on which an amount was spent to compensate for each such residual significant impact, and the amount spent on each such restoration action;

(d) the intended outcomes of each such restoration action;

(e) the management plan for each such restoration action;

(f) any other matters prescribed by the regulations.

Bioregional plan registration charge

(2) The register must contain the details prescribed by the regulations in relation to each bioregional plan in relation to which an amount of bioregional plan registration charge has been imposed on a registered priority action.

Bioregional plan restoration contributions

(3) The register must contain the details prescribed by the regulations in relation to each bioregional plan that includes a condition that requires a person to pay a bioregional plan restoration contribution.

Exemption charge

(4) The register must contain the details prescribed by the regulations in relation to each action in relation to which an amount of exemption charge has been imposed.

Top-up amounts

(5) The register must contain the details prescribed by the regulations in relation to each activity on which a top-up amount has been spent by the Restoration Contributions Holder under section 177DA.

(6) The register must be made publicly available on the Department's website.

(7) The register is not a legislative instrument.

Division 5—Annual report

177DI Annual report

(1) The Restoration Contributions Holder must cause to be prepared, as soon as practicable after the end of each financial year, an annual report on the exercise of the Restoration Contributions Holder's functions and powers during the financial year.

(2) Without limiting subsection (1), the annual report must include the following in relation to the financial year:

(a) details of each residual significant impact of an approved action, or approved class of actions, in relation to which an amount of restoration contribution charge has been imposed;

(b) details of each approved action, or approved class of actions, mentioned in paragraph (a);

(c) for each such residual significant impact:

(i) each matter protected by a provision of Part 3 that is likely to be damaged by the residual significant impact; and

(ii) the amount of restoration contribution charge imposed in relation to the residual significant impact; and

(iii) whether the restoration contribution charge has been paid;

(d) details of each restoration action on which an amount was spent under Subdivision A or B of Division 2;

(e) details of each bioregional restoration action on which an amount was spent;

(f) details of each activity on which the Restoration Contributions Holder spent top-up amounts under section 177DA;

(g) achievements against the objectives of the management plan for each restoration action and each bioregional restoration action, including progress towards a net gain (where relevant);

(h) for any residual significant impacts of an approved action, or an approved class of action, for which a general restoration action was not available:

(i) the residual significant impacts; and

(ii) the matters protected by a provision of Part 3 that are likely to be damaged by each such residual significant impact;

(i) a reconciliation of monies from the Restoration Contributions Special Account against the relevant projects;

(j) any directions given by the Minister or the Secretary to the Restoration Contributions Holder;

(k) any other matters prescribed by the regulations.

Note: Section 177CR limits the directions that may be given by the Minister or Secretary.

(3) The Restoration Contributions Holder must give the annual report to the Minister as soon as practicable after it is prepared.

Division 6—The Restoration Contributions Special Account

177DJ Restoration Contributions Special Account

(1) The Restoration Contributions Special Account is established by this section.

(2) The Restoration Contributions Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

177DK Credits of amounts to the Restoration Contributions Special Account

There must be credited to the Restoration Contributions Special Account amounts equal to the following amounts received by or on behalf of the Commonwealth:

(a) amounts of restoration contribution charge;

(b) amounts of bioregional plan registration charge;

(c) amounts of exemption charge;

(d) amounts of bioregional plan restoration contribution;

(e) amounts received in connection with the performance of the Restoration Contributions Holder's functions;

(f) amounts of any gifts or bequests received by the Restoration Contributions Holder, or made for the purposes of the Special Account, not being gifts or bequests that are expressed to be tied to the granting of approval of a specific action, or are subject to any directions for expenditure;

(g) amounts of interest earned on the investment, in accordance with subsection 177CQ(2), of amounts mentioned in paragraph (a), (b), (c) or (d) standing to the credit of the Special Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

177DL Purposes of the Restoration Contributions Special Account

The purposes of the Restoration Contributions Special Account are as follows:

(a) paying or discharging the costs, expenses and other obligations associated with the performance of the functions of the Restoration Contributions Holder;

(b) paying or discharging the costs, expenses and other obligations associated with the performance of the functions of the Restoration Contributions Advisory Committee;

(c) paying any remuneration or allowances payable to the following:

(i) the Restoration Contributions Holder;

(ii) APS employees assisting the Restoration Contributions Holder;

(d) paying or discharging the costs, expenses and other obligations associated with an investment of a kind mentioned in subsection 177CQ(2).

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

324 After paragraph 184(c)

Insert:

(ca) in the case of the list referred to in section 183:

(i) deleting 2 or more threatening processes from the list and including in the list a threatening process that combines the deleted processes; or

(ii) deleting a threatening process from the list and including in the list 2 or more threatening processes that, in combination, cover the deleted process; or

325 Subsection 188(2)

Repeal the subsection, substitute:

(2) The Minister must not delete a threatening process from the list unless the Minister:

(a) is satisfied that the threatening process is no longer eligible to be treated as a key threatening process; or

(b) deletes the threatening process as mentioned in paragraph 184(ca).

326 Subsection 189(1)

After "(b)", insert ", (ca)".

327 At the end of paragraph 189(1B)(c)

Add "or any part of it".

328 Subsection 194B(1) (definition of *includes*)

Omit "subsection (2)", substitute "subsections (2) and (3)".

329 At the end of section 194B

Add:

(3) A reference in this Subdivision to including an item in the list referred to in section 183 does not include a reference to including a threatening process as mentioned in paragraph 184(ca).

330 After paragraph 194E(2)(b)

Insert:

(ba) must invite people:

(i) to consider, for any item they nominate for inclusion, whether there exists Indigenous peoples' knowledge,

including knowledge about cultural significance, in relation to the item; and

(ii) if such knowledge exists—to provide, with the nomination, the knowledge or information on who may be able to provide the knowledge; and

331 At the end of section 194L

Add:

(3) The Scientific Committee must also give the Indigenous Advisory Committee:

(a) a copy of the finalised priority assessment list; and

(b) a copy of the nominations made in response to the notice under subsection 194E(1), other than any nominations rejected by the Minister under subsection 194F(3); and

(c) a compilation of any Indigenous peoples' knowledge, including knowledge about cultural significance, in relation to nominated items that was provided in response to the notice under subsection 194E(1).

332 After paragraph 194M(3)(d)

Insert:

(da) must invite people:

(i) to consider whether there exists Indigenous peoples' knowledge, including knowledge about cultural significance, in relation to the item or items; and

(ii) if such knowledge exists—to provide, to the Scientific Committee, the knowledge or information on who may be able to provide the knowledge; and

333 After subsection 194M(3)

Insert:

(3A) The Scientific Committee must:

(a) give the Indigenous Advisory Committee a copy of the notice; and

(b) invite the Indigenous Advisory Committee to make comments in relation to the item or items to which the notice relates.

334 After paragraph 194Q(7)(a)

Insert:

(aa) notify the Indigenous Advisory Committee that the item has been included in the Subdivision A list; and

335 At the end of subsection 194Q(8)

Add:

; and (c) notify the Indigenous Advisory Committee of the decision.

336 Subparagraph 197(d)(ii)

Omit "management arrangement or authorisation process that is an accredited management arrangement or an accredited authorisation process", substitute "management or authorisation framework that is accredited".

337 Paragraph 197(da)

Repeal the paragraph, substitute:

(da) an action that may be taken without an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2) because section 37 (registered priority actions under bioregional plans) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(daa) an action that may be taken without an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2) because section 36G (actions approved under declared framework do not require approval) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

338 Subparagraph 201(3)(b)(ii)

Omit "that is in force for that species or ecological community".

339 Subsection 207A(1)

Repeal the subsection, substitute:

(1) The Minister must arrange for a register of critical habitat to be kept. The register must be kept in accordance with any regulations prescribed for the purposes of this subsection.

(1AA) The Minister may include on the register critical habitat (see subsection (4)) for a listed threatened species or a listed threatened ecological community. Critical habitat that is included on the register is ***registered critical habitat***.

(1AB) Nothing in subsection (1AA) requires the Minister to include particular critical habitat on the register.

340 Subsection 207A(4)

Repeal the subsection, substitute:

(4) Habitat is ***critical habitat*** for a listed threatened species or listed threatened ecological community if the habitat is necessary for one or more of the following:

(a) activities such as foraging, breeding, roosting or dispersal;

(b) the long-term maintenance of the species or ecological community (including maintenance essential to its survival);

(c) the maintenance of genetic diversity and long-term evolutionary development;

(d) the reintroduction of populations or the recovery of the species or ecological community.

341 Section 207B (heading)

After "**damaging**", insert "**registered**".

342 After paragraph 207B(1)(b)

Insert:

(ba) the critical habitat is registered critical habitat; and

343 Subsection 207B(2)

Omit "paragraph (1)(c)", substitute "paragraphs (1)(ba) and (c)".

344 Section 207C (heading)

After "**containing**", insert "**registered**".

345 Subsection 207C(1)

After "that includes", insert "registered".

346 Subsection 207C(2)

After "protect the", insert "registered".

347 Subparagraph 212(1)(d)(ii)

Omit "management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process", substitute "management or authorisation framework that is accredited".

348 Paragraph 212(1)(da)

Repeal the paragraph, substitute:

(da) an action that may be taken without an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2) because section 37 (registered priority actions under bioregional plans) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(daa) an action that may be taken without an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2) because section 36G (actions approved under declared framework do not require approval) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

349 Subparagraph 231(bb)(ii)

Omit "management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process", substitute "management or authorisation framework that is accredited".

350 Paragraph 231(bc)

Repeal the paragraph, substitute:

(bc) an action that may be taken without an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7) because section 37 (registered priority actions under bioregional plans) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(bd) an action that may be taken without an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or

(4), 24B(1) or (2) or 24C(1), (3), (5) or (7) because section 36G (actions approved under declared framework do not require approval) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

351 Subparagraphs 238(3)(b)(ii) and (c)(ii)

Omit "that is in force for a species of cetacean".

352 Section 252

Repeal the section.

353 Subparagraph 255(d)(ii)

Omit "management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process", substitute "management or authorisation framework that is accredited".

354 Paragraph 255(da)

Repeal the paragraph, substitute:

(da) an action that may be taken without an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4) because section 37 (registered priority actions under bioregional plans) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

(daa) an action that may be taken without an approval under Part 9 for the purposes of subsection 23(1) or (2), 24A(1), (2), (3) or (4), 24B(1) or (2) or 24C(1), (3), (5) or (7), 26(1) or (2) or 27A(1), (2), (3) or (4) because section 36G (actions approved under declared framework do not require approval) lets the person who is taking the action take the action without the approval for the purposes of the subsection; or

355 Section 267 (paragraph beginning "The Minister need ensure that a recovery plan")

Omit the paragraph, substitute:

> The Minister need ensure that a recovery plan is in force for the whole or part of a listed threatened species or ecological community only if the Minister decides to have a recovery plan for the whole or part of the species or community. The Minister must decide whether to have a recovery plan for the species or community, or part of it, within 90 days after it becomes listed. The Minister may, at any other time, decide whether to have such a plan.

356 Section 267 (paragraph beginning "The Minister need ensure a threat abatement plan")

Repeal the paragraph, substitute:

> The Minister need ensure a threat abatement plan is in force for the whole, or one or more parts, of a key threatening process only if the Minister decides that a plan is a feasible, effective and efficient way of abating the whole process or the relevant part or parts of the process. The Minister must consult before making such a decision.

357 Subsection 269AA(1)

Repeal the subsection, substitute:

(1) Within 90 days after a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community becomes listed, the Minister must decide whether to:

(a) have a recovery plan for the whole species or ecological community; or

(b) have a recovery plan for part of the species or ecological community; or

(c) not have a recovery plan at all for the species or ecological community.

(1A) If the Minister decides to have a recovery plan for one or more parts of the species or ecological community, the Minister is taken to have also decided not to have a recovery plan for any other part of the species or ecological community.

(1B) The Minister may, at any other time, decide whether to have a recovery plan for a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community, or part of such a species or ecological community.

358 Paragraph 269AA(2)(a)

After "in that subsection", insert ", together with any decision the Minister is taken to have made under subsection (1A),".

359 Paragraph 269AA(2)(b)

Omit "subsection (1)", substitute "subsection (1B)".

360 At the end of subsection 269AA(3)

Add "or the relevant part of it".

361 Subsection 269AA(4)

After "decision in relation to the", insert "whole or part of the".

362 Paragraph 269AA(4)(a)

After "community", insert "or the relevant part of it".

363 Paragraph 269AA(4)(b)

After "plan for the", insert "whole or part of the".

364 Subsection 269AA(5)

After "the species or community" (first occurring), insert ", or part of it,".

365 Subsection 269AA(5)

After "the species or community" (second occurring), insert ", or for that part of it".

366 Subsection 269A(1)

After "to have a recovery plan for the", insert "whole or part of the".

367 Subsection 269A(1) (note)

After "or community", insert "or part of it".

368 Paragraphs 269A(2)(a) and (b)

Before "a listed", insert "the whole or part of".

369 Subsection 269A(3)

After "species)", insert "or part of it,".

370 Subsection 269A(3)

After "ecological community", insert "or part of it,".

371 Subsection 269A(3)

After "species or community", insert ", or the relevant part,".

372 Subsection 269A(5)

After "or (3) for", insert "the whole or part of".

373 Paragraph 269A(5)(a)

After "or community" (wherever occurring), insert "or part".

374 Subsection 269A(6)

After "or ecological community", insert ", or part of a species or ecological community".

375 Paragraph 269A(6)(a)

After "or community", insert "or part".

376 Subsection 270(1)

Repeal the subsection, substitute:

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

377 Paragraph 270(2)(b)

After "community" (wherever occurring), insert "or part of it".

378 Paragraph 270(2)(ca)

After "or community", insert ", or relevant part of it".

379 Paragraph 270(2)(d)

Omit "habitats that are critical to the survival", substitute "critical habitats".

380 Paragraph 270(2)(d)

Omit "concerned", substitute ", or relevant part of it,".

381 Paragraph 270(2)(e)

Omit "concerned", substitute ", or relevant part of it,".

382 Subsections 270A(1) and (2)

Repeal the subsections, substitute:

Decision

(1) For each threatening process in the list of key threatening processes established under section 183, the Minister may at any time decide to:

(a) have a threat abatement plan for the whole process; or

(b) have a threat abatement plan for one or more parts of the process; or

(c) not have a threat abatement plan at all for the process.

(1A) If the Minister decides to have a threat abatement plan for one or more parts of the key threatening process, the Minister is taken to have also decided not to have a threat abatement plan for any other part of the process.

(1B) The Minister must make a decision under this section:

(a) within 90 days after the process is included in the list; and

(b) within 5 years after the last decision under this section in relation to the process, unless that decision was to have a threat abatement plan for the whole process.

Note: A process may be included in the list of key threatening processes by combining or separating other processes (see paragraph 184(ca)).

Basis for decision

(2) The Minister must decide to have a threat abatement plan for the whole process if the Minister believes that having and implementing such a plan is a feasible, effective and efficient way to abate the whole process.

(2A) The Minister must decide to have a threat abatement plan for a part of the process if:

(a) the Minister believes that having and implementing such a plan is a feasible, effective and efficient way to abate that part of the process; and

(b) the Minister does not believe that having and implementing a threat abatement plan for the whole process is a feasible, effective and efficient way to abate the whole process.

(2B) The Minister must decide to not have a threat abatement plan for the whole process, or any part of the process, if the Minister does not believe that having and implementing a threat abatement plan for the whole process, or the part of the process, is a feasible, effective and efficient way to abate the whole process or the part of the process.

383 Paragraph 270A(3)(b)

After "interested in abatement of", insert "any part of".

384 Subsections 270A(3), (4) and (5)

After "threat abatement plan to abate", insert "the whole or any part of".

385 Subsection 270A(6)

After "threat abatement plan for", insert "the whole or any part of".

386 Subsection 270A(6)

After "threat abatement plan to abate", insert "the whole or any part of".

387 Paragraph 270A(8)(a)

Repeal the paragraph, substitute:

(a) a decision under this section; and

388 Subsection 270B(1)

Repeal the subsection, substitute:

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:

(a) have a threat abatement plan for the whole process; or

(b) have a threat abatement plan for one or more parts of the process.

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

389 Subsection 270B(2)

Omit "the process", substitute "the whole process or one or more parts of the process, as the case may be".

390 Subsection 270B(3)

Omit "the effect of the process,", substitute "the effect of the whole process or one or more parts of the process, as the case may be,".

391 Subsection 270B(3)

After "in which the process", insert ", or a relevant part of the process,".

392 Subsection 270B(5)

Omit "for the process", substitute "for the whole process, or one or more parts of the process,".

393 Paragraph 270B(5)(a)

After "the process" (wherever occurring), insert ", or a relevant part of the process,".

394 Subsection 270B(6)

Omit "a process that occurs", substitute "the whole of a process that occurs, or one or more parts of a process that occur,".

395 Paragraph 270B(6)(a)

After "the process", insert ", or a relevant part of the process,".

396 Subsection 270B(7)

Omit "for the process", substitute "for the whole process, or one or more parts of the process,".

397 After subsection 270B(7)

Insert:

Adopting a plan for part of a key threatening process

(7A) If:

(a) a process (the ***deleted process***) is deleted from the list of key threatening processes when another process (the ***combined process***) that combines the deleted process with one or more other processes is included in the list; and

(b) at the time of the inclusion of the combined process, a threat abatement plan is in force for the deleted process;

the Minister may adopt the plan (as in force immediately before the deletion of the deleted process) as a threat abatement plan for the part of the combined process that corresponds to the deleted process.

Note: A process may be included in the list of key threatening processes by combining or separating other processes (see paragraph 184(ca)).

398 Subsection 270B(8)

Repeal the subsection, substitute:

Effect of adopting a plan

(8) A plan adopted under subsection (7) with or without modification, or under subsection (7A), has effect as if it had been made under subsection (2).

399 Subsection 271(1)

Repeal the subsection, substitute:

(1) A threat abatement plan for the whole, or one or more parts, of a key threatening process must provide for the research, management and other actions necessary to reduce the whole process, or the relevant parts of the process, 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 or the relevant parts of the process, as the case may be.

400 Subsection 271(3)

Omit "a threat abatement plan,", substitute "a threat abatement plan for the whole, or one or more parts, of a key threatening process,".

401 Paragraph 271(3)(d)

Omit "the key threatening process that is the subject of the plan", substitute "the process or the relevant parts of the process, as the case may be".

402 Subsection 271(4)

Omit "A threat abatement plan", substitute "A threat abatement plan for the whole, or one or more parts, of a key threatening process".

403 Paragraph 271(4)(c)

Omit "the key threatening process that is the subject of the plan", substitute "the process or the relevant parts of the process, as the case may be".

404 Subsection 273(1)

After "plan for", insert "the whole or part of".

405 Subsection 273(3)

Repeal the subsection, substitute:

Ensuring recovery plan is in force

(3) Once the first recovery plan for the whole or part of a listed threatened species or a listed threatened ecological community is in force, the Minister must exercise the Minister's powers under this Subdivision to ensure that a recovery plan is in force for the species or community, or the relevant part of it, until the Minister decides under section 269AA not to have a recovery plan for the species or community or the relevant part of it.

Note: For revocation, see section 283A.

406 Subsection 273(4)

Omit "a key threatening process", substitute "the whole, or one or more parts, of a key threatening process".

407 Subsection 273(5)

Repeal the subsection, substitute:

Ensuring threat abatement plan is in force

(5) Once the first threat abatement plan for the whole, or one or more parts, of a key threatening process is in force, the Minister must exercise the Minister's powers under this Subdivision to ensure that a threat abatement plan is in force for the process or the relevant parts of the process, as the case may be, until the Minister decides under section 270A not to have such a plan.

Note: For revocation, see section 283A.

408 Subsection 274(2)

After "about a recovery plan", insert "for the whole or part of a species or ecological community".

409 Paragraphs 274(2)(a) and (b)

After "community", insert ", or part,".

410 Paragraph 274(2)(c)

After "community", insert ", or part".

411 Paragraph 274(2)(d)

After "community", insert ", or part,".

412 Paragraph 274(2)(e)

After "community", insert ", or part".

413 Subsection 274(3)

After "a threat abatement plan", insert "for the whole, or one or more parts, of a key threatening process".

414 Paragraph 274(3)(a)

Repeal the paragraph, substitute:

(a) the degree of threat posed by the process or the relevant parts of the process, as the case may be, to the survival in nature of species and ecological communities;

415 Paragraph 275(1)(a)

Repeal the paragraph, substitute:

(a) publish a copy of the proposed plan on the Department's website; and

416 Subparagraphs 275(1)(c)(i) and (ii)

Repeal the subparagraphs, substitute:

(i) on the Department's website; and

417 Subsections 275(2) and (3)

Repeal the subsections, substitute:

(2) The notice must invite persons to make written comments about the proposed plan within the period specified in the notice (which must be at least 3 months from the day the notice is published on the Department's website).

418 Subsection 278(1)

Repeal the subsection, substitute:

(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 publish on the Department's website:

(a) a copy of the plan; and

(b) a notice of the making or adopting of the plan.

419 After subsection 279(5)

Insert:

(5A) Before varying a plan, the Minister must:

(a) publish on the Department's website:

(i) a draft of the proposed variation; and

(ii) an invitation for anyone to give the Minister, within the period specified in the invitation, written comments on the proposed variation; and

(b) have regard to any comments received in response to the invitation within the specified period and in accordance with any requirements prescribed by the regulations for the purposes of this paragraph.

420 Subsection 279(6)

Omit "seek the co-operation of", substitute "consult with".

421 Subsection 279(7)

Repeal the subsection, substitute:

(7) Section 278 applies to a variation of a plan in the same way as that section applies to the making of a recovery plan or a threat abatement plan.

422 Subsection 282(2)

After "implementing a recovery plan", insert "for the whole or part of a species or ecological community".

423 Paragraphs 282(2)(a) and (b)

After "community", insert ", or part,".

424 Paragraph 282(2)(c)

After "community", insert ", or part".

425 Paragraph 282(2)(d)

After "community", insert ", or part,".

426 Paragraph 282(2)(e)

After "community", insert ", or part".

427 Subsection 282(3)

Omit "a threat abatement plan,", substitute "a threat abatement plan for the whole, or one or more parts, of a key threatening process,".

428 Paragraph 282(3)(a)

Repeal the paragraph, substitute:

(a) the degree of threat posed by the process or the relevant parts of the process, as the case may be, to the survival in nature of species and ecological communities;

429 Subsections 283(1) and (2)

After "deal", insert "wholly or partly".

430 Subsection 283A(1)

Repeal the subsection, substitute:

(1) The Minister may, by legislative instrument:

(a) revoke a recovery plan for the whole of a listed threatened species or the whole of a listed threatened ecological community if the Minister decides under section 269AA to:

(i) have a recovery plan for part of the species or ecological community; or

(ii) not have a recovery plan at all for the species or community; or

(b) revoke a recovery plan for part of a listed threatened species or part of a listed threatened ecological community if the Minister decides under section 269AA to:

(i) have a recovery plan for the whole species or community; or

(ii) have a recovery plan for a different part of the species or community; or

(iii) not have a recovery plan at all for the species or community; or

(c) revoke a threat abatement plan for the whole of a key threatening process if the Minister decides under section 270A to:

(i) have a threat abatement plan for one or more parts of the process; or

(ii) not have a threat abatement plan at all for the process; or

(d) revoke a threat abatement plan for one or more parts of a key threatening process if the Minister decides under section 270A to:

(i) have a threat abatement plan for the whole process; or

(ii) have a threat abatement plan for a different part of the process; or

(iii) not have a threat abatement plan at all for the process.

431 After Subdivision B of Division 5 of Part 13

Insert:

Subdivision BA—Protection statements

298A Protection statements for listed threatened species and listed threatened ecological communities

(1) The Minister may, by legislative instrument, make a ***protection statement*** for:

(a) a listed threatened species or one or more parts of a listed threatened species (except one that is extinct or is a conservation dependent species); or

(b) a listed threatened ecological community or one or more parts of a listed threatened ecological community.

(2) The Minister must not make a protection statement unless the Minister is satisfied that the protection statement:

(a) is not inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph; and

(b) meets any criteria prescribed by the regulations.

(3) In making a protection statement for a species or community or one or more parts of a species or community, the Minister must have regard to:

(a) any recovery plan for the species or community or a relevant part of the species or community; and

(b) any approved conservation advice for the species or community; and

(c) any advice received from a person or body in accordance with section 298D; and

(d) any relevant comments received in accordance with section 298E; and

(e) any matter prescribed by the regulations; and

(f) any other matter the Minister considers relevant.

298B Content of protection statements

(1) A protection statement for a species or community or one or more parts of a species or community must include information about what must be protected in order to ensure the survival and recovery of the species or community, or the relevant parts of the species or community, in the wild.

(2) A protection statement for a species or community or one or more parts of a species or community may also include:

(a) information about impacts on the species or community, or a relevant part of the species or community, that would or would be likely to seriously impair the viability of the species or community or part of the species or community; or

(b) information about critical habitat for the species or community, or a relevant part of the species or community; or

(c) information about irreplaceable habitat for the species or community, or a relevant part of the species or community; or

(d) any information the Minister considers relevant; or

(e) any other information prescribed by the regulations.

(3) A protection statement for a species or community or one or more parts of a species or community may also set out circumstances or factors that the Minister considers are relevant to the exercise of discretion (if applicable) by a decision maker in applying an environment law provision relevant to an impact on the species or community or part of the species or community.

298C Protection statements may cover more than one species or community

A single protection statement may cover:

(a) one or more species or communities; or

(b) one or more parts of the same, or different, species or communities; or

(c) any combination thereof.

298D Advice on protection statements

The Minister may obtain advice, in accordance with the regulations (if any), from any of the following persons or bodies before making, varying or revoking a protection statement:

(a) the Scientific Committee;

(b) the Restoration Contributions Holder;

(c) the Restoration Contributions Advisory Committee;

(d) a State or Territory government body;

(e) any other person or body the Minister considers relevant.

298E Public consultation on protection statements

(1) Before making or varying a protection statement, the Minister must publish on the Department's website:

(a) a draft of the protection statement or variation; and

(b) a notice inviting comments on the draft protection statement or variation within the period specified in the notice, which must be a period of at least 30 business days.

(2) The Minister must not make or vary a protection statement until after the end of the period specified in the notice.

(3) Subsection (1) does not apply to a variation of a minor or machinery nature.

298F Varying a protection statement

(1) The Minister may, by legislative instrument, vary a protection statement if the Minister is satisfied it is appropriate to do so.

(2) In varying a protection statement for a species or community or one or more parts of a species or community the Minister must have regard to:

(a) any recovery plan for the species or community or a relevant part of the species or community;

(b) any approved conservation advice for the species or community; and

(c) any advice received from a person or body in accordance with section 298D; and

(d) any relevant comments received in accordance with section 298E.

(3) If the Minister varies a protection statement, the Minister must publish reasons for the variation on the Department's website as soon as practicable after making the variation.

298G Revoking protection statements

Automatic revocation

(1) A protection statement for a species or community or one or more parts of a species or community is, by force of this section, revoked if:

(a) the species or community ceases to be a listed threatened species or listed threatened ecological community; or

(b) the species is transferred to the extinct category or the conservation dependent category.

(2) The revocation takes effect at the time that the event mentioned in paragraph (1)(a) or (b) occurs.

Revocation by Minister

(3) The Minister may, by legislative instrument, revoke a protection statement if the Minister is satisfied that the protection statement is no longer appropriate.

(4) The Minister must have regard to any advice obtained from a person or body in accordance with section 298D in revoking a protection statement.

(3) If the Minister revokes a protection statement, the Minister must publish reasons for the revocation on the Department's website as soon as practicable after making the revocation.

298H Reviews of protection statements

(1) The Minister must cause reviews of each protection statement to be undertaken in accordance with this section.

(2) The first review of a protection statement must commence within 5 years of the day on which the protection statement commences.

(3) Subsequent reviews of a protection statement for a species or community or one or more parts of a species or community must commence:

(a) if the Minister makes or varies a recovery plan for the species or community or a relevant part of the species or community—when the recovery plan is made or varied; and

(b) if the Minister approves a conservation advice or changes an approved conservation advice for the species or community or a relevant part of the species or community—when the conservation advice is approved or changed; and

(c) in all cases—within 5 years after the day on which a report of the previous review of the protection statement is given to the Minister under subsection (5).

(4) A review of a protection statement must consider:

(a) the matters prescribed by the regulations; and

(b) any other matter specified by the Minister in writing.

(5) The person conducting a review of a protection statement must give a written report of the review to the Minister within:

(a) 12 months after the day the review is commenced; or

(b) a longer period determined in writing by the Minister.

(6) The Minister must publish the report on the Department's website as soon as practicable after the report is given to the Minister.

(7) An instrument mentioned in paragraph (4)(b) is not a legislative instrument.

432 After Division 7 of Part 13

Insert:

Division 7A—Exemptions from provisions of this Part

302A Exemption from provisions of this Part

(1) The Minister may, by written instrument, grant an exemption (a ***Part 13 exemption***) for an action from a provision (including a regulation made under a provision) of this Part:

(a) on the Minister's initiative; or

(b) on application under section 302C.

Note: The Minister may request information to make an informed decision under subsection 302N(1).

Content of exemption

(2) The exemption must specify:

(a) the action; and

(b) each provision from which the action is exempt; and

(c) the person to whom the exemption applies; and

(d) the period for which the exemption is in force; and

(e) any conditions imposed on the exemption under section 302E.

(3) The Minister must be satisfied that the period specified for the purposes of paragraph (2)(d) is reasonably necessary to address the national interest that is the basis for the exemption.

When exemption comes into force

(4) An exemption comes into force at the start of the period specified for the purposes of paragraph (2)(d) (which must not be earlier than the day the exemption is made).

Not a legislative instrument

(5) An exemption made under subsection (1) is not a legislative instrument.

302B Effect of Part 13 exemption

While a Part 13 exemption from a provision is in force for an action, the provision does not apply in relation to the taking of the action if:

(a) the action is taken by the person to whom the exemption applies; and

(b) the person takes the action in accordance with the conditions (if any) of the exemption.

Note 1: For conditions of an exemption, see section 302E.

Note 2: To the extent a defendant seeks to rely on this section as a defence to an offence, the defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

302C Application for Part 13 exemption

(1) The following may apply to the Minister (the ***Environment Minister***) for a Part 13 exemption for an action:

(a) the person who proposes to take the action;

(b) if that person agrees in writing—a Minister (other than the Environment Minister), or a Minister of a State or Territory.

(2) The application must:

(a) be in writing; and

(b) specify the provision or provisions from which the person is applying for an exemption for the action.

Timeframe for decision

(3) The Minister must decide whether to grant the exemption under section 302A within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 302N, days between the request and receipt of the information do not count towards this timeframe (subsection 302N(2)).

Notice if Minister decides not to grant exemption

(4) If the Minister decides not to grant the exemption, the Minister must give the applicant written notice of the Minister's decision as soon as practicable after the decision is made.

Note: If the Minister grants the exemption, the Minister must give each person to whom the exemption applies a copy of the exemption (see section 302F).

302D Grounds for grant of Part 13 exemption

(1) Before granting a Part 13 exemption for an action from a provision (including a regulation made under a provision) of this Part the Minister must be satisfied that:

(a) if the exemption were not granted, the action would contravene the provision; and

(b) it is in the national interest that the provision not apply to the taking of the action by the person to whom the exemption is to apply.

(2) In determining the national interest for the purposes of a provision of this Division, the Minister may consider:

(a) Australia's defence or security; or

(b) a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates.

This does not limit the matters the Minister may consider.

Note: The following provisions of this Division require the Minister to consider the national interest:

(a) paragraph (1)(b) of this section;

(b) subsection 302G(3);

(c) paragraph 302K(1)(a).

302E Conditions of Part 13 exemption

(1) The Minister may impose one or more conditions on a Part 13 exemption for an action from a provision if any of the following subsections apply.

Conditions—general

(2) The Minister is satisfied that:

(a) the provision is not a regulation made for the purposes of paragraph 301A(b), (c) or (d); and

(b) the condition is necessary or convenient for protecting from the action, or mitigating damage that has been, will be or may be caused by the action to:

(i) a listed threatened species, a listed threatened ecological community, a listed migratory species or a listed marine species, or the habitat of such a species or of such an ecological community, that is in a Commonwealth area; or

(ii) the environment in a Commonwealth area.

Conditions—cetaceans

(3) The Minister is satisfied that:

(a) the provision is not a regulation made for the purposes of paragraph 301A(b), (c) or (d); and

(b) the action is likely to interfere with, or otherwise affect, cetaceans in, or in waters beyond the outer limits of, the Australian Whale Sanctuary; and

(c) the condition is necessary or convenient for:

(i) avoiding or mitigating the interference with or effect on the cetaceans that has been, will be or is likely to be caused by the action; or

(ii) protecting from the action, or mitigating damage that has been, will be or may be caused by the action to, the environment of, or the environment of waters beyond the outer limits of, the Australian Whale Sanctuary.

Conditions—bringing invasive species into Australia

(4) The Minister is satisfied that:

(a) the provision is a regulation made for the purposes of paragraph 301A(b); and

(b) the condition relates to bringing a member of a species included in the list mentioned in paragraph 301A(a) into the Australian jurisdiction.

Conditions—trade in invasive species

(5) The Minister is satisfied that:

(a) the provision is a regulation made for the purposes of paragraph 301A(c); and

(b) the condition relates to trade in members of a species included in the list mentioned in paragraph 301A(a):

(i) between Australia and another country; or

(ii) between 2 States; or

(iii) between 2 Territories; or

(iv) between a State and a Territory; or

(v) by a constitutional corporation.

Conditions—actions involving or affecting invasive species

(6) The Minister is satisfied that:

(a) the provision is a regulation made for the purposes of paragraph 301A(d); and

(b) the condition:

(i) involves or affects members of a species included in the list mentioned in paragraph 301A(a); and

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

302F Notice of Part 13 exemption

(1) As soon as practicable after making a Part 13 exemption under section 302A, the Minister must:

(a) give a copy of the exemption to:

(i) the person to whom the exemption applies; and

(ii) if a different person applied for the exemption under subsection 302C(1)—that person; and

(b) publish a copy of the exemption together with the Minister's reasons for granting the exemption on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the exemption or reasons 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

302G Variation of Part 13 exemption

(1) The Minister may, by written instrument, vary a Part 13 exemption:

(a) on the Minister's initiative; or

(b) on application under section 302H.

Note: The Minister may request information to make an informed decision under subsection 302N(1).

(2) The variation may vary any one or more of the following:

(a) the specified action;

(b) the provisions from which the action is exempt, but not in a way that results in the action being exempt from additional provisions;

(c) the person to whom the exemption applies;

(d) the period for which the exemption is in force;

(e) the conditions of the exemption, including by imposing additional conditions.

Grounds for variation

(3) The Minister must not vary the exemption as mentioned in paragraph (2)(a), (b) or (c) unless the Minister is satisfied that the exemption as varied is in the national interest.

Note: Subsection 302D(2) applies in relation to determining the national interest.

(4) The Minister must not vary the exemption as mentioned in paragraph (2)(d) unless the Minister is satisfied that the variation is reasonably necessary to address the national interest that is the basis for the exemption as varied.

(5) The Minister must not vary the exemption as mentioned in paragraph (2)(e) unless the Minister is satisfied, in relation to the conditions as varied, of the matters set out in subsection 302E(2), (3), (4), (5) or (6).

When variation comes into force

(6) A variation comes into force on the day specified in the variation (which must not be earlier than the day the variation is made).

Not a legislative instrument

(7) A variation made under subsection (1) is not a legislative instrument.

302H Application to vary Part 13 exemption

(1) The following may apply to the Minister to vary a Part 13 exemption:

(a) the person to whom the exemption applies (the ***exempt person***);

(b) if a different person applied to the Minister for the exemption under subsection 302C(1)—that person, with the agreement in writing of the exempt person.

(2) The application must:

(a) be in writing; and

(b) specify the variation applied for.

Note: For the types of variations that may be made, see subsection 302G(2).

Timeframe for decision

(3) The Minister must decide whether to vary the exemption under section 302G within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 302N, days between the request and receipt of the information do not count towards this timeframe (subsection 302N(2)).

Notice if Minister decides not to vary exemption

(4) If the Minister decides not to vary the exemption, the Minister must give the applicant written notice of the Minister's decision as soon as practicable after the decision is made.

Note: If the Minister varies the exemption, the Minister must give a copy of the variation to the person to whom it applies and the applicant (if a different person) (see section 302J).

302J Notice of variation of Part 13 exemption

(1) As soon as practicable after varying a Part 13 exemption under section 302G, the Minister must:

(a) give a copy of the variation to:

(i) the person to whom the exemption, as varied, applies; and

(ii) if a different person applied for the variation—that person; and

(b) publish a copy of the variation together with the Minister's reasons for varying the exemption on the Department's website.

(2) However, the Minister must not publish under paragraph (1)(b) so much of the variation or reasons 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 Australia's national interest not to provide.

Note: Subsection 157C(2) applies in relation to determining Australia's national interest.

302K Revocation of Part 13 exemption

(1) The Minister may, by written instrument, revoke a Part 13 exemption, on the Minister's initiative, if the Minister reasonably believes that:

(a) the exemption is no longer in the national interest; or

(b) a condition of the exemption has been contravened.

Note 1: The Minister may request information to make an informed decision under subsection 302N(1).

Note 2: For paragraph (a), subsection 302D(2) applies in relation to determining the national interest.

Note 3: A Part 13 exemption is taken to be revoked if the Minister decides to accept the surrender of the exemption under section 302M.

(2) A revocation comes into force on the day specified in the revocation (which must not be earlier than the day the revocation is made).

(3) A revocation made under subsection (1) is not a legislative instrument.

302L Notice of revocation of Part 13 exemption

As soon as practicable after revoking a Part 13 exemption under section 302K, the Minister must:

(a) give a copy of the revocation to:

(i) the person to whom the exemption applied immediately before the revocation; and

(ii) if a different person applied for the exemption under subsection 302C(1)—that person; and

(b) publish a copy of the revocation together with the Minister's reasons for revoking the exemption on the Department's website.

302M Surrender of Part 13 exemption

(1) A person to whom a Part 13 exemption applies may, in writing, request the Minister to accept the surrender of the exemption.

(2) The Minister must decide whether to accept the surrender within 20 business days of receiving the application.

Note: If the Minister requests information to make an informed decision under section 302N, days between the request and receipt of the information do not count towards this timeframe (subsection 302N(2)).

(3) In deciding whether or not to accept the surrender, the Minister may have regard to any matter the Minister considers relevant.

Notice of decision

(4) As soon as practicable after the decision is made, the Minister must:

(a) give written notice of the decision to:

(i) the person who made the request; and

(ii) if a different person applied for the exemption under subsection 302C(1)—that person; and

(b) if the Minister decides to accept the surrender—publish the notice on the Department's website.

Effect of surrender

(5) If the Minister decides to accept the surrender, the exemption is taken to be revoked with effect from the day specified in the notice (which must not be earlier than the day the notice is published under paragraph (4)(b)).

302N Minister may request further information for making decision

(1) The Minister may request any of the following persons to provide specified information if the Minister is satisfied that the information is reasonably necessary in order for the Minister to make an informed decision as to whether to grant, vary, revoke, or accept the surrender of, a Part 13 exemption for an action:

(a) the applicant for the decision (if any);

(b) if there is no applicant—the person who proposes to take, is taking or has taken the action;

(c) in any case—the person to whom the exemption applies or is proposed to apply;

(d) any other person the Minister considers appropriate.

(2) If the Minister has requested information under subsection (1) in respect of a decision for which there is an applicant, a day is not to

be counted as a business day for the purposes of subsection 302C(3) (application for exemption), 302H(3) (application to vary exemption) or 302M(2) (application to surrender exemption) 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.

433 Section 303A

Repeal the section.

434 Division 2 of Part 13A (heading)

Omit "**species**", substitute "**specimens**".

435 Subdivision A of Division 2 of Part 13A (heading)

Omit "**CITES species and**".

436 Sections 303CA and 303CB

Repeal the sections, substitute:

303CA CITES specimens

(1) A specimen is a ***CITES specimen*** at any time while the specimen is a CITES I specimen, a CITES II specimen or a CITES III specimen.

(2) A specimen is a ***CITES I specimen*** if:

(a) the specimen belongs to a species included in Appendix I to CITES; or

(b) a declaration that the specimen is a CITES I specimen is in force under section 303CB.

(3) A specimen is a ***CITES II specimen*** if:

(a) the specimen belongs to a species included in Appendix II to CITES; or

(b) a declaration that the specimen is a CITES II specimen is in force under section 303CB.

(4) A specimen is a ***CITES III specimen*** if:

(a) the specimen belongs to a species included in Appendix III to CITES; or

(b) a declaration that the specimen is a CITES III specimen is in force under section 303CB.

(5) If an annotation in an Appendix to CITES indicates that only specified kinds of specimens of a species are included in the Appendix, paragraph (2)(a), (3)(a) or (4)(a) (as applicable) refers only to specimens of the specified kinds.

Note: Specimens may be included in an Appendix to CITES subject to restrictions and conditions imposed by or under CITES. These restrictions and conditions are given effect by subsections 303CD(4) and 303CG(3).

(6) For the purposes of this section, assume that the definition of ***specimen*** in CITES includes a thing that is a specimen within the meaning of this Act.

303CB Stricter domestic measures

(1) The Minister may, by legislative instrument, declare that:

(a) a specimen that belongs to a species included in Appendix II or III to CITES is a CITES I specimen; or

(b) a specimen that is not a CITES I specimen because of subsection 303CA(5) is a CITES I specimen; or

(c) a specimen that is not a CITES II specimen because of subsection 303CA(5) is a CITES II specimen; or

(d) a specimen that is not a CITES III specimen because of subsection 303CA(5) is a CITES III specimen; or

(e) a specimen that is not a CITES specimen is a CITES I specimen or a CITES II specimen.

(2) If a quantitative limit is imposed by or under CITES in relation to the export or import of a CITES specimen, the Minister may, by legislative instrument, declare that, for the purposes of this Part, a specified lower quantitative limit is taken to be imposed by or under CITES.

437 Paragraph 303CD(4)(d)

Repeal the paragraph, substitute:

(d) in a case where a quantitative limit in relation to the import of the specimen is imposed by or under CITES—the quantity of the specimen does not exceed:

(i) if a lower limit is specified in a declaration in force under subsection 303CB(2)—the lower limit; or

(ii) otherwise—the limit imposed by or under CITES; and

438 At the end of section 303CF

Add:

(3) The Minister may, if requested to do so by the applicant, agree in writing to extend the specified period for giving the information.

(4) If, at the end of the specified period, as extended (if applicable), the applicant has not given the Minister the information, the application is taken to be withdrawn.

439 Paragraph 303CG(3)(d)

Repeal the paragraph, substitute:

(d) if the specimen is a CITES specimen and a restriction or condition for the specimen is imposed by or under CITES:

(i) for a restriction or condition that is a quantitative limit for which a lower limit is specified in a declaration in force under subsection 303CB(2)—the lower limit has been, or is likely to be, complied with; or

(ii) otherwise—the restriction or condition has been, or is likely to be, complied with; and

440 Subparagraph 303DB(6)(a)(ii)

Omit "for that species".

441 At the end of section 303DF

Add:

(3) The Minister may, if requested to do so by the applicant, agree in writing to extend the specified period for giving the information.

(4) If, at the end of the specified period, as extended (if applicable), the applicant has not given the Minister the information, the application is taken to be withdrawn.

442 Paragraph 303DG(4)(d)

Omit "for that species".

443 At the end of section 303EH

Add:

(3) The Minister may, if requested to do so by the applicant, agree in writing to extend the specified period for giving the information.

(4) If, at the end of the specified period, as extended (if applicable), the applicant has not given the Minister the information, the application is taken to be withdrawn.

444 At the end of section 303EM

Add:

(3) The Minister may, if requested to do so by the applicant, agree in writing to extend the specified period for giving the information.

(4) If, at the end of the specified period, as extended (if applicable), the applicant has not given the Minister the information, the application is taken to be withdrawn.

445 Subsection 303FN(6)

Omit "third anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 3", substitute "fifth anniversary of the day on which the declaration took effect. However, this rule does not apply if a period of less than 5".

446 Paragraph 303FRA(3)(a)

Omit "and 84", substitute ", 84 and 87A".

447 At the end of section 303GK

Add:

Electronic communication

(5) Nothing in this section prevents the holder of a permit producing a permit, or causing a permit to be produced, by means of an electronic communication.

448 At the end of section 303GL

Add:

Electronic communication

(4) Nothing in this section prevents a person producing a certificate, or causing a certificate to be produced, by means of an electronic communication.

449 Subparagraph 304(1)(a)(vi)

Omit "nuclear", substitute "radiological exposure".

450 Section 305 (heading)

After "**Minister**" insert "**or Restoration Contributions Holder**".

451 Section 305

After "Minister" (wherever occurring) insert "or the Restoration Contributions Holder".

452 Section 305

Omit "protection and conservation" (wherever occurring), substitute "protection and conservation, or restoration".

453 Paragraph 305(1)(f)

Omit "nuclear", substitute "radiological exposure".

454 Subparagraphs 305(1A)(b)(v) and (c)(vi)

Omit "nuclear", substitute "radiological exposure".

455 Paragraph 305(2)(d)

Omit "nuclear actions", substitute "of radiological exposure actions".

456 Paragraph 306(1)(a)

Omit "protection and conservation", substitute "protection and conservation, or restoration".

457 Subparagraphs 306(1)(a)(vi) and (b)(vi) and (2)(a)(vi) and (b)(vi)

Omit "nuclear", substitute "radiological exposure".

458 Section 306A (heading)

After "**agreement**" insert "**entered into by the Minister**".

459 Subsection 306A(1)

After "agreement", insert ", other than an agreement entered into by the Restoration Contributions Holder,".

460 Paragraph 307(b)

After "Minister", insert "or the Restoration Contributions Holder".

461 Section 307A (heading)

After "**agreements**", insert "**entered into by the Minister**".

462 Paragraph 307A(2)

Omit "protection and conservation", substitute "protection and conservation, or restoration".

463 Subsections 308(1) and (3)

After "Minister", insert "or the Restoration Contributions Holder".

464 Subsection 308(4)

Repeal the subsection, substitute:

(4) If the Minister or the Restoration Contributions Holder is satisfied that a conservation agreement is not capable of achieving its purpose, the Minister or Restoration Contributions Holder may, by notifiable instrument, terminate the agreement or vary it in any way the Minister or Restoration Contributions Holder thinks necessary to ensure it becomes capable of achieving its purpose.

465 Subsection 308(5)

Omit "Minister may make an order", substitute "Minister or the Restoration Contributions Holder may make a notifiable instrument".

466 Subsection 308(6)

Repeal the subsection.

467 Subsection 308(7)

Omit "an order", substitute "a notifiable instrument".

468 Subsection 308(7)

After "Minister", insert "or the Restoration Contributions Holder".

469 Subsection 308(8)

Omit "an order", substitute "a notifiable instrument".

470 After subsection 308(8) (before the note)

Insert:

(9) For the purposes of this section:

(a) a thing required or permitted to be done by the Minister in relation to a conservation agreement is required or permitted to be done by the Minister only in relation to a conservation agreement entered into by the Minister; and

(b) a thing required or permitted to be done by the Restoration Contributions Holder in relation to a conservation agreement is required or permitted to be done by the Restoration Contributions Holder only in relation to a conservation agreement entered into by the Restoration Contributions Holder.

471 Subsections 309(1) and (2)

Repeal the subsections, substitute:

(1) As soon as practicable after a conservation agreement has been entered into or varied, other than by a notifiable instrument made under subsection 308(4), the Minister or the Restoration Contributions Holder must publish the conservation agreement as entered into or varied, on the Department's website.

472 Subsections 309(3), (4) and (5)

After "Minister" (wherever occurring), insert "or the Restoration Contributions Holder".

473 At the end of section 309

Add:

(6) For the purposes of this section:

(a) a thing required or permitted to be done by the Minister in relation to a conservation agreement is required or permitted to be done only in relation to a conservation agreement entered into by the Minister; and

(b) a thing required or permitted to be done by the Restoration Contributions Holder in relation to a conservation agreement is required or permitted to be done only in relation to a conservation agreement entered into by the Restoration Contributions Holder.

474 Sections 310 and 312

After "Minister" (wherever occurring), insert "or the Restoration Contributions Holder".

475 At the end of Subdivision A of Division 1A of Part 15

Add:

324B National Heritage place may be made up of geographically distinct or non-contiguous locations etc.

For the purposes of this Act, a National Heritage place, or a place being nominated or assessed for inclusion in the National Heritage List as a National Heritage place, may be made up of locations, areas, regions or other elements that are not contiguous, or not geographically proximate.

Note 1: ***Place*** is defined in section 528 to include locations, areas, regions, buildings and other structures, and their immediate surroundings.

Note 2: This section is subject to subsection 324JJ(5A).

476 Section 324E

Omit:

> The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister

> determines the start of the first assessment period (see section 324G).
>
> The usual process involves the following steps for each assessment period:
>
> (a) the Minister may determine heritage themes (this step is optional) (see section 324H);
>
> (b) the Minister invites people to nominate places for inclusion in the National Heritage List, and gives the nominations to the Australian Heritage Council (see sections 324J and 324JA);

substitute:

> The usual process involves the following steps:
>
> (a) from time to time, the Minister invites people to nominate places for inclusion in the National Heritage List, and gives the nominations to the Australian Heritage Council (see sections 324J and 324JA);

477 Section 324E

Omit:

> The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

478 Section 324F (definition of *assessment period*)

Repeal the definition.

479 Section 324F (definition of *eligible for assessment consideration*)

Omit ", in relation to an assessment period,".

480 Section 324F (definition of *finalised priority assessment list*)

Omit "for an assessment period".

481 Section 324F (definition of *proposed priority assessment list*)

Omit "for an assessment period".

482 Sections 324G and 324H

Repeal the sections.

483 Section 324J (heading)

Omit "**to invite nominations for each assessment period**", substitute "**may invite nominations from time to time**".

484 Subsection 324J(1)

Omit "Before the start of each assessment period, the Minister must", substitute "The Minister may, from time to time,".

485 Paragraph 324J(2)(c)

Repeal the paragraph.

486 Paragraph 324J(2)(f)

Repeal the paragraph, substitute:

(f) may also include any other information that the Minister considers appropriate.

487 Subsections 324JA(1), (2) and (3)

Repeal the subsections, substitute:

Giving nominations to Australian Heritage Council

(1) Within 30 business days after the cut-off date specified in the notice inviting nominations under subsection 324J(1), the Minister must give the Australian Heritage Council the nominations received by the Minister by the cut-off date, other than any nominations rejected under subsection (4).

488 Subsection 324JA(6)

Repeal the subsection.

489 Subsection 324JB(1)

Omit "in relation to an assessment period".

490 Subsection 324JB(1)

Omit "for the assessment period", substitute "in relation to the nominations".

491 Subsection 324JB(2)

Omit "consideration in relation to the assessment period", substitute "consideration".

492 Paragraph 324JB(2)(a)

Repeal the paragraph.

493 Paragraph 324JB(2)(b)

Omit "in relation to the assessment period".

494 Paragraphs 324JB(3)(a), (b), (c) and (d)

Repeal the paragraphs, substitute:

(a) the place has been nominated by a nomination referred to in subsection (1) or was nominated in relation to the most recent previous list prepared under this section; or

(b) the Council itself wishes to nominate the place for inclusion in the National Heritage List; or

(c) each part of the place is a place to which paragraph (a) or (b) applies.

495 Subsection 324JC(1)

Omit "for an assessment period".

496 Subsection 324JC(2)

Repeal the subsection, substitute:

(2) The assessment completion time for a place must be either:

(a) the end of the period of 12 months starting on the day the finalised priority assessment list is published under subsection 324JF(1); or

(b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take longer than the period under paragraph (a)—the end of that longer period.

497 Subsection 324JD(1)

Omit "for an assessment period".

498 Paragraph 324JD(1)(b)

Omit "or (c)".

499 Subsection 324JD(2)

Repeal the subsection, substitute:

(2) The statement must also identify, as a place nominated by the Australian Heritage Council, any place that is included in the list because the Council itself wishes to nominate the place or part of it (as mentioned in paragraphs 324JB(3)(b) and (c)).

500 Subsection 324JE(1)

Omit "for an assessment period".

501 Subsection 324JE(4)

Omit "for the assessment period".

502 Subsections 324JF(1), 324JG(1), 324JH(1) and 324JI(1)

Omit "for an assessment period".

503 After section 324JI

Insert:

324JIA Discontinuing assessment of a place

Discontinuance on Council's recommendation

(1) The Australian Heritage Council may, at any time before an assessment in relation to a place is given to the Minister under section 324JH, recommend to the Minister that the assessment of the place under this Subdivision be discontinued.

(2) A recommendation made under subsection (1) must:
(a) be in writing; and
(b) set out the Council's reasons for recommending that the assessment of the place be discontinued.

(3) The Minister must consider the recommendation and may, if the Minister considers it appropriate to do so, direct the Council to discontinue the assessment of the place.

(4) If the Minister does not give a direction under subsection (3) within 3 months after being given the Council's recommendation, the Council must continue with the assessment of the place.

Discontinuance on Minister's initiative

(5) The Minister may, on the Minister's own initiative, if the Minister considers it appropriate to do so, direct the Council to discontinue the assessment of a place under this Subdivision at any time before an assessment of the place is given to the Minister under section 324JH.

Further information

(6) In deciding whether to make a direction under this section, the Minister may request the Council to provide any of the following:
(a) any comments received by the Council in response to the notice under subsection 324JG(1) in relation to the place;
(b) any other information relevant to the Minister's decision that the Minister reasonably believes the Council can provide.

(7) In deciding whether to make a direction, the Minister may request any person to provide any information relevant to the Minister's decision that the Minister reasonably believes the person can provide.

Publication of reasons

(8) If the Minister, under this section, directs the Council to discontinue the assessment of a place, the Minister must, as soon as practicable:
(a) give the Council a copy of the direction; and

(b) publish a copy of the direction, and the Minister's reasons for making it, on the Department's website.

Effect of direction

(9) If the Minister makes a direction under this section in relation to a place, the place is taken to be no longer included in the finalised priority assessment list.

Direction not a legislative instrument

(10) A direction given under subsection (3) or (5) is not a legislative instrument.

504 After subsection 324JJ(5)

Insert:

(5A) Despite section 324B, if the assessed place is made up of locations, areas, regions or other elements that are not contiguous, or not geographically proximate, the Minister may include the assessed place, or a part of the assessed place, in the National Heritage List only if the Minister is satisfied that each of the locations, areas, regions or other elements:

(a) has been assessed for inclusion in the National Heritage List, whether together or separately; and

(b) has one or more of the same National Heritage values as the other locations, areas, regions or elements that make up the place.

(5B) To avoid doubt, the Minister may comply with subsection (1) by taking action under section 324LB (expansion of National Heritage place) to add the assessed place, or a part of the assessed place, to an existing National Heritage place.

505 Paragraphs 324JO(1)(a) and 324JP(1)(a)

Omit "for an assessment period".

506 After section 324L

Insert:

324LA Amendment of National Heritage values of a place

(1) The Minister may, by instrument published in the *Gazette*, do any of the following in relation to a National Heritage place:

(a) add one or more National Heritage values to the entry for the place in the National Heritage List;

(b) amend the National Heritage values included in the List for the place.

(2) The Minister may do so only if the Minister is satisfied that:

(a) it is appropriate to do so; and

(b) after the instrument is made, the place will continue to meet one or more National Heritage criteria.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

(3) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.

(4) Subsections 324JJ(6) and (7) apply if the Minister makes an instrument under this section, as if:

(a) references in those subsections to the Minister including the assessed place or a part of it were references to the Minister making a change under subsection (1) in relation to the place; and

(b) the reference in paragraph 324JJ(6)(b) to a person who responded to a notice under subsection 324J(1) were a reference to a person who responded to a notice under paragraph 324M(1)(b) (invitation to the public) in relation to the amended National Heritage values of the place.

(5) An instrument made under subsection (1) is not a legislative instrument.

324LB Expansion of National Heritage place

(1) The Minister may, by instrument published in the *Gazette*, alter the boundary of a National Heritage place (the ***listed place***) as described in the National Heritage List so as to add a place to the listed place, if the Minister is satisfied that the added place:

(a) has been assessed for inclusion in the National Heritage List (either on its own or as part of a larger place); and

(b) has one or more of the same National Heritage values as the listed place.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

(2) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.

(3) Subsections 324JJ(6) and (7) apply if the Minister makes an instrument under this section, as if:

(a) references in those subsections to the assessed place were references to the added place; and

(b) the reference in paragraph 324JJ(6)(b) to a person who responded to a notice under subsection 324J(1) were a reference to a person who responded to a notice under paragraph 324M(1)(b) (invitation to the public) in relation to the added place.

(4) An instrument made under subsection (1) is not a legislative instrument.

324LC Alignment with boundaries of declared World Heritage property

(1) The Minister may, by instrument published in the *Gazette*, alter the boundaries of a National Heritage place to align them with the boundaries of a declared World Heritage property, if the Minister is satisfied that the National Heritage place and the declared World Heritage property are the same, or substantially the same, place.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

(2) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.

(3) An instrument made under subsection (1) is not a legislative instrument.

507 Subsection 324M(1)

Omit "the Minister removes from the National Heritage List under section 324L all or part of a place or one or more of a place's National Heritage values in a removal for loss of value", substitute "making a change under section 324L on the ground mentioned in paragraph 324L(1)(a) or (2)(a) (removal for loss of value), or under section 324LA, 324LB or 324LC, in relation to a place on the National Heritage List".

508 Paragraphs 324M(1)(a) and (b)

Omit "removal" (wherever occurring), substitute "change".

509 Paragraphs 324M(5)(a) and (b)

Repeal the paragraphs, substitute:

(a) decide whether to make the change; and

(b) if the Minister decides to make the change—make an instrument to effect the change under section 324L, 324LA, 324LB or 324LC;

510 Section 324N

Repeal the section, substitute:

324N Minor amendments to the National Heritage List

(1) The Minister may, by written instrument, amend the National Heritage List in relation to a National Heritage place for one or more of the following reasons:

(a) to fix a typographical error in the entry for the place;

(b) to make a correction to the description of the boundaries of the place;

(c) to correct an error in the description of the National Heritage values for the place;

(d) to reflect a change in name, or additional name, for the place.

(2) An instrument made under subsection (1) is not a legislative instrument.

(3) If the Minister makes an instrument under subsection (1), the Minister must, as soon as practicable, publish a copy on the Department's website.

511 After subparagraph 324R(2)(b)(i)

Insert:

(ia) publication in the *Gazette* of an instrument made under section 324LA, 324LB or 324LC relating to the place; or

512 At the end of Subdivision A of Division 3A of Part 15

Add:

341BA Commonwealth Heritage place may be made up of geographically distinct or non-contiguous locations etc.

For the purposes of this Act, a Commonwealth Heritage place, or a place being nominated or assessed for inclusion in the Commonwealth Heritage List as a Commonwealth Heritage place, may be made up of locations, areas, regions or other elements that are not contiguous, or not geographically proximate.

Note 1: ***Place*** is defined in section 528 to include locations, areas, regions, buildings and other structures, and their immediate surroundings.

Note 2: This section is subject to subsection 341JI(5A).

513 Section 341E

Omit:

> The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G).
>
> The usual process involves the following steps for each assessment period:

substitute:

The usual process involves the following steps:

514 Section 341E (paragraph (a))

Before "the Minister", insert "from time to time,".

515 Section 341E

Omit:

The steps mentioned in paragraphs (a) to (c) will generally be completed before the start of the assessment period.

516 Section 341F (definition of *assessment period*)

Repeal the definition.

517 Section 341F (definition of *eligible for assessment consideration*)

Omit ", in relation to an assessment period,".

518 Section 341F (definition of *finalised priority assessment list*)

Omit "for an assessment period".

519 Section 341F (definition of *proposed priority assessment list*)

Omit "for an assessment period".

520 Section 341G

Repeal the section.

521 Section 341H (heading)

Omit "**to invite nominations for each assessment period**", substitute "**may invite nominations from time to time**".

522 Subsection 341H(1)

Omit "Before the start of each assessment period, the Minister must", substitute "The Minister may, from time to time,".

523 Paragraph 341H(2)(c)

Repeal the paragraph.

524 Subsections 341J(1), (2) and (3)

Repeal the subsections, substitute:

Giving nominations to Australian Heritage Council

(1) Within 30 business days after the cut-off date specified in the notice inviting nominations under subsection 324H(1), the Minister must give the Australian Heritage Council the nominations received by the Minister by the cut-off date, other than any nominations rejected under subsection (4).

525 Subsection 341J(6)

Repeal the subsection.

526 Subsection 341JA(1)

Omit "in relation to an assessment period".

527 Subsection 341JA(1)

Omit "for the assessment period", substitute "in relation to the nominations".

528 Subsection 341JA(2)

Omit "in relation to the assessment period" (wherever occurring).

529 Subsection 341JA(3)

Omit "in relation to the assessment period".

530 Paragraphs 341JA(3)(a), (b), (c) and (d)

Repeal the paragraphs, substitute:

(a) the place has been nominated by a nomination referred to in subsection (1) or was nominated in relation to the most recent previous list prepared under this section; or

(b) the Council itself wishes to nominate the place for inclusion in the Commonwealth Heritage List; or

(c) each part of the place is a place to which paragraph (a) or (b) applies.

531 Subsection 341JB(1)

Omit "for an assessment period".

532 Subsection 341JB(2)

Repeal the subsection, substitute:

(2) The assessment completion time for a place must be either:

(a) the end of the period of 12 months starting on the day the finalised priority assessment list is published under section 341JE(1); or

(b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take longer than the period under paragraph (a)—the end of that longer period.

533 Subsection 341JC(1)

Omit "for an assessment period".

534 Paragraph 341JC(1)(b)

Omit "or (c)".

535 Subsection 341JC(2)

Repeal the subsection, substitute:

(2) The statement must also identify, as a place nominated by the Australian Heritage Council, any place that is included in the list because the Council itself wishes to nominate the place or part of it (as mentioned in paragraphs 341JA(3)(b) and (c)).

536 Subsection 341JD(1)

Omit "for an assessment period".

537 Subsection 341JD(4)

Omit "for the assessment period".

538 Subsections 341JE(1), 341JF(1), 341JG(1) and 341JH(1)

Omit "for an assessment period".

539 After section 341JH

Insert:

341JHA Discontinuing assessment of a place

Discontinuance on Council's recommendation

(1) The Australian Heritage Council may, at any time before an assessment in relation to a place is given to the Minister under section 341JG, recommend to the Minister that the assessment of the place under this Subdivision be discontinued.

(2) A recommendation made under subsection (1) must:

(a) be in writing; and

(b) set out the Council's reasons for recommending that the assessment of the place be discontinued.

(3) The Minister must consider the recommendation and may, if the Minister considers it appropriate to do so, direct the Council to discontinue the assessment of the place.

(4) If the Minister does not give a direction under subsection (3) within 3 months after being given the Council's recommendation, the Council must continue with the assessment of the place.

Discontinuance on Minister's initiative

(5) The Minister may, on the Minister's own initiative, if the Minister considers it appropriate to do so, direct the Council to discontinue the assessment of a place under this Subdivision at any time before an assessment of the place is given to the Minister under section 341JG.

Further information

(6) In deciding whether to make a direction under this section, the Minister may request the Council to provide any of the following:

(a) any comments received by the Council in response to the notice under subsection 341JF(1) in relation to the place;

(b) any other information relevant to the Minister's decision that the Minister reasonably believes the Council can provide.

(7) In deciding whether to make a direction, the Minister may request any person to provide any information relevant to the Minister's decision that the Minister reasonably believes the person can provide.

Publication of reasons

(8) If the Minister, under this section, directs the Council to discontinue the assessment of a place, the Minister must, as soon as practicable:

(a) give the Council a copy of the direction; and

(b) publish a copy of the direction, and the Minister's reasons for making it, on the Department's website.

Effect of direction

(9) If the Minister makes a direction under this section in relation to a place, the place is taken to be no longer included in the finalised priority assessment list.

Direction not a legislative instrument

(10) A direction given under subsection (3) or (5) is not a legislative instrument.

540 After subsection 341JI(5)

Insert:

(5A) Despite section 341BA, if the assessed place is made up of locations, areas, regions or other elements that are not contiguous, or not geographically proximate, the Minister may include the assessed place, or a part of the assessed place, in the Commonwealth Heritage List only if the Minister is satisfied that each of the locations, areas, regions or other elements:

(a) has been assessed for inclusion in the Commonwealth Heritage List, whether together or separately; and

(b) has one or more of the same Commonwealth Heritage values as the other locations, areas, regions or elements that make up the place.

(5B) To avoid doubt, the Minister may comply with subsection (1) by taking action under section 341LB (expansion of Commonwealth Heritage place) to add the assessed place, or a part of the assessed place, to an existing Commonwealth Heritage place.

541 Paragraphs 341JN(1)(a) and 341JO(1)(a)

Omit "for an assessment period".

542 After section 341L

Insert:

341LA Amendment of Commonwealth Heritage values of a place

(1) The Minister may, by instrument published in the *Gazette*, do any of the following in relation to a Commonwealth Heritage place:

(a) add one or more Commonwealth Heritage values to the entry for the place in the Commonwealth Heritage List;

(b) amend the Commonwealth Heritage values included in the List for the place.

(2) The Minister may do so only if the Minister is satisfied that:

(a) it is appropriate to do so; and

(b) after the instrument is made, the place will continue to meet one or more Commonwealth Heritage criteria.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).

(3) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.

(4) Subsections 341JI(6) and (7) apply if the Minister makes an instrument under this section, as if:

(a) references in those subsections to the Minister including the assessed place were references to the Minister making a change under subsection (1) in relation to the place; and

(b) the reference in paragraph 341JI(6)(b) to the assessed place being nominated by, or included in or including a place nominated by, a person who responded to a notice under subsection 341H(1) were a reference to a person who responded to a notice under paragraph 341M(1)(b) (invitation to the public) in relation to the changed Commonwealth Heritage values of the place.

(5) An instrument made under subsection (1) is not a legislative instrument.

341LB Expansion of Commonwealth Heritage place

(1) The Minister may, by instrument published in the *Gazette*, alter the boundary of a Commonwealth Heritage place (the ***listed place***) as described in the Commonwealth Heritage List so as to add a place to the listed place.

(2) The Minister may do so only if the Minister is satisfied that the added place:

(a) meets the requirements specified in subsection 341C(2); and

(b) has been assessed for inclusion in the Commonwealth Heritage List (either on its own or as part of a larger place); and

(c) has one or more of the same Commonwealth Heritage values as the listed place.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).

(3) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.

(4) Subsections 341JI(6) and (7) apply if the Minister makes an instrument under this section, as if:

(a) references in those subsections to the assessed place were references to the added place; and

(b) the reference in paragraph 341JI(6)(b) to a person who responded to a notice under subsection 341H(1) were a reference to a person who responded to a notice under

paragraph 341M(1)(b) (invitation to the public) in relation to the added place.

(5) An instrument made under subsection (1) is not a legislative instrument.

341LC Alignment with boundaries of declared World Heritage property

(1) The Minister may, by instrument published in the *Gazette*, alter the boundaries of a Commonwealth Heritage place to align them with the boundaries of a declared World Heritage property, if the Minister is satisfied that the Commonwealth Heritage place and the declared World Heritage property are the same, or substantially the same, place.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).

(2) If the Minister makes an instrument under this section, the Minister must, as soon as practicable, publish the Minister's reasons for doing so on the Department's website.

(3) An instrument made under subsection (1) is not a legislative instrument.

543 Subsection 341M(1)

Omit "the Minister removes from the Commonwealth Heritage List under section 341L all or part of a place or one or more of a place's Commonwealth Heritage values in a removal for loss of value", substitute "making a change under section 341L on the ground mentioned in paragraph 341L(2)(a) or (3)(a) (removal for loss of value), or under section 341LA, 341LB or 341LC, in relation to a place on the Commonwealth Heritage List".

544 Paragraphs 341M(1)(a) and (b)

Omit "removal" (wherever occurring), substitute "change".

545 Paragraphs 341M(5)(a) and (b)

Repeal the paragraphs, substitute:

(a) decide whether to make the change; and

(b) if the Minister decides to make the change—make an instrument to effect the change under section 341L, 341LA, 341LB or 341LC;

546 Section 341N

Repeal the section, substitute:

341N Minor amendments to the Commonwealth Heritage List

(1) The Minister may, by written instrument, amend the Commonwealth Heritage List in relation to a Commonwealth Heritage place for one or more of the following reasons:

(a) to fix a typographical error in the entry for the place;

(b) to make a correction to the description of the boundaries of the place;

(c) to correct an error in the description of the Commonwealth Heritage values for the place;

(d) to reflect a change in name, or additional name, for the place.

(2) An instrument made under subsection (1) is not a legislative instrument.

(3) If the Minister makes an instrument under subsection (1), the Minister must, as soon as practicable, publish a copy on the Department's website.

547 After subparagraph 341R(2)(b)(i)

Insert:

(ia) publication in the *Gazette* of an instrument made under section 341LA, 341LB or 341LC relating to the place; or

548 Subsection 391(3) (table item 6A, column headed "Nature of decision")

Omit "for a listed threatened species or a listed threatened ecological community", substitute "for the whole or part of a listed threatened species or the whole or part of a listed threatened ecological community".

549 Subsection 391(3) (table item 7A, column headed "Nature of decision")

Omit "for a key threatening process", substitute "for the whole, or one or more parts of, a key threatening process".

550 Division 12 of Part 17

Repeal the Division, substitute:

Division 12—Audits

Subdivision A—Directed environmental audits

458 Directed environmental audits

(1) The CEO may, by notice in writing to a person in the circumstances set out in subsection (2) or (3), require the person to conduct an environmental audit (a ***directed environmental audit***).

Circumstances in which environmental audit may be required

(2) The circumstances are that:

(a) the person:

(i) is the holder of, or is otherwise approved to take an action under, an environmental authority; or

(ii) is subject to an environmental order; or

(iii) is a person to whom an environmental exemption applies; and

(b) the CEO reasonably suspects that the person has contravened, or is likely to contravene, a condition or requirement of the authority, order or exemption.

(3) The circumstances are that:

(a) the person:

(i) is the holder of, or is otherwise approved to take an action under, an environmental authority; or

(ii) is a person to whom an environmental exemption applies; and

(b) the CEO reasonably suspects that:

(i) the action to which the authority or exemption relates has, has had or is likely to have impacts on the matter dealt with by a provision for which the authority authorises the action or from which the exemption exempts the action; and

(ii) those impacts are significantly greater than was indicated in the information available to the person who granted the authority or exemption when it was granted or the person who approved a variation (however described) of the authority or exemption when the variation was approved (if any).

Requirements for notice

(4) The notice must specify:

(a) the matters to be covered by the audit; and

(b) the form of the audit report and the kinds of particulars it is to contain; and

(c) the day on or before which the report must be given to the CEO; and

(d) any other matters prescribed by the regulations.

(5) Without limiting the matters that may be specified for the purposes of paragraph (4)(a), those matters may include all or any of the following:

(a) an evaluation of the nature of the environment that is or will be affected by the activities, of the person, to which the environmental authority, environmental exemption or environmental order is relevant;

(b) an assessment of the risks to the environment resulting from those activities;

(c) an assessment of the person's existing capacity, in carrying on those activities, to comply with:

(i) for an environmental authority or environmental exemption—any conditions of the authority or exemption; and

(ii) for an environmental order—the order; and

(iii) in any case—the requirements of this Act and the regulations;

(d) an assessment of what the person will need to do, or continue to do, in order to comply.

459 Appointment of auditor and conducting an audit

(1) A person who is given notice under section 458 (the ***audited person***) must:

(a) appoint a person to conduct the audit required by the notice; and

(b) arrange for the person appointed (the ***auditor***) to conduct the audit in accordance with the notice.

Civil penalty: 500 penalty units.

(2) The person appointed to conduct the audit must be:

(a) a registered auditor; or

(b) if no registered auditor is reasonably available to conduct the audit—a person who the CEO has approved for such appointment before the appointment is made.

(3) The CEO may, in writing, approve a person for the purposes of paragraph (2)(b) if:

(a) the person approved is not an officer or employee of the audited person; and

(b) the CEO is satisfied that the person approved has the independence, and the knowledge or experience, necessary to properly conduct the audit.

(4) An appointment of a person to conduct the audit made otherwise than in accordance with subsection (2) has no effect.

(5) An approval under subsection (3) is not a legislative instrument.

460 Nature of directed environmental audit

(1) A person commits an offence if:

(a) the person is the auditor for a directed environmental audit; and

(b) in the course of conducting the audit, the person does not deal with a particular matter; and

(c) the matter is specified in the notice under section 458 as a matter that is to be covered by the audit.

Penalty: 30 penalty units.

(2) A person commits an offence if:

(a) the person is the auditor for a directed environmental audit; and

(b) in the course of conducting the audit, the person conceals, or does not take into account, any information or document; and

(c) the information or document is relevant to the audit.

Penalty: Imprisonment for 6 months.

(3) The auditor for a directed environmental audit may have regard to the results of a previous environmental audit, including such an audit conducted in accordance with a condition or requirement of an environmental authority or environmental order to which the audit relates, if:

(a) the previous audit was completed within the last preceding 2 years; and

(b) the auditor is satisfied that the previous audit is still relevant.

461 Audit reports

(1) After completing a directed environmental audit, the auditor must prepare, and give to the audited person, a written report that:

(a) sets out the results of the audit; and

(b) is in the form, and contains the particulars, specified for the purposes of paragraph 458(4)(b).

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

(2) The audited person must give the report to the CEO:

(a) on or before the day specified by the CEO under paragraph 458(4)(c); or

(b) on or before such later day as the CEO, on application by the audited person, determines in writing.

(3) A person commits an offence if:

(a) the person is required to give the CEO a report under subsection (2); and

(b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 50 penalty units.

Subdivision B—Compliance audits

462 Compliance audits

(1) The CEO may, in writing, require an audit (a ***compliance audit***) to be conducted of activities mentioned in column 1 of an item of the following table in relation to any of the matters mentioned in column 2 of the item.

Matters for compliance audits

Item	Column 1 Activities	Column 2 Matters to which audit may relate
1	Activities purportedly covered by an environmental authority	(a) whether the activities are covered by the authority; (b) whether the activities are complying, have complied or will comply with any conditions of the authority; (c) whether the activities are complying, have complied or will comply with any requirement of, or made under, this Act or the regulations; (d) whether the activities have, have had or are likely to have impacts that: (i) are impacts on the matter dealt with by a provision for which the authority authorises action; and (ii) are significantly greater than was indicated in the information available to the person who granted the authority when it was granted
2	Activities purportedly covered by an environmental exemption	(a) whether the activities are covered by the exemption; (b) whether the activities are complying, have complied or will comply with any conditions of the exemption;

Matters for compliance audits		
Item	**Column 1** **Activities**	**Column 2** **Matters to which audit may relate**
		(c) whether the activities are complying, have complied or will comply with any requirement of, or made under, this Act or the regulations; (d) whether the activities have, have had or are likely to have impacts that: (i) are impacts on the matter dealt with by a provision from which the exemption exempts action; and (ii) are significantly greater than was indicated in the information available to the person who granted the exemption when it was granted
3	Activities that: (a) are purportedly carried out for the purposes of complying with an environmental order; or (b) are subject to any requirement of an environmental order	(a) whether the activities are carried out for the purposes of complying with the order; (b) whether the activities are complying, have complied or will comply, or are or will be sufficient to comply, with the order; (c) whether the activities are complying, have complied or will comply with any requirement of, or made under, this Act or the regulations
4	Activities purportedly covered by a marine park permission	(a) whether the activities are covered by the permission; (b) whether the activities are complying, have complied or will comply with any conditions of the permission; (c) whether the activities are complying, have complied or will comply with any requirement of, or made under: (i) the *Great Barrier Reef Marine Park Act 1975*; or (ii) regulations made under that Act; (d) whether the activities have, have had or are likely to have impacts that: (i) are impacts on the environment in the Great Barrier Reef Marine Park; and (ii) are significantly greater than was

Matters for compliance audits		
Item	**Column 1** **Activities**	**Column 2** **Matters to which audit may relate**
		indicated in the information available to the person who granted the permission when it was granted
5	Activities that: (a) are purportedly carried out for the purposes of complying with a marine park order; or (b) are subject to any requirement of a marine park order	(a) whether the activities are carried out for the purposes of complying with the order; (b) whether the activities are complying, have complied or will comply, or are or will be sufficient to comply, with the order; (c) whether the activities are complying, have complied or will comply with any requirement of, or made under: (i) the *Great Barrier Reef Marine Park Act 1975*; or (ii) regulations made under that Act
6	Activities of a kind prescribed by the regulations for the purposes of this item	Any matters that: (a) relate to compliance with an environmental law; and (b) are prescribed by the regulations for the purposes of this item

(2) The audit may deal with anything that is:

(a) reasonably necessary for the effective conduct of the audit; or

(b) incidental to any matters to which the audit relates.

462A Single audit or program of audits may be required

The CEO may require, under section 462, a single audit, or a program of audits, to be conducted in relation to a specified matter or matters included in a specified class of matters.

Note: If the CEO has required a program of audits to be conducted in relation to a matter, the CEO may also require additional audits to be conducted in relation to the matter (see subsection 33(1) of the *Acts Interpretation Act 1901*).

462B Who may conduct compliance audit

(1) A compliance audit must be conducted by:

(a) an authorised officer; or
(b) a registered auditor.

(2) The person conducting the audit is the ***auditor*** for the audit.

462C Relevant person for a compliance audit

(1) A person is a ***relevant person*** for a compliance audit if the person is:
(a) for an audit of activities relating to an environmental authority:
(i) the holder of the authority; or
(ii) if the activities are those of a person who is otherwise approved to take an action under the authority—the person carrying on those activities; or
(b) for an audit of activities relating to an environmental exemption—the person to whom the exemption applies; or
(c) for an audit of activities relating to a marine park permission—the holder of the permission; or
(d) for an audit of activities relating to an environmental order or a marine park order—the person who is subject to the order and whose activities the audit is concerned with; or
(e) for an audit of activities mentioned in item 6 of the table in subsection 462(1)—the person who is or was carrying on, or is proposing to carry on, the activities.

(2) A person is also a ***relevant person*** for a compliance audit if the person is acting as an agent of the relevant person under subsection (1), and appears to be doing or to have done so in relation to activities to which the audit relates.

462D Conduct of audit

(1) The CEO need not give notice of a compliance audit.

(2) Before starting to conduct a compliance audit, the auditor for the audit:
(a) must give a description of the scope of the audit to the relevant person for the audit under subsection 462C(1); and

(b) must take reasonable steps to give such a description to any relevant person for the audit under subsection 462C(2) whose assistance the auditor considers will be reasonably necessary for the conduct of the audit (see section 462E).

Regulations may make provision in relation to other matters

(3) The regulations may make provision for and in relation to:

(a) other matters relating to the conduct of a compliance audit; and

(b) the process to be followed after a compliance audit has been completed.

(4) Without limiting subsection (3), the regulations may make provision for and in relation to the following:

(a) information that must be provided to relevant persons for a compliance audit before the audit, during the audit or after the audit is completed;

(b) requirements for reports to be provided in relation to a compliance audit.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

462E Relevant person must provide assistance

(1) A person must provide the auditor for a compliance audit with assistance that is reasonably necessary for the conduct of the audit if:

(a) the person is a relevant person for the audit under subsection 462C(1); or

(b) the person is a relevant person for the audit under subsection 462C(2) and the auditor requests the assistance of the person.

(2) Without limiting subsection (1), providing assistance that is reasonably necessary includes complying with any request under subsection 462F(1) for the audit.

(3) Subsection (1) does not require a relevant person for the audit to allow the auditor:

(a) to enter premises; or
(b) to take samples of any thing at premises; or
(c) to inspect any thing at premises.

(4) A person commits an offence if:
(a) the person is a relevant person for a compliance audit; and
(b) the person fails to provide the assistance required by subsection (1) in relation to the audit.

Penalty for contravention of this subsection: 30 penalty units.

462F Powers of auditors

(1) For the purpose of conducting a compliance audit, the auditor for the audit may request a person who the auditor reasonably believes has information or documents that are relevant to the audit to answer questions, provide information in writing or produce the documents.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

(2) The auditor may make copies of, or take extracts from, a document or record produced under subsection (1).

Subdivision C—Other matters relating to audits

462G Register of auditors

(1) The CEO must cause a register of auditors to be kept for the purposes of this Act.

(2) The CEO must register an individual in the register if:
(a) the individual has applied for registration in accordance with regulations made for the purposes of subsection (4); and
(b) the CEO is satisfied that it is appropriate to register the individual as an auditor, having regard to:
(i) the individual's qualifications, knowledge, expertise, competence and independence; and
(ii) any other matters as are prescribed by the regulations for the purposes of this subparagraph; and

(iii) any other matters the CEO considers relevant.

Note: The CEO may impose conditions on an individual's registration (see section 462J).

(3) If the CEO is not satisfied that it is appropriate to register the individual as an auditor, the CEO must refuse to register the individual.

(4) The regulations may provide for any of the following:

(a) the form and content of the register;

(b) publication of the register;

(c) the form and content of applications for registration and the manner in which applications are to be made;

(d) fees to be paid in connection with registration (including ongoing or recurrent fees to maintain registration);

(e) requirements to be met in order to maintain registration;

(f) review of registration;

(g) suspension of registration in prescribed circumstances;

(h) deregistration in prescribed circumstances;

(i) inspection of the performance of registered auditors in conducting directed environmental audits;

(j) inspection of the performance of registered auditors in conducting compliance audits;

(k) inspection of the performance of registered auditors in conducting environmental audits required by conditions of approvals under Part 9;

(l) other matters in connection with registration in the register.

(5) A fee under paragraph (4)(d) must not be such as to amount to taxation.

(6) The register is not a legislative instrument.

462H Registered auditors must comply with guidelines

(1) A registered auditor must comply with guidelines prescribed by the regulations for the purposes of this subsection (if any) in relation to the conduct of a directed environmental audit or a compliance audit.

Note: The consequences of a registered auditor failing to comply with the guidelines are set out in regulations made for the purposes of subsection 462G(4).

Regulations prescribing guidelines

(2) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection (1) may make provision in relation to a matter by applying, adopting, or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(3) Subsection (2) applies whether or not the instrument or other writing was created for a purpose other than being applied, adopted or incorporated by the regulations.

(4) To the extent that regulations making provision as mentioned in subsection (2) constitutes a subdelegation of the Governor-General's power to make regulations for the purposes of subsection (1), subsection (2) authorises that subdelegation.

462J Conditions of registration

(1) The CEO may impose one or more conditions on an individual's registration as a registered auditor.

(2) Without limiting subsection (1), the CEO may impose conditions setting out the following:

(a) the kinds of audits the individual is able to conduct;

(b) the circumstances in which the individual is able to conduct an audit or a kind of audit;

(c) requirements or restrictions relating to the individual's independence as a registered auditor.

(3) The regulations may provide for or in relation to any of the following:

(a) the process to be followed in deciding to impose conditions;

(b) notification of such decisions;

(c) review of such decisions;

(d) variation or revocation of conditions;

(e) other matters in connection with conditions.

462K Other audit obligations not affected

Nothing in this Division affects any obligation of a person to conduct an audit in accordance with a condition or requirement of an environmental authority, environmental exemption, marine park permission, environmental order or marine park order.

551 After Division 13 of Part 17

Insert:

Division 13A—Environment protection orders

474A CEO may issue environment protection orders

(1) The CEO may issue an order under this section (an ***environment protection order***) if the CEO reasonably believes that:

(a) a person has engaged, is engaging or is likely to engage in conduct consisting of an act or omission that constitutes:

(i) a contravention of a provision of this Act or the regulations; or

(ii) a contravention of one or more conditions of an environmental authority under which the person is approved to take an action; or

(iii) a contravention of one or more conditions of an environmental exemption which applies to the person; and

(b) the contravention or likely contravention is causing, or poses an imminent risk of, serious damage to a matter covered by subsection (2); and

(c) it is necessary to issue the order for either or both of the following purposes:

(i) ensuring the person's future compliance with this Act or the regulations, or the conditions of the environmental authority or environmental exemption;

(ii) preventing or mitigating the damage caused, or eliminating or reducing the risk of damage posed, by the contravention or likely contravention to the matter covered by subsection (2).

(2) For the purposes of paragraphs (1)(b) and (c), this subsection covers the following matters:

(a) in relation to a contravention or likely contravention of a provision:

(i) for a provision of Part 3—the matter protected by the provision; or

(ii) for any other provision—the environment, to the extent that it is dealt with by the provision;

(b) in relation to a contravention or likely contravention of conditions of an environmental authority or environmental exemption:

(i) for an approval under Part 9—the matter protected by any provision of Part 3 for which the approval has effect; or

(ii) for a national interest exemption or continuing section 158 exemption from a provision of Part 3—the matter protected by any provision of Part 3 from which an action is exempt under the exemption; or

(iii) for a national interest exemption or continuing section 158 exemption from a provision of Chapter 4—the matter protected by any provision of Part 3 that is, or would be but for the exemption, a controlling provision for the action that is exempt under the exemption; or

(iv) for a permit issued under Chapter 5—the environment, to the extent that it is dealt with by any provision of that Chapter for which the permit has effect; or

(v) for a Part 13 exemption or continuing section 303A exemption—the environment, to the extent that it is dealt with by any provision of Part 13 or regulations made under Part 13 from which an action is exempt under the exemption.

(3) The order may impose any requirements on the person that the CEO reasonably believes are necessary for the purposes mentioned in paragraph (1)(c), including by doing any or all of the following:

(a) requiring the person to discontinue or not commence specified activities;

(b) requiring the person to change the manner in which the person is carrying on, or is to carry on, specified activities;

(c) otherwise restricting the manner in which the person is carrying on, or is to carry on, specified activities;

(d) requiring the person to take specified action in a specified manner or in specified circumstances.

How order may be issued

(4) An environment protection order may be issued:

(a) by notice in writing; or

(b) if the CEO is satisfied it is necessary to do so because of urgent circumstances—by notice given orally (including by telephone).

(5) For the purposes of subsection (4), the notice may be:

(a) given to the person to whom the order applies, including, if the notice is given orally and the person is not an individual, by giving the notice to any employee or officer of the person acting in that capacity; or

(b) given to any person who is acting as an agent of the person to whom the order applies in relation to activities to which the order relates.

(6) If the order is issued by notice in writing to an agent mentioned in paragraph (5)(b), the CEO must, within 72 hours after the order is issued, give a copy of the notice to the person to whom the order applies.

(7) If the order is issued by notice given orally to a person, the CEO must, within 72 hours after the oral notice is given:

(a) give notice in writing of the order to the person to whom the order applies; and

(b) if the oral notice was given to an agent mentioned in paragraph (5)(b)—give a copy of the notice in writing of the order to the agent.

Other matters

(8) Neither of the following is a legislative instrument:

(a) an environment protection order issued in writing under paragraph (4)(a);

(b) notice of an environment protection order under subsection (7).

474B Content of environment protection orders

(1) An environment protection order must (subject to subsection (2)):

(a) state the day on which the order is issued; and

(b) state the name of the person the order applies to; and

(c) state the purposes for which the order is issued, including by giving brief details of any alleged contravention or potential contravention to which the order relates; and

(d) set out the requirements imposed on the person by the order; and

(e) either:

(i) specify when the order ceases to be in force; or

(ii) include a statement to the effect that the order will remain in force until it is revoked by the CEO.

(2) If an environment protection order is issued by notice given orally under paragraph 474A(4)(b):

(a) a requirement in subsection (1) of this section for the order to contain a matter is taken to be a requirement for the CEO, when issuing the order, to inform the person to whom notice of the order is given of the matter; and

(b) a reference in this Act or the regulations to a matter specified in the order is taken to be a reference to a matter of which the person has been so informed; and

(c) notice of the environment protection order under subsection 474A(7) must include each matter so informed.

474C Duration of environment protection orders

(1) An environment protection order comes into force immediately after notice of the order is given under subsection 474A(4).

Note: For the persons to whom notice may be given under subsection 474A(4), see subsection (5) of that section.

(2) The order remains in force until the earlier of the following occurs:

(a) the time (if any) specified in the order for the purposes of subparagraph 474B(1)(e)(i);

(b) the order is revoked by the CEO under section 474D.

474D Variation or revocation of environment protection orders

(1) The CEO may, by written notice given to the person an environment protection order applies to, vary or revoke the order.

(2) The CEO must revoke an environment protection order under subsection (1) if the CEO reasonably believes that the order is no longer necessary for any of the purposes for which it was issued.

474E Person must comply with environment protection order

Fault-based offence

(1) A person commits an offence if:
(a) an environment protection order applies to the person; and
(b) the person does, or fails to do, an act or thing; and
(c) doing, or failing to do, the act or thing results in a contravention of the order.

Penalty: 1,000 penalty units.

Strict liability offence

(2) A person commits an offence of strict liability if:
(a) an environment protection order applies to the person; and
(b) the person contravenes the order.

Penalty: 300 penalty units.

474F Person must not hinder or obstruct compliance

A person (the ***first person***) commits an offence if:
(a) an environment protection order applies to another person; and
(b) the first person hinders or obstructs the other person in complying with the order.

Penalty: 300 penalty units.

474G Natural justice hearing rule

The CEO is not required to observe any requirements of the natural justice hearing rule in relation to the issue or variation of an environment protection order.

474H Giving notice by electronic means

Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* do not apply to a notice under this Division.

Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information to the information being given by way of electronic communication.

552 Paragraphs 489(1)(a) and (2A)(a)

After "9,", insert "11,".

553 Subparagraphs 495(2)(a)(v) and 496C(1)(a)(vi)

Omit "nuclear", substitute "radiological exposure".

554 At the end of paragraph 503(e)

Add ", the regulations or another law of the Commonwealth".

555 Subsection 505A(3)

Repeal the subsection, substitute:

(3) A person may only be appointed as a member of the Committee if the person is an Indigenous person.

(4) The Minister is to appoint the members of the Committee on a part-time basis.

(5) The Minister is to appoint 2 of the members, one male and one female, as co-chairs of the Committee.

556 Subsection 505B(1)

Repeal the subsection, substitute:

(1) The Committee has the following functions:

(a) to advise the Minister on matters relating to the following:

(i) the operation of this Act or an instrument made under this Act;
(ii) the objects of this Act;
(iii) the environment;
(iv) policies, plans or programs (however described) that are made, prepared, varied or endorsed under this Act;

(b) at the request of the CEO—to provide advice to the CEO in relation to matters specified in the request relating to the CEO's functions under this Act;

(c) at the request of the Director—to provide advice to the Director in relation to matters specified in the request relating to the Director's functions under this Act;

(d) to provide any other advice or information required or permitted to be obtained from the Committee under this Act or the regulations;

(e) to perform any other functions that are conferred on the Committee by this Act or the regulations.

557 At the end of section 505B

Add:

(3) In performing its functions, the Committee must take into account the significance of Indigenous peoples' knowledge of the management of land, sea and seabed, airspace and water, and the conservation and sustainable use of biodiversity.

Advice beyond Committee's expertise

(4) Subsection (5) applies if:

(a) the Committee is requested, required or permitted to provide advice under subsection (1); and

(b) the Committee is satisfied that it does not have the appropriate expertise to provide the advice.

(5) The Committee:

(a) is not required to provide the advice; and

(b) must advise the Minister, and any other person to whom the advice was to be provided, that the Committee is unable to provide the advice.

558 Paragraph 505D(1)(b)

Omit "within 2 months of a request by", substitute "at the request of".

559 After paragraph 505D(1)(b)

Insert:

Note: Subsections (3) and (4) set out the timeframe that applies to this function.

560 Paragraph 505D(1)(c)

Repeal the paragraph.

561 After paragraph 505D(1)(d)

Insert:

(da) at the request of the Environment Minister—to provide advice to the Environment Minister about matters relating to policies, plans or programs (however described) that are made, prepared, varied or endorsed under this Act;

562 Paragraph 505D(1)(h)

Omit "prescribed by", substitute "that are conferred on the Committee by this Act or".

563 Paragraph 505D(2)(b)

Omit ", if the Committee has sufficient scientific expertise".

564 At the end of section 505D

Add:

Timeframes to provide advice to State or Territory Minister

(3) The Committee must provide advice under paragraph (1)(b) to an appropriate Minister of a declared State or Territory within 2 months of the Minister's request.

(4) However, if the Committee considers that it cannot do so within 2 months, the Committee must, in writing given to the Minister:

(a) advise the Minister of that fact; and

(b) substitute a longer period within which to provide the advice; and

(c) give reasons for that period.

Advice beyond Committee's expertise

(5) Subsection (6) applies if:

(a) the Committee is requested, required or permitted to provide advice under subsection (1) or (2); and

(b) the Committee is satisfied that it does not have sufficient expertise to provide the advice.

(6) The Committee:

(a) is not required to provide the advice; and

(b) must advise the Minister, and any other person to whom the advice was to be provided, that the Committee is unable to provide the advice.

565 Subsection 505E(1)

Omit "(1)".

566 Subsection 505E(2)

Repeal the subsection.

567 After Division 2B of Part 19

Insert:

Division 2C—Establishment and functions of the Restoration Contributions Advisory Committee

505F Establishment

(1) The Restoration Contributions Advisory Committee is established.

(2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.

(3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.

505G Functions of the Committee

(1) The functions of the Committee are as follows:

(a) at the request of the Restoration Contributions Holder—to advise the Restoration Contributions Holder in relation to any of the functions or powers of the Restoration Contributions Holder;

(b) at the request of the Minister—to advise the Minister on any matter relating to restoration contribution charge;

(c) at the request of the Minister—to advise the Minister on any matter relating to bioregional plan registration charge or bioregional plan restoration contributions;

(d) at the request of the Minister—to advise the Minister on any matter relating to exemption charge;

(e) any other functions prescribed by the regulations;

(f) to do anything incidental to, or conducive to, the performance of the above functions.

(2) The Minister may give the Committee written guidelines about its functions.

568 At the end of section 506

Add:

; (e) the Restoration Contributions Advisory Committee.

569 At the end of paragraph 510(1)(a)

Add:

(vii) for a Committee that has co-chairs—procedures relating to co-chairs; and

570 After Division 3 of Part 19

Insert:

Division 3A—Statement of expectations and statement of intent for bodies

510A Application

This Division applies to the following (each an ***advisory body***):

(a) the Australian Heritage Council;
(b) the Threatened Species Scientific Committee;
(c) the Indigenous Advisory Committee;
(d) the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development;
(e) the Restoration Contributions Advisory Committee;
(f) an advisory committee established under section 511;
(g) any other committee established under this Act.

510B Minister's statement of expectations

(1) The Minister may, at any time, prepare and give a written statement (a ***statement of expectations***) to an advisory body that sets out the Minister's expectations for the advisory body.

(2) In preparing a statement of expectations for an advisory body, the Minister must request advice from the following:
(a) the Secretary;
(b) the advisory body.

(3) A statement of expectations cannot direct an advisory body in the performance or exercise of the advisory body's functions or powers.

(4) In preparing a statement of expectations for an advisory body, the Minister:
(a) must have regard to any advice requested from the Secretary or the advisory body; and
(b) must have regard to any matters prescribed by the regulations; and
(c) may have regard to any other matter the Minister considers relevant; and
(d) must prepare the statement in accordance with any requirements prescribed by the regulations.

(5) As soon as practicable after giving a statement of expectations to an advisory body, the Minister must arrange for it to be published on the Department's website.

(6) A statement of expectations for an advisory body replaces any previous statement of expectations for the advisory body.

(7) A statement of expectations is not a legislative instrument.

510C Statement of intent

(1) If the Minister gives a statement of expectations to an advisory body under section 510B, the advisory body must prepare and give the Minister a written response (a ***statement of intent***).

(2) In preparing a statement of intent, an advisory body:
- (a) must have regard to any matters prescribed by the regulations; and
- (b) may have regard to any other matter the advisory body considers relevant; and
- (c) must prepare the statement in accordance with any requirements prescribed by the regulations.

(3) An advisory body must publish a statement of intent on the Department's website as soon as practicable after it is given to the Minister.

(4) A statement of intent is not a legislative instrument.

571 After Part 19A

Insert:

Part 19B—National environmental standards

514YC Simplified outline of this Part

National environmental standards are legislative instruments made by the Minister.

Before making a national environmental standard, the Minister must be satisfied that it promotes the objects of this Act and is not inconsistent with relevant international agreements.

A national environmental standard must specify outcomes or objectives. It may also specify parameters, principles, processes or actions for achieving the outcomes or objectives.

When varying or revoking a national environmental standard, the Minister must comply with the no regression principle.

National environmental standards must be applied in making certain decisions under this Act. Those decisions are indicated either by the provision of this Act under which a decision is made or by the regulations. The regulations will prescribe which standards must be applied in making such decisions.

For other decisions, where national environmental standards do not need to be applied, a decision maker can still choose to apply them.

514YD Making national environmental standards

(1) The Minister may, by legislative instrument, make national environmental standards for the purposes of this Act.

(2) Before making a national environmental standard, the Minister must be satisfied that:
  (a) the standard would promote the objects of this Act; and
  (b) the standard would not be inconsistent with Australia's obligations under the international agreements specified in subsection 520(3).

(3) The Minister may have regard to any other matter the Minister considers relevant when deciding whether to make a national environmental standard.

(4) A national environmental standard:
  (a) must prescribe one or more outcomes or objectives; and
  (b) may prescribe any of the following:
    (i) parameters within, or principles by which, an outcome or objective is to be achieved;
    (ii) processes or actions to be followed or taken in achieving an outcome or objective.

(5) A national environmental standard, or an instrument varying or revoking a national environmental standard, may also prescribe:

(a) any matters required or permitted by this Act to be dealt with by national environmental standards; or

(b) other matters (including matters of an application, saving or transitional nature) incidental to matters prescribed as mentioned in subsection (4) or prescribed as mentioned in paragraph (a) of this subsection.

(6) In prescribing matters of an application, saving or transitional nature, a national environmental standard, or an instrument varying or revoking a national environmental standard, may provide that the standard, variation or revocation applies in relation to a decision made on or after the day the standard, variation or revocation commences, regardless of whether the decision relates to an application, referral or other matter made before that day.

514YE Incorporation by reference

(1) Despite subsection 14(2) of the *Legislation Act 2003*, a national environmental standard may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(2) The Minister must arrange for a copy of any matter applied, adopted or incorporated to be published on the Department's website, as soon as practicable after it is applied, adopted or incorporated.

(3) Subsection (2) does not apply in relation to matter that is, or is included in, an Act, a legislative instrument or a notifiable instrument.

514YF Varying and revoking national environmental standard

(1) The Minister may, by legislative instrument, vary or revoke a national environmental standard.

(2) Before varying or revoking a national environmental standard, the Minister must be satisfied that:

(a) the standard as varied, or the revocation, promotes the objects of this Act; and

(b) the standard as varied, or the revocation, is not inconsistent with Australia's obligations under the international agreements specified in subsection 520(3).

(3) The Minister may have regard to any other matter the Minister considers relevant in deciding whether to vary or revoke a national environmental standard.

514YG No regression principle

(1) Before varying or revoking a national environmental standard, the Minister must be satisfied that the variation or revocation:

(a) does not reduce protections of the environment; and

(b) does not reduce the likelihood that environmental data or information provided to the Minister, Secretary, Department or a Commonwealth agency under this Act or the regulations is appropriate, including as to quality, for the purposes for which it is provided; and

(c) does not reduce the likelihood that appropriate consultation or engagement (including with Indigenous persons) will occur under the Act;

(d) does not reduce the likelihood that outcomes or objectives specified in the standard will be achieved;

(e) meets the prescribed requirements (if any).

(2) In deciding whether the Minister is satisfied for the purposes of subsection (1), the Minister is not required to have regard to the content of any instrument or other writing applied, adopted or incorporated for the purposes of making provision in the national environmental standard in relation to a matter.

(3) In deciding whether the Minister is satisfied for the purposes of subsection (1), the Minister may take into account protections or requirements under any of the following:

(a) this Act or another law of the Commonwealth;

(b) a law of a State or a self-governing Territory;

(c) another national environmental standard in force or proposed to be made.

(4) Subsection (1) does not apply in relation to a variation or revocation of a national environmental standard within 18 months of the standard being made.

514YH Consultation

(1) Before making, varying, or revoking a national environmental standard, the Minister must:

(a) publish a draft of the proposed standard, variation, or revocation on the Department's website; and

(b) invite public comment on the draft within the period specified in the invitation (which must be at least 20 business days); and

(c) consider any relevant comments made within the specified period.

(2) Subsection (1) does not apply in relation to a variation of a standard if the Minister is satisfied that the variation is of a minor or machinery nature.

514YI Consultation in relation to engagement with Indigenous persons

(1) Before making, varying, or revoking a national environmental standard that relates to engagement with Indigenous persons, the Minister must:

(a) invite the Indigenous Advisory Committee to provide any comments on the proposed standard, variation or revocation, within the period specified in the invitation (which must be a reasonable period); and

(b) consider any comments made by the Committee within the specified period.

(2) To avoid doubt, the Minister is not prevented from making, varying or revoking the standard if no comments are made by the Committee within the specified period.

514YJ Review of national environmental standards

(1) The Minister must arrange for a review of a national environmental standard to be started:
  (a) within 18 months of the standard commencing; and
  (b) at least every 5 years after that.

(2) A standard must be reviewed in accordance with paragraph (1)(a) even if it is varied before the end of the 18 months.

(3) If a standard is varied (other than a variation of a minor or machinery nature) more than 18 months after it commenced, the next review of the standard is to be started within 5 years of the variation commencing.

(4) A review of a standard must consider the extent to which the standard is achieving its outcomes and objectives and what changes, if any, should be made to the standard.

(5) The persons undertaking a review must give the Minister a written report of the review by the end of:
  (a) the period of 12 months starting on the day the review commenced; or
  (b) if the Minister, in writing, extends that period—the extended period.

(6) The Minister must arrange for the report to be published on the Department's website as soon as practicable after the report is given to the Minister.

514YK Using national environmental standards

Mandatory use

(1) In making a decision prescribed by the regulations for the purposes of this subsection, a person must:
  (a) apply any national environmental standard prescribed for the decision; and
  (b) apply it in the way prescribed.

Note: Other provisions of this Act may also require a person to apply a standard in a specified way in making a decision (see for example section 136A).

(2) For the purposes of paragraph (1)(b), the regulations may prescribe the following ways that a national environmental standard is to be applied by a person making a decision:

(a) by the person being satisfied that the decision is not inconsistent with the standard;

(b) by the person having regard to the standard;

(c) any other way.

Prescribing all or part of a national environmental standard

(3) Regulations prescribing a national environmental standard for the purposes of a provision of this Act that refers to a national environmental standard prescribed for the purposes of the provision may prescribe the whole or a specified part of a standard. If a specified part is prescribed, the provision is taken to refer to the part of the standard that is prescribed.

Discretionary use

(4) A person may, in making a decision under this Act, have regard to any national environmental standard the person considers relevant to the decision.

(5) However, a person is only required to apply a national environmental standard in making a decision under this Act if subsection (1) of this section, or another provision of this Act, requires it.

Effect on validity of decisions

(6) Unless this Act requires a person to apply a national environmental standard in making a decision under this Act, a failure by a person to have regard to or apply a national environmental standard does not affect the validity of the decision.

572 Before Part 20

Insert:

Part 19C—Rulings

514YL Simplified outline of this Part

The Minister and CEO may publish their opinions on the way in which provisions of environment law should apply in relation to persons, activities and other matters. These are called rulings.

Generally, decision makers are required to act consistently with rulings, but not if they are satisfied it is not appropriate to follow a ruling in particular circumstances. In this case decision makers must publish their reasons.

514YM Minister's rulings

Ruling about how environment law provision should apply

(1) The Minister may, by written instrument, make for the purposes of the performance of functions and exercise of powers under this Act a ruling setting out the Minister's opinion on the way in which one or more specified environment law provisions should apply in relation to:

(a) a particular person or a class of persons; or

(b) a particular action or activity, or a class of actions or activities; or

(c) a matter protected by a provision of Part 3, or a class of matters protected by a provision of Part 3; or

(d) a particular application (however described) made under this Act or the regulations, or a class of applications (however described) made under this Act or the regulations; or

(e) particular circumstances; or

(f) any other matters prescribed by the regulations.

(2) The ruling may set out circumstances or factors that, in the Minister's opinion, are relevant to the exercise of discretion (if applicable) by a decision maker in applying the environment law provision.

(3) A provision of any of the following is an ***environment law provision***:

(a) this Act;

(b) the regulations;

(c) a national environmental standard;

(d) any other instrument made under this Act.

(4) Despite subsection (1), the Minister must not make a ruling in relation to any of the CEO's environment law provisions (see subsection 514YN(3)).

Ruling about consistency of environment process with national environmental standard

(5) The Minister may, by written instrument, make for the purposes of the performance of functions and exercise of powers under this Act a ruling that sets out the Minister's opinion on the consistency of a management or authorisation framework, or any component of a management or authorisation framework, with a national environmental standard or part of a national environmental standard.

When ruling takes effect

(6) A ruling takes effect on the day specified in the ruling (which must not be before the day it is published under subsection (7)).

Publication of ruling

(7) If the Minister makes a ruling, the Minister must publish it on the Department's website as soon as practicable.

Rulings are not legislative instruments

(8) A ruling made under subsection (1) or (5) is not a legislative instrument.

514YN CEO's rulings

(1) The CEO may, by written instrument, make for the purposes of the performance of functions and exercise of powers under this Act a ruling setting out the CEO's opinion on the way in which one or

more specified CEO's environment law provisions should apply in relation to:

(a) a particular person or a class of persons; or

(b) a particular action or activity, or a class of actions or activities; or

(c) a matter protected by a provision of Part 3, or a class of matters protected by a provision of Part 3; or

(d) a particular application (however described) made under this Act or the regulations, or a class of applications (however described) made under this Act or the regulations; or

(e) particular circumstances; or

(f) any other matters prescribed by the regulations.

(2) The ruling may set out circumstances or factors that, in the CEO's opinion, are relevant to the exercise of discretion (if applicable) by a decision maker in applying the environment law provision.

(3) An environment law provision, other than a provision of a national environmental standard, is a ***CEO's environment law provision*** to the extent that the provision:

(a) confers a function or power on the CEO; or

(b) relates to the performance of the CEO's functions or the exercise of the CEO's powers under this Act or the regulations.

(4) To avoid doubt, a provision that confers functions or powers on the Minister, or that relates to the performance of such functions or the exercise of such powers, is not covered by subsection (3) regardless of whether the functions or powers may be delegated to the CEO.

(5) A ruling takes effect on the day specified in the ruling (which must not be before the day it is published under subsection (6)).

(6) If the CEO makes a ruling, the CEO must publish it on the NEPA's website as soon as practicable.

(7) A ruling made under subsection (1) is not a legislative instrument.

514YO Public consultation before making ruling

(1) Before the Minister makes a ruling, the Minister must:

(a) publish on the Department's website:

(i) a draft of the ruling; and

(ii) a notice inviting comments on the draft ruling within the period specified in the notice; and

(b) take into account any comments made within the specified period.

(2) Before the CEO makes a ruling, the CEO must:

(a) publish on the NEPA's website:

(i) a draft of the ruling; and

(ii) a notice inviting comments on the draft ruling within the period specified in the notice; and

(b) take into account any comments made within the specified period.

514YP Variation of ruling

Variation of Minister's ruling

(1) The Minister may, by written instrument, vary a ruling made by the Minister, if the Minister is satisfied that it is appropriate to do so.

(2) If the Minister varies a ruling, the Minister must publish the variation on the Department's website as soon as practicable.

Variation of CEO's ruling

(3) The CEO may, by written instrument, vary a ruling made by the CEO, if the CEO is satisfied that it is appropriate to do so.

(4) If the CEO varies a ruling, the CEO must publish the variation on the NEPA's website as soon as practicable.

When variation takes effect

(5) A variation takes effect on the day specified in the variation (which must not be before the day it is published under subsection (2) or (4), as applicable).

Variation is not a legislative instrument

(6) A variation made under subsection (1) or (3) is not a legislative instrument.

514YQ Public consultation before variation

(1) Before the Minister varies a ruling, the Minister must:
  (a) publish on the Department's website:
    (i) a draft of the variation; and
    (ii) a notice inviting comments on the draft variation within the period specified in the notice; and
  (b) take into account any comments made within the specified period.

(2) Before the CEO varies a ruling, the CEO must:
  (a) publish on the NEPA's website:
    (i) a draft of the variation; and
    (ii) a notice inviting comments on the draft variation within the period specified in the notice; and
  (b) take into account any comments made within the specified period.

514YR Revocation of ruling

Revocation of Minister's ruling

(1) The Minister may, by written instrument, revoke a ruling made by the Minister, if the Minister is satisfied that the ruling is no longer appropriate.

(2) If the Minister revokes a ruling, the Minister must publish the revocation on the Department's website as soon as practicable.

Revocation of CEO's ruling

(3) The CEO may, by written instrument, revoke a ruling made by the CEO, if the CEO is satisfied that the ruling is no longer appropriate.

(4) If the CEO revokes a ruling, the CEO must publish the revocation on the NEPA's website as soon as practicable.

When revocation takes effect

(5) A revocation takes effect on the day specified in the revocation (which must not be before the day it is published under subsection (2) or (4), as applicable).

Revocation is not a legislative instrument

(6) A revocation made under subsection (1) or (3) is not a legislative instrument.

514YS Review of rulings

(1) If the Minister or CEO (in either case the ***maker***) makes a ruling, the maker must arrange for a review of the ruling to be started:
  (a) within 5 years of the ruling taking effect; and
  (b) at least every 5 years after that.

(2) A review of a ruling must consider the matters (if any) prescribed by the regulations.

(3) The persons undertaking the review must give the maker a written report of the review by the end of:
  (a) the period of 12 months starting on the day the review commenced; or
  (b) if the maker, in writing, extends that period—the extended period.

(4) The maker must arrange for the report to be published as soon as practicable on:
  (a) if the maker is the Minister—the Department's website; or
  (b) if the maker is the CEO—the NEPA's website.

514YT Using rulings

(1) In performing a function or exercising a power under this Act or the regulations, a person must not act inconsistently with a ruling that is relevant to the function or power.

(2) Despite subsection (1), a person may act inconsistently if, having regard to the particular circumstances of the matter to which the performance of the function or the exercise of the power relates, the person is satisfied that it would be inappropriate to comply with subsection (1).

(3) If a person acts inconsistently with a ruling because the person is satisfied as mentioned in subsection (2), the person must publish, on the Department's website (for a Minister's ruling) or the NEPA's website (for a CEO's ruling) a notice setting out:

(a) the function or power; and

(b) that, in performing the function or exercising the power, the person acted inconsistently with a specified ruling; and

(c) the person's reasons for being satisfied that it would be inappropriate to comply with subsection (1).

573 At the end of subsection 515(1)

Add:

Note: See also section 34AAB of the *Acts Interpretation Act 1901*.

574 After subsection 515(1)

Insert:

(1A) Despite subsection (1), the Minister must not delegate powers or functions to do the following:

(a) make a declaration under section 33 or suspend, vary or revoke such a declaration;

(b) revoke, under section 35D or 35E, an instrument suspending, varying or revoking a declaration under section 33;

(c) accredit a management or authorisation framework under section 33;

(d) make a declaration under section 36H or suspend, vary or revoke such a declaration;

(e) revoke, under section 36L, an instrument suspending a declaration under section 36H;

(f) enter into a bilateral agreement, or suspend or cancel the effect of a bilateral agreement (whether generally or otherwise), under Division 2 of Part 5;

(g) accredit a management or authorisation framework under section 46;

(h) approve, under section 133, the taking of an action that is a national interest proposal;

(i) make a determination under section 146N or 146P or revoke such a determination;

(j) determine that the taking of an action is a national interest proposal under section 157A;

(k) revoke, under section 157E, a determination that the taking of an action is a national interest proposal;

(l) grant, vary, revoke, or accept the surrender of, a national interest exemption under Division 3 of Part 11;

(m) make, vary, suspend or revoke a bioregional plan under Part 12A;

(n) make a determination under section 177CE or revoke such a determination;

(o) make a determination under section 177CF or revoke such a determination;

(p) grant, vary, revoke, or accept the surrender of, a Part 13 exemption under Division 7A of Part 13;

(q) give a statement of expectations under section 510B;

(r) make, vary or revoke a national environmental standard under Part 19B;

(s) make, vary or revoke a ruling under Part 19C.

(1B) Despite subsection (1), the Minister may only delegate the power to make a determination under subsection 516A(7) (content of annual reports) to:

(a) the Secretary of the Department; or

(b) an SES employee, or acting SES employee, in the Department.

575 At the end of section 515

Add:

(4) A reference in this section to powers or functions under this Act or a provision of this Act includes powers or functions under the regulations or regulations made for the purposes of the provision.

576 After Part 20A

Insert:

Part 20B—Authorised uses and disclosures of relevant information

Division 1—Preliminary

515B Meaning of certain terms used in this Part

Relevant information

(1) Information is ***relevant information*** if it is:

(a) obtained or generated by an entrusted person under, or in accordance with, this Act or an instrument made under this Act; or

(b) obtained or generated by an entrusted person in the course of or for the purposes of:

(i) administering this Act or an instrument made under this Act, or monitoring compliance with this Act or an instrument made under this Act; or

(ii) assisting another person to administer this Act or an instrument made under this Act, or monitor compliance with this Act or an instrument made under this Act.

Protected information

(2) Relevant information obtained by an entrusted person is ***protected information*** if disclosure of the information could reasonably be expected to:

(a) if the disclosure is by the entrusted person—found an action by a person (other than the Commonwealth) for breach of a duty of confidence; or

(b) prejudice the effective working of government; or

(c) prejudice the prevention, detection, investigation, prosecution or punishment of one or more offences; or

(d) endanger a person's life or physical safety; or

(e) prejudice the protection of public safety or the environment.

Entrusted persons

(3) A person is an ***entrusted person*** if the person is:

(a) the Minister; or

(b) the Secretary; or

(c) an APS employee in the Department; or

(d) any other person employed in, or engaged by, the Department; or

(e) any other person prescribed by the regulations.

Division 2—Authorised uses and disclosures by Minister

515C Disclosure of relevant information to Commonwealth entities

The Minister may disclose relevant information to a Commonwealth entity if the Minister is satisfied the disclosure is for the purposes of assisting the entity to perform its functions or exercise its powers.

Note: If protected information is disclosed under this section to a Commonwealth entity (other than the Department or NEPA) for a purpose, an official of the entity must not use or disclose the information other than for that purpose (see section 515V).

515D Disclosure of relevant information to State or Territory government body

The Minister may disclose relevant information to a State or Territory government body if:

(a) the Minister reasonably believes that the disclosure of the information is necessary for the purposes of:

(i) the Minister performing functions, or exercising powers, under this Act or an instrument made under this Act; or

(ii) the administration of a State or Territory law; and

(b) the State or Territory government body has undertaken not to use or further disclose the information except in accordance with an agreement that:

(i) is in force between the Commonwealth and the State or Territory; and

(ii) applies in relation to the information; and

(c) the Minister is satisfied that the information will be used and further disclosed only in accordance with the agreement.

Note: See also section 515E for disclosure for the purposes of law enforcement (including to a State or Territory government body).

515E Disclosure for the purposes of law enforcement

(1) The Minister may disclose relevant information to a body listed in subsection (2) if:

(a) the Minister reasonably believes that the disclosure of the information is necessary for:

(i) the enforcement of the criminal law; or

(ii) the enforcement of a law imposing a pecuniary penalty; or

(iii) the protection of public revenue; and

(b) the functions of that body include that enforcement or protection.

(2) For the purposes of subsection (1), the following bodies are listed:

(a) a Commonwealth entity;

(b) a State or Territory government body;

(c) the Australian Federal Police;

(d) the police force or police service of a State or Territory.

515F Use or disclosure to reduce serious risk to human health

The Minister may use or disclose relevant information if the Minister reasonably believes that the use or disclosure is necessary to prevent or lessen a serious risk to human health.

515G Use or disclosure to reduce serious risk to the environment

The Minister may use or disclose relevant information if the Minister reasonably believes that the use or disclosure is necessary to prevent or lessen a serious risk to the environment.

Division 3—Authorised uses and disclosures by entrusted person

515H Use or disclosure for the purposes of an Act

An entrusted person may use or disclose relevant information if the use or disclosure is for the purposes of this Act or another Act administered by the Minister, or for the purposes of an instrument made under those Acts.

515J Disclosure for the purposes of the functions etc. of the CEO

An entrusted person may disclose relevant information to NEPA if the disclosure is for the purposes of assisting in the performance of the CEO's functions or the exercise of the CEO's powers under a law of the Commonwealth.

515K Disclosure for the purposes of the functions etc. of the Head of Environment Information Australia

An entrusted person may disclose relevant information to Environment Information Australia if the disclosure is for the purposes of assisting in the performance of the Head of Environment Information Australia's functions or the exercise of the Head's powers under a law of the Commonwealth.

515L Use or disclosure for the purposes of international obligations

An entrusted person may use or disclose relevant information if the use or disclosure is for the purposes of Australia meeting its international obligations.

515M Use or disclosure of publicly available information

An entrusted person may use or disclose relevant information if the information has already been lawfully made available to the public.

515N Disclosure to person to whom information relates

An entrusted person may disclose relevant information to the person to whom the information relates.

515P Use or disclosure with consent

An entrusted person may use or disclose relevant information that relates to a person if:

(a) the person has consented to the use or disclosure; and

(b) the use or disclosure is in accordance with that consent.

515Q Disclosure to person who provided information

An entrusted person may disclose relevant information to the person who provided the information.

515R Use or disclosure of summaries or statistics

An entrusted person may use or disclose:

(a) summaries of relevant information; or

(b) statistics derived from relevant information;

if those summaries or statistics do not enable the identification of a person.

515S Disclosure to a court, tribunal etc.

(1) An entrusted person may disclose relevant information to a court exercising federal jurisdiction.

(2) An entrusted person may disclose relevant information to:

(a) a court; or

(b) a tribunal, authority or person that has the power to require the answering of questions or the production of documents;

for the purposes of the enforcement of a law of the Commonwealth or to assist the court, tribunal, authority or person to make or review an administrative decision that is required or authorised to be made or reviewed under a law of the Commonwealth.

515T Use for the purposes of disclosure

An entrusted person may use relevant information for the purpose of disclosing the relevant information under this Division.

Division 4—Civil penalty provisions

515U Unauthorised use or disclosure of protected information—entrusted person

Unauthorised use or disclosure

(1) A person contravenes this subsection if:

(a) the person is, or has been, an entrusted person; and

(b) the person has obtained relevant information in the person's capacity as an entrusted person; and

(c) the information is protected information; and

(d) the person uses or discloses the information.

Civil penalty: 200 penalty units.

Exceptions

(2) However, subsection (1) does not apply if the use or disclosure is authorised or required by:

(a) this Act; or

(b) any other law of the Commonwealth; or

(c) a prescribed law of a State or a Territory.

(3) A person who wishes to rely on subsection (2) in proceedings for a contravention of a civil penalty provision bears an evidential burden in relation to the matters in that subsection.

515V Unauthorised use or disclosure of protected information—official of Commonwealth entity

A person contravenes this section if:

(a) the person is, or has been, an official of a Commonwealth entity that is not the Department or NEPA; and

(b) the person has obtained relevant information in the person's capacity as an official of the entity; and

(c) the information is protected information that was disclosed to the entity under section 515C; and

(d) the person uses or discloses the information other than for the purpose for which it was disclosed to the entity.

Civil penalty: 200 penalty units.

577 Subsection 516A(4)

Omit "that is a Commonwealth agency".

578 Subsection 516A(5)

Repeal the subsection.

579 Subsection 516A(6)

Omit "subsection (1), (4) or (5)", substitute "subsection (1) or (4)".

580 Paragraphs 516A(6)(c), (d) and (e)

Repeal the paragraphs, substitute:

(c) include information on the reporter's environmental performance, and the effect of climate matters and environmental matters (including climate and environmental risks) on the reporter; and

(d) identify the mechanisms (if any) for reviewing and increasing the effectiveness of measures taken by the reporter to do the following:

(i) improve the reporter's environmental performance;

(ii) mitigate the effect of climate and environmental matters on the reporter.

581 Subsection 516A(6) (note)

Repeal the note.

582 Subsection 516A(7)

Repeal the subsection, substitute:

(7) The Minister may determine, by legislative instrument, information that must be included in a report for the purposes of paragraph (6)(c) or (d).

583 Before Part 22 of Chapter 7

Insert:

Part 21A—Programs relating to protection and conservation etc. of the environment

516C Protection, conservation, restoration and recovery programs

(1) The Minister may, by legislative instrument, prescribe one or more programs in relation to the protection, conservation, restoration or recovery of the environment, including in relation to the expenditure of Commonwealth money under such programs.

(2) A program may only be prescribed under subsection (1) to the extent that it is with respect to one or more legislative powers of the Parliament.

(3) The legislative instrument must:

(a) specify the legislative power or powers of the Parliament in respect of which the instrument is made; and

(b) make provision in relation to:

(i) a description of the program; and

(ii) the purpose of the program.

(4) The legislative instrument may make provision in relation to:

(a) eligibility criteria relating to the program; or

(b) a process for making applications in relation to the program; or

(c) whether application fees are payable in relation to the program.

(5) Subsections (3) and (4) do not limit subsection (1).

516D Arrangements relating to protection, conservation, restoration and recovery programs

(1) The Commonwealth may make, vary or administer an arrangement:

(a) in relation to the carrying out by a constitutional corporation of its activities under a program prescribed by a legislative instrument made under subsection 516C(1); and

(b) for money to be payable by the Commonwealth to the constitutional corporation for that purpose.

Note: Such a legislative instrument would specify the legislative power of the Parliament under paragraph 51(xx) of the Constitution.

(2) The Commonwealth may make, vary or administer an arrangement:

(a) in relation to the carrying out of activities by a person other than a constitutional corporation under a program prescribed by a legislative instrument made under subsection 516C(1); and

(b) for money to be payable by the Commonwealth to the person for that purpose.

(3) The powers conferred on the Commonwealth by subsections (1) and (2) may be exercised on behalf of the Commonwealth by a Minister or an accountable authority of a non-corporate Commonwealth entity.

Reimbursement of costs or expenses

(4) An arrangement under subsection (1) or (2) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses.

(5) Subsection (4) does not limit subsection (1) or (2).

Definitions

(6) In this section:

administer an arrangement includes give effect to.

arrangement includes contract, agreement, deed or understanding.

make, in relation to an arrangement, includes enter into.

vary an arrangement means:

(a) vary in accordance with the terms or conditions of the arrangement; or

(b) vary with the consent of the non-Commonwealth party or parties to the arrangement.

516E Terms and conditions relating to protection, conservation, restoration and recovery program arrangements

Arrangements with constitutional corporations

(1) The terms and conditions on which money may be payable by the Commonwealth to a constitutional corporation under an arrangement under subsection 516D(1) must be set out in a written agreement between the Commonwealth and the constitutional corporation.

(2) The constitutional corporation must comply with the terms and conditions.

(3) Without limiting subsection (1), the terms and conditions must provide for the circumstances in which the constitutional corporation must repay amounts to the Commonwealth.

Arrangements with States and Territories

(4) The terms and conditions on which money may be payable by the Commonwealth to a State or Territory under an arrangement under subsection 516D(2) must be set out in a written agreement between the Commonwealth and the State or Territory.

(5) The State or Territory must comply with the terms and conditions.

Who may enter into agreements

(6) An agreement under subsection (1) or (4) may be entered into on behalf of the Commonwealth by a Minister or an accountable authority of a non-corporate Commonwealth entity.

Arrangements with other persons

(7) This section does not, by implication, prevent an arrangement under section 516D between the Commonwealth and a person other than a constitutional corporation or a State or Territory from being made subject to terms and conditions.

516F Executive power of the Commonwealth

This Part does not, by implication, limit the executive power of the Commonwealth.

516G Relationship of this Part with the *Public Governance, Performance and Accountability Act 2013*

Section 23 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the power of accountable authorities in relation to arrangements and commitments) does not authorise the accountable authority of a non-corporate Commonwealth entity to exercise, on behalf of the Commonwealth, a power conferred on the Commonwealth by section 516D of this Act.

584 Subsection 517(3)

Repeal the subsection, substitute:

(3) A determination does not apply for the purposes of Part 13A.

585 After section 519

Insert:

519A Approved forms

(1) The Minister may, in writing, approve a form for the purposes of a provision of this Act or the regulations that refers to a thing being done in the approved form.

(2) If the Minister does so, the form is the ***approved form*** for the purposes of that provision.

586 Section 520A

Repeal the section.

587 After section 521A

Insert:

521B Charges imposed by other Acts

(1) This section applies in relation to charge imposed by:

(a) the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*;

(b) the *Environment Protection and Biodiversity Conservation (General Charges Imposition) Act 2025*; or

(c) the *Environment Protection and Biodiversity Conservation (Customs Charges Imposition) Act 2025*; or

(d) the *Environment Protection and Biodiversity Conservation (Excise Charges Imposition) Act 2025*.

(2) The regulations may make provision for and in relation to the following:

(a) except in relation to charge imposed by the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*—the person or persons liable to pay charge;

(b) the time when charge is due and payable;

(c) the collection of charge;

(d) the recovery of charge;

(e) refund, remission or waiver of charge (in whole or in part);

(f) refund, remission or waiver of any penalty payable in respect of unpaid charge (see subsection (3)) (in whole or in part);

(g) overpayments and underpayments of charge;

(h) giving information and keeping records in relation to charge;

(i) reconsideration and review of decisions in relation to refund, remission or waiver of charge or a penalty payable in respect of unpaid charge;

(j) any other matters relating to a liable person's liability to pay charge.

(3) The regulations may make provision in relation to the matters specified in subsection (2), so far as those matters relate to charge imposed by the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*, in relation to the following:

(a) different classes of approved actions or priority actions;

(b) different classes of charge.

(4) Subsections (2) and (3) of this section do not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Penalty for unpaid charge

(5) If the regulations specify a time when charge is due and payable, the regulations may also prescribe an amount by way of penalty (the ***penalty***) that is due and payable if charge is not paid at or before that time.

(6) Without limiting subsection (5), the penalty may relate to each day or part of a day that charge remains unpaid after becoming due and payable.

(7) Regulations made for the purposes of subsection (5) may prescribe the penalty by specifying an amount or a method for working out an amount.

Charge and penalty are debts recoverable by the Commonwealth

(8) Charge, or a penalty, that is due and payable to the Commonwealth may be recovered as a debt due to the Commonwealth by action in:

(a) the Federal Court; or

(b) the Federal Circuit Court; or

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

521C Commonwealth notionally liable to pay restoration charge and late payment penalties relating to restoration charge

(1) The Commonwealth is not liable to pay charge imposed by the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*, or late payment penalty relating to such charge, that is payable under this Act or the regulations. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a charge or penalty.

(2) The Minister administering the *Public Governance, Performance and Accountability Act 2013* may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to

the transfer of money within an account, or between accounts, operated by the Commonwealth.

(3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.

(4) Directions under subsection (2) are not legislative instruments.

(5) In subsections (1) and (2):

Commonwealth includes a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that cannot be made liable to taxation by a Commonwealth law.

521D Payment of notional cost recovery charges by the Commonwealth

(1) The Minister administering the *Public Governance, Performance and Accountability Act 2013* may give written directions for the purpose of ensuring that charges imposed by the Acts specified in subsection (3) are notionally payable by the Commonwealth (or parts of the Commonwealth).

Note: For notional payments and receipts, see section 76 of that Act.

(2) A direction given under subsection (1) is not a legislative instrument.

(3) For the purposes of subsection (1), the Acts are the following:

(a) the *Environment Protection and Biodiversity Conservation (General Charges Imposition) Act 2025*;

(b) the *Environment Protection and Biodiversity Conservation (Customs Charges Imposition) Act 2025*;

(c) the *Environment Protection and Biodiversity Conservation (Excise Charges Imposition) Act 2025*.

588 At the end of Subdivision F of Division 1 of Part 23

Add:

527F Unacceptable impacts

For the purposes of this Act, the following table sets out the impacts that are ***unacceptable impacts*** on each matter protected by a provision of Part 3.

Unacceptable impacts

Provision	Matter protected	Unacceptable impact
section 12	the world heritage values of a declared world heritage property	a significant impact that causes, will cause, or is likely to cause, loss, damage or alteration to part or all of the world heritage values
section 15A	the world heritage values of a declared world heritage property	a significant impact that causes, or is likely to cause, loss, damage or alteration to part or all of the world heritage values
section 15B	the National Heritage values of a National Heritage place	a significant impact that causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the national heritage values of the National Heritage place
section 15C	the National Heritage values of a National Heritage Place	a significant impact that causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the national heritage values of the National Heritage place
section 16	the ecological character of a declared Ramsar wetland	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the ecological character of a declared Ramsar wetland; or (b) undermines, will undermine, or is likely to undermine, the ability of the declared Ramsar wetland to continue

Unacceptable impacts

Provision	Matter protected	Unacceptable impact
		to meet the criteria for which it was listed under the Ramsar Convention
section 17B	the ecological character of a declared Ramsar wetland	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the ecological character of a declared Ramsar wetland; or (b) undermines, will undermine, or is likely to undermine, the ability of the declared Ramsar wetland to continue to meet the criteria for which it was listed under the Ramsar Convention
subsection 18(1)	a listed threatened species in the extinct in the wild category	a significant impact that seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed threatened species
subsection 18(2)	a listed threatened species in the critically endangered category	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed threatened species; or (b) causes, will cause, or is likely to cause, serious damage to critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for the listed threatened species to remain viable in the wild
subsection 18(3)	a listed threatened species in the endangered category	a significant impact that: (a) seriously impairs, will

Unacceptable impacts

Provision	Matter protected	Unacceptable impact
		seriously impair, or is likely to seriously impair, the viability of the listed threatened species; or (b) causes, will cause, or is likely to cause, serious damage to critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for the listed threatened species to remain viable in the wild
subsection 18(4)	a listed threatened species in the vulnerable category	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed threatened species; or (b) causes, will cause, or is likely to cause, serious damage to critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for the listed threatened species to remain viable in the wild
subsection 18(5)	a listed threatened ecological community in the critically endangered category	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed threatened ecological community; or (b) causes, will cause, or is likely to cause, serious damage to critical habitat of the listed threatened

Unacceptable impacts

Provision	Matter protected	Unacceptable impact
		ecological community where the habitat is irreplaceable and necessary for the listed threatened ecological community to remain viable in the wild
subsection 18(6)	a listed threatened ecological community in the endangered category	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed threatened ecological community; or (b) causes, will cause, or is likely to cause, serious damage to critical habitat of the listed threatened ecological community where the habitat is irreplaceable and necessary for the listed threatened ecological community to remain viable in the wild
subsection 18A(1) or (2)	(a) a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species); and (b) a listed threatened ecological community (except an ecological community included in the vulnerable category of the list referred to in section 181)	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed threatened species or listed threatened ecological community; or (b) except for a listed threatened species included in the extinct in the wild category of the list referred to in section 178—causes, will cause, or is likely to cause, serious damage to critical habitat of the listed

Unacceptable impacts		
Provision	**Matter protected**	**Unacceptable impact**
		threatened species or listed threatened ecological community where the habitat is irreplaceable and necessary for the listed threatened species or listed threatened ecological community to remain viable in the wild
section 20	a listed migratory species	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed migratory species; or (b) causes, will cause, or is likely to cause, serious damage to habitat of the listed migratory species where the habitat is irreplaceable and necessary for the listed threatened migratory to remain viable in the wild
section 20A	a listed migratory species	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed migratory species; or (b) causes, will cause, or is likely to cause, serious damage to habitat of the listed migratory species where the habitat is irreplaceable and necessary for the listed migratory species to remain viable in the wild

Unacceptable impacts		
Provision	**Matter protected**	**Unacceptable impact**
section 21	the environment	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment
section 22A	the environment	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment
subsection 23(1)	the environment	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the functioning or integrity of a marine ecosystem (or part of a marine ecosystem) that is part of the environment; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place if the place is part of the environment
subsection 23(2)	the environment in a Commonwealth marine area	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the functioning or integrity of a marine ecosystem (or part of a marine ecosystem) that is part of the environment in the Commonwealth marine area; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values

Unacceptable impacts		
Provision	**Matter protected**	**Unacceptable impact**
		of a place if the place is part of the environment of the Commonwealth marine area
subsection 23(3)	the environment in the coastal waters (within the meaning of the *Fisheries Management Act 1991*) in which the action is taken of the State or the Northern Territory	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the functioning or integrity of any marine ecosystem (or part of a marine ecosystem) that is part of the environment in the coastal waters of the State or the Northern Territory in which the action is taken; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place that is part of the environment in the coastal waters of the State or the Northern Territory in which the action is taken
subsection 24A(1) or (2)	the environment	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the functioning or integrity of a marine ecosystem (or part of a marine ecosystem) that is part of the environment; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place that is part of the environment
subsection 24A(3)	the environment in a	a significant impact that:

Unacceptable impacts		
Provision	**Matter protected**	**Unacceptable impact**
or (4)	Commonwealth marine area	(a) seriously impairs, will seriously impair, or is likely to seriously impair, the functioning or integrity of a marine ecosystem (or part of a marine ecosystem) that is part of the environment in the Commonwealth marine area; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place if the place is part of the environment of the Commonwealth marine area
subsection 24A(5) or (6)	the environment in the coastal waters (within the meaning of the *Fisheries Management Act 1991*) in which the action is taken of the State or the Northern Territory	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the functioning or integrity of a marine ecosystem (or part of a marine ecosystem) that is part of the environment in the coastal waters of the State or the Northern Territory in which the action is taken; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place that is part of the environment in the coastal waters of the State or the Northern Territory in which the action is taken
subsection 24B(1)	the environment	a significant impact that: (a) seriously impairs, will

Unacceptable impacts		
Provision	**Matter protected**	**Unacceptable impact**
		seriously impair, or is likely to seriously impair, the biodiversity values that are part of the environment; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place that is part of the environment
subsection 24B(2)	the environment in the Great Barrier Reef Marine Park	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the biodiversity values that are part of the environment in the Great Barrier Reef Marine Park; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place that is part of the environment in the Great Barrier Reef Marine Park
subsections 24C(1) and (3)	the environment	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the biodiversity values that are part of the environment; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place that is part of the environment
subsections 24C(5)	the environment in the Great	a significant impact that:

Unacceptable impacts		
Provision	**Matter protected**	**Unacceptable impact**
and (7)	Barrier Reef Marine Park	(a) seriously impairs, will seriously impair, or is likely to seriously impair, the biodiversity values that are part of the environment in the Great Barrier Reef Marine Park; or (b) causes, will cause, or is likely to cause, serious or irreversible damage to part or all of the heritage values of a place that is part of the environment in the Great Barrier Reef Marine Park
section 24D	a water resource	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the integrity of the water resource to the extent that critical human water needs can no longer be provided from the water resource; or (b) causes, will cause, or is likely to cause, irreversible damage to the integrity of a water resource that is necessary to maintain a site of regional or national ecological significance
section 24E	a water resource	a significant impact that: (a) seriously impairs, will seriously impair, or is likely to seriously impair, the integrity of the water resource to the extent that critical human water needs can no longer be provided; or

Unacceptable impacts		
Provision	**Matter protected**	**Unacceptable impact**
		(b) causes, will cause, or is likely to cause, irreversible damage to the integrity of a water resource that is necessary to maintain a site of regional or national ecological significance
section 25	a thing prescribed by the regulations for the purposes of this table item in relation to which an action to which section 25 applies	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment
subsection 26(1)	the environment	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment
subsection 26(2)	the environment on Commonwealth land	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment
subsection 27A(1) or (2)	the environment	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment
subsection 27A(3) or (4)	the environment on Commonwealth land	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment
section 27B	the environment in a Commonwealth Heritage place outside the Australian jurisdiction	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment

Unacceptable impacts		
Provision	**Matter protected**	**Unacceptable impact**
section 27C(1) and (2)	the environment in a Commonwealth Heritage place outside the Australian jurisdiction	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment
section 28	the environment	a significant impact that the Minister is satisfied is unacceptable because it will seriously impair the environment

527G Definition of *accredited*

A management or authorisation framework is ***accredited***:

(a) for the purposes of a declaration under section 33—if the framework is accredited by a written instrument in force under subsection 33(2) for the purposes of the declaration; and

(b) for the purposes of a bilateral agreement—if the framework is accredited by a written instrument in force under subsection 46(2) for the purposes of the agreement.

527H Definition of *seriously impair*

(1) A significant impact of an action ***seriously impairs*** something if, compared to the action not being taken, the impact results in the thing being seriously altered for the worse.

(2) For the purposes of subsection (1), have regard to the nature, intensity, duration, magnitude, geographic extent and context of the impact.

527J Definition of *residual significant impact*

Residual significant impact of an action

(1) An impact that an action will have or is likely to have on a matter protected by a provision of Part 3 is a ***residual significant impact*** on the matter if all of the following apply:

(a) the impact is significant;

(b) the impact will not be avoided, mitigated or repaired in the course of taking the action;

(c) the impact will not be avoided, mitigated or repaired in the course of complying with conditions to be attached to the approval of the taking of the actions.

Residual significant impact of a class of actions

(2) An impact that a class of actions as a whole will have or is likely to have on a matter protected by a provision of Part 3 is a ***residual significant impact*** on the matter if all of the following apply:

(a) the impact is significant;

(b) the impact will not be avoided, mitigated or repaired in the course of taking the actions in the class;

(c) the impact will not be avoided, mitigated or repaired in the course of complying with conditions to be attached to the approval of the taking of the class of actions.

527K Passing the net gain test in relation to residual significant impact

Approval of an action

(1) An approval of the taking of an action ***passes the net gain test*** in relation to a residual significant impact the action has, will have, or is likely to have, on a matter protected by a provision of Part 3, if:

(a) either or both of the following kinds of conditions is attached to the approval:

(i) a condition requiring the holder of the approval to compensate for damage to the matter that has been, or may or will be, caused by the residual significant impact;

(ii) a condition requiring the holder of the approval to pay restoration contribution charge in relation to the residual significant impact; and

(b) compliance with the condition or conditions results in a net gain for the matter:

(i) if the regulations prescribe the net gain for the matter—that is at least equal to the prescribed net gain; or

(ii) otherwise—that the Minister is satisfied is appropriate; and

(c) if any other requirements are prescribed by the regulations in relation to compensation for damage to the matter—the requirements are satisfied.

Approval of a class of actions

(2) An approval of the taking of a class of actions ***passes the net gain test*** in relation to a residual significant impact the class of actions as a whole has, will have or is likely to have, on a matter protected by a provision of Part 3, if:

(a) either or both of the following kinds of conditions is attached to the approval:

(i) a condition requiring the holder of the approval to compensate for damage to the matter that has been, or may or will be, caused by the residual significant impact;

(ii) a condition requiring the holder of the approval to pay restoration contribution charge in relation to the residual significant impact; and

(b) compliance with the condition or conditions results in a net gain for the matter:

(i) if the regulations prescribe the net gain for the matter—that is at least equal to the prescribed net gain; or

(ii) otherwise—that the Minister is satisfied is appropriate; and

(c) if any other requirements are prescribed by the regulations in relation to compensation for damage to the matter—the requirements are satisfied.

Protected matters that a modified net gain test applies to

(3) Despite subsections (1) and (2), an approval of the taking of an action or a class of actions is taken to pass the net gain test in relation to a residual significant impact on a matter prescribed by the regulations for the purposes of this subsection if the Minister is satisfied that:

(a) paragraphs (1)(a) and (c) or (2)(a) and (c) apply in relation to the residual significant impact; and

(b) compliance with the condition or conditions attached as mentioned in paragraph (1)(a) or (2)(a) results in no net loss for the matter.

Certain approvals taken to pass net gain test

(4) Despite subsections (1) and (2), an approval of the taking of an action or class of actions is taken to pass the net gain test in relation to a residual significant impact on the environment to the extent that the environment:

(a) consists of people or communities; and

(b) is protected by any of the following provisions of Part 3:

(i) section 21 or 22A (about radiological exposure actions);

(ii) section 23 or 24A (about marine areas);

(iii) section 24B or 24C (about the Great Barrier Reef Marine Park);

(iv) section 26 or 27A (about Commonwealth land);

(v) section 27B or 27C (about Commonwealth Heritage places overseas);

(vi) section 28 (about Commonwealth agencies).

Protected matters that net gain test does not apply to

(5) The following provisions of this Act do not apply in relation to a residual significant impact on a matter protected by a provision of Part 3 if the matter is prescribed by the regulations for the purposes of this subsection:

(a) paragraph 33(3)(i) (about accreditation of authorisation or management frameworks for the purposes of a declaration under section 33);

(b) paragraphs 46(3)(i) (about accreditation of authorisation or management frameworks for the purposes of a bilateral agreement);
(c) subsection 48A(5) (about undertakings in bilateral agreements in relation to residual significant impacts);
(d) section 136C (about approval of actions with a residual significant impact);
(e) paragraph 143(2A)(c) (about revoking, varying or adding to conditions attached to an approval);
(f) paragraph 145D(3A)(c) (about extending an approval period);
(g) section 146FC (about approvals under Part 10);
(h) paragraph 177AP(e) (about making bioregional plans);
(i) paragraph 177AS(i) (about varying bioregional plans).

589 Section 528

Insert:

accountable authority has the meaning given by the *Public Governance, Performance and Accountability Act 2013*.

accredited: see section 527G.

590 Section 528 (definition of *accredited authorisation process* and *accredited management arrangement*)

Repeal the definitions.

591 Section 528

Insert:

advanced restoration action has the meaning given by subsection 170CAA(1).

advisory body has the meaning given by section 510A.

alternate pathway has the meanings given by section 71A.

alternative restoration action has the meaning given by subsection 177CS(5).

approval means:

(a) in relation to an action:
(i) an approval of the taking of the action under subsection 133(1); or
(ii) an approval of the taking of the action under subsection 146B(1) in accordance with an endorsed policy, plan or program; or
(b) in relation to a class of actions—an approval of the taking of the class of actions under subsection 146B(1) in accordance with an endorsed policy, plan or program.

approved action means an action for which an approval is in effect.

approved class of actions means a class of actions for which an approval is in effect.

approved form has the meaning given by subsection 519A(2).

audited person has the meaning given by subsection 459(1).

auditor:
(a) in relation to a directed environmental audit—has the meaning given by subsection 459(1); or
(b) in relation to a compliance audit—has the meaning given by subsection 462B(2).

592 Section 528 (definition of *authorisation process*)

Omit "set out in a law of the Commonwealth or a State or Territory".

593 Section 528 (definition of *bilaterally accredited authorisation process* and *bilaterally accredited management arrangement*)

Repeal the definitions.

594 Section 528

Insert:

bioregional guidance plan: see subsection 176(1).

595 Section 528 (definition of *bioregional plan*)

Repeal the definition, substitute:

bioregional plan: see subsection 177AA(1).

596 Section 528

Insert:

bioregional plan registration charge means charge imposed by section 9 of the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*.

bioregional plan restoration contribution: see subsection 177AH(3).

bioregional restoration action means a bioregional restoration measure other than a bioregional plan restoration contribution.

bioregional restoration measure: see subsections 177AH(1) and (2).

CEO's environment law provision has the meaning given by subsection 516F(3).

597 Section 528 (definition of *CITES I species*)

Repeal the definition.

598 Section 528 (definition of *CITES I specimen*)

Repeal the definition, substitute:

CITES I specimen has the meaning given by subsection 303CA(2).

599 Section 528 (definition of *CITES II species*)

Repeal the definition.

600 Section 528 (definition of *CITES II specimen*)

Repeal the definition, substitute:

CITES II specimen has the meaning given by subsection 303CA(3).

601 Section 528 (definition of *CITES III species*)

Repeal the definition.

602 Section 528 (definition of *CITES III specimen*)

Repeal the definition, substitute:

CITES III specimen has the meaning given by subsection 303CA(4).

603 Section 528 (definition of *CITES specimen*)

Repeal the definition, substitute:

CITES specimen has the meaning given by subsection 303CA(1).

604 Section 528

Insert:

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

compliance audit has the meaning given by section 462.

605 Section 528 (definition of *conservation zone*)

Repeal the definition, substitute:

conservation zone:

(a) for the purposes of Division 5 of Part 15, section 393 and Division 5 of Part 19—means a Commonwealth area that is declared to be a conservation zone under Division 5 of Part 15; or

(b) otherwise—means a conservation zone specified in a bioregional plan for a region in accordance with section 177AJ.

606 Section 528

Insert:

continuing section 158 exemption means an exemption granted under section 158 (as in force immediately before the commencement of item 606 of Schedule 1 to the *Environment Protection Reform Act 2025*).

continuing section 303A exemption means an exemption granted under section 303A (as in force immediately before the

commencement of item 606 of Schedule 1 to the *Environment Protection Reform Act 2025*).

607 Section 528 (definition of *critical habitat*)

Repeal the definition, substitute:

critical habitat has the meaning given by subsection 207A(4).

608 Section 528

Insert:

designated environmental instrument means:

(a) the Australian World Heritage Management Principles; or

(b) a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321; or

(c) the National Heritage Management Principles; or

(d) an agreement to which the Commonwealth is party in relation to a National Heritage place; or

(e) a plan that has been prepared for the management of a National Heritage place under section 328S or as described in section 324X; or

(f) a plan that has been prepared for the management of a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention as described in section 333; or

(g) the Australian Ramsar management principles; or

(h) an instrument prescribed by the regulations.

designated international agreement means:

(a) the Apia Convention; or

(b) the Biodiversity Convention; or

(c) the Bonn Convention; or

(d) CAMBA; or

(e) CITES; or

(f) JAMBA; or

(g) the Ramsar Convention; or

(h) ROKAMBA; or

(i) the World Heritage Convention; or
(j) an international agreement approved under subsection 209(4); or
(k) an agreement prescribed by the regulations.

designated priority action: a priority action is a ***designated priority action*** for a person for an impacted protected matter if the provision of Part 3 that protects the impacted protected matter does not apply to the taking of the priority action by the person.

designated report writer has the meaning given by section 84B.

designated restricted action: a restricted action is a ***designated restricted action*** for a person for a restricted protected matter if the provision of Part 3 that protects the restricted protected matter does not apply to the taking of the restricted action taken by the person.

609 Section 528 (definition of *directed environmental audit*)

Omit "subsection 460(4)", substitute "subsection 458(1)".

610 Section 528

Insert:

entrusted person has the meaning given by subsection 515B(3).

611 Section 528 (definition of *environmental authority*)

Repeal the definition, substitute:

environmental authority means:
(a) an approval under Part 9; or
(b) a permit issued under Chapter 5.

612 Section 528

Insert:

environmental exemption means:
(a) an exemption granted under section 157H (national interest exemption); or
(b) an exemption granted under section 302A (Part 13 exemption); or

(c) a continuing section 158 exemption; or
(d) a continuing section 303A exemption.

environmental order means:
(a) an environment protection order; or
(b) a conservation order; or
(c) a remediation determination; or
(d) a remediation order.

environment law provision has the meaning given by subsection 516E(3).

environment protection order has the meaning given by subsection 474A(1).

exclusion determination: see subsection 177CF(1).

exemption charge means the following:
(a) national interest exemption charge;
(b) Part 13 exemption charge.

general restoration action has the meaning given by subsection 177CS(3).

greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

greenhouse gas emissions information has the meaning given by subsection 84A(2).

613 Section 528 (paragraph (b) of the definition of *holder*)

Repeal the paragraph, substitute:
(b) in the case of an approval under Part 9:
(i) the person named in the approval under paragraph 133(2)(c); or
(ii) if the approval is transferred under section 145B—the person to whom the approval is transferred; or
(c) in the case of an approval under section 146B:
(i) the person named in the approval under paragraph 146B(2)(ba); or

(ii) if the approval is transferred under section 145B (as applied by section 146DD)—the person to whom the approval is transferred; or

(d) in the case of a marine park permission—the person who is the holder of the permission under regulations made under the *Great Barrier Reef Marine Park Act 1975*.

614 Section 528

Insert:

impacted protected matter for the priority actions in a class of actions: see subsection 177AE(2).

Indigenous Advisory Committee means the Committee established by section 505A.

intended outcome, for a national interest proposal:

(a) in relation to a determination made under section 157A—has the meaning given by subsection 157C(1); or

(b) in relation to a determination taken under section 75A to be made under section 157A—has the meaning given by subsection 146P(1); or

(c) in relation to a determination taken under section 75B to be made under section 157A—has the meaning given by subsection 177CF(1); or

(d) in relation to a determination taken under section 75C to be made under section 157A—has the meaning given by subsection 177BV(1).

irreplaceable: habitat is ***irreplaceable*** for a species or ecological community if, whether biologically, physically or technically, it is impossible to reverse damage to the habitat, or impossible to restore, recreate or replace the habitat:

(a) in a relevant timeframe and location; and

(b) with the function (including the complexity and scale) necessary to support the viability of the species or community.

management or authorisation framework means:

(a) a management arrangement; or

(b) an authorisation process.

marine park order means any of the following, within the meaning of the *Great Barrier Reef Marine Park Act 1975*:

(a) a vessel monitoring direction;

(b) an emergency direction;

(c) an enforceable direction;

(d) a remediation order.

marine park permission means a permission granted under regulations made under the *Great Barrier Reef Marine Park Act 1975*.

national environmental standard means a national environmental standard made under subsection 514YD(1).

national interest exemption has the meaning given by subsection 157H(1).

national interest exemption charge means charge imposed by subsection 10(1) of the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*.

national interest proposal: the taking of an action is a ***national interest proposal*** if a determination that the taking of the action is a national interest proposal is in force under section 157A.

non-corporate Commonwealth entity has the meaning given by the *Public Governance, Performance and Accountability Act 2013*.

NOPSEMA means the National Offshore Petroleum Safety and Environmental Management Authority.

Note: See the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

NOPSEMA management or authorisation framework has the meaning given by subsection 36G(2).

615 Section 528 (definition of *nuclear action*)

Repeal the definition.

616 Section 528

Insert:

Part 13 exemption has the meaning given by subsection 302A(1).

Part 13 exemption charge means charge imposed by subsection 10(2) of the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*.

passes the net gain test:

(a) in relation to an approval of the taking of an action—has the meaning given by subsection 527K(1); and

(b) in relation to an approval of the taking of a class of actions—has the meaning given by subsection 527K(2).

priority action: see subsection 177AE(1).

priority class of actions: see subsection 177AE(1).

protected information has the meaning given by subsection 515B(2).

protection statement: see 298A(1).

radiological exposure action has the meaning given by subsection 22(1A).

registered auditor means an individual who is registered in the register of auditors kept under section 462G.

registered critical habitat has the meaning given by subsection 207A(1AA).

registered person, in relation to a priority action, means a person in relation to whom the priority action is a registered priority action.

registered priority action: a priority action is a ***registered priority action*** in relation to a person at a particular time if, at that time:

(a) the priority action is registered in relation to the person under subsection 177BN(7) or paragraph 177BO(8)(a); and

(b) the priority action has not ceased to be registered in relation to the person under:

(i) paragraph 177BO(8)(b) (transfer of registration); or

(ii) subsection 177BP(3) (revocation of registration); or

(iii) subsection 177BQ(2) (priority action has not substantially commenced).

relevant information has the meaning given by subsection 515B(1).

relevant person for a compliance audit has the meaning given by section 462C.

relevant State: a State is a ***relevant State*** for a bioregional plan if any part of the area to which the bioregional plan relates is located wholly or partly within the State.

relevant Territory: a Territory is a ***relevant Territory*** for a bioregional plan if any part of the area to which the bioregional plan relates is located wholly or partly within the Territory.

residual significant impact:

(a) in relation to an action—has the meaning given by subsection 527J(1); and

(b) in relation to a class of actions—has the meaning given by subsection 527J(2).

responsible person for a policy, plan or program means the person responsible from time to time for the adoption or implementation of the policy, plan or program.

restoration contribution charge means charge imposed by subsection 8(1), (2) or (3) of the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*.

Restoration Contributions Advisory Committee means the committee established by section 505F.

Restoration Contributions Holder: see section 177CL.

Restoration Contributions Special Account means the special account established by section 177DJ.

restricted action: see subsection 177AK(1).

restricted protected matter for the restricted actions in a class of actions: see subsection 177AK(2).

ROKAMBA means the Agreement with the Government of the Republic of Korea on the Protection of Migratory Birds done at Canberra on 6 December 2006.

Note: The text of the Agreement is set out in Australian Treaty Series 2007 No. 24. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

scope 1 greenhouse gas emission has the meaning given by subsection 84A(3).

scope 2 greenhouse gas emission has the meaning given by subsection 84A(4).

seriously impair has the meaning given by section 527H.

617 Section 528 (definition of *species*)

Omit all the words from and including "In this definition", substitute "In this definition, ***the purposes of Part 13A*** do not include determining the meaning of the expression ***listed threatened species*** when used in Part 13A.".

618 Section 528

Insert:

State or Territory government body means:

(a) a Department of State of a State or Territory; or

(b) an agency of a State or Territory; or

(c) an authority of a State or Territory.

statement of expectations: see subsection 510B(1).

statement of intent: see subsection 510C(1).

subject to: a person is ***subject to*** an environmental order or a marine park order if:

(a) for an environment protection order—the order applies to the person; or

(b) for a conservation order:

(i) the person is carrying on, or is proposing to carry on, activities to which the order relates; or

(ii) the order requires the person to take action; or

(c) for a remediation determination or remediation order—the determination or order requires the person to take action; or

(d) for a vessel monitoring direction within the meaning of the *Great Barrier Reef Marine Park Act 1975*:

(i) the person is a kind of person responsible (within the meaning of subsection 61AAA(10) of that Act) for a vessel; and

(ii) the direction applies to the person, or to that kind of person; or

(e) for an emergency direction within the meaning of the *Great Barrier Reef Marine Park Act 1975* that applies to a particular person—the direction applies to the person; or

(f) for an emergency direction within the meaning of the *Great Barrier Reef Marine Park Act 1975* that applies to a class of persons or to persons generally—the direction applies to the person and either of the following apply:

(i) the person is carrying on, or is proposing to carry on, activities to which the direction relates;

(ii) the direction requires the person to take action; or

(g) for an enforceable direction, or remediation order, within the meaning of the *Great Barrier Reef Marine Park Act 1975*—the direction or order applies to the person.

top-up amount means:

(a) an amount debited under an Appropriation Act against the appropriation for an item in the Appropriation Act, and credited to the Restoration Contributions Special Account, on the basis that a purpose of the Restoration Contributions Special Account is a purpose that is covered by the item; or

(b) an amount credited to the Restoration Contributions Special Account that is covered by paragraph 177DK(e), (f) or (g).

unacceptable impacts has the meaning given by section 527F.

viability of a species or ecological community means the ability of the species or ecological community to survive and recover in the wild, either as a whole or in a particular region.

Environment Protection (Sea Dumping) Act 1981

619 Subsections 19(3) and (4)

Repeal the subsections.

620 Paragraph 24(2)(a)

Omit "(as it applies of its own force or because of Subdivision A of Division 4 of Part 11 of that Act)".

Hazardous Waste (Regulation of Exports and Imports) Act 1989

621 Section 4 (paragraph (a) of the definition of *decision period*)

Omit ", 16C".

622 Section 16C

Repeal the section.

623 Subsection 26B(1) (note)

Omit ", 26E".

624 Section 26E

Repeal the section.

Nature Repair Act 2023

625 After paragraph 45(1)(e)

Insert:

(ea) sets out:

(i) for the purposes of paragraph 76A(1)(a), whether or not a biodiversity certificate issued in respect of such a project may be used for an environmental offsetting purpose; and

(ii) for the purposes of paragraph 76A(1)(b), requirements that must be met for such a biodiversity certificate to be used for an environmental offsetting purpose; and

626 Section 76A (at the end of the heading)

Add "**unless certain requirements met etc.**".

627 Subsection 76A(1)

Repeal the subsection, substitute:

(1) A biodiversity certificate issued in respect of a registered biodiversity project must not be used for an environmental offsetting purpose unless:

(a) under the methodology determination (the ***applicable methodology determination***) that covers the registered biodiversity project, the biodiversity certificate may be used for an environmental offsetting purpose; and

(b) if the applicable methodology determination sets out requirements for the purposes of subparagraph 45(1)(ea)(ii)—those requirements are met; and

(c) if the rules specify requirements for the purposes of this paragraph—those requirements are met.

Offshore Petroleum and Greenhouse Gas Storage Act 2006

628 After paragraph 678(1)(c)

Insert:

(ca) for any declaration in force under section 36H of the *Environment Protection and Biodiversity Conservation Act 1999*—an analysis of the extent to which the conditions mentioned in subsection 36H(2) of that Act continue to be met in relation to the NOPSEMA management or authorisation framework (within the meaning of that Act) to which the declaration relates;

629 At the end of subsection 679(1)

Add:

; and (e) if the part of the plan mentioned in paragraph 677A(b) includes the analysis mentioned in paragraph 678(1)(ca) in relation to a declaration in force under section 36H of the *Environment Protection and Biodiversity Conservation Act 1999*:

(i) provide a copy of that part of the plan to the Environment Minister; and

(ii) consult the Environment Minister on the content of the analysis.

630 At the end of section 679

Add:

(9) The responsible Commonwealth Minister must not approve, or direct the variation of, the part of the corporate plan that relates specifically to the analysis mentioned in paragraph 678(1)(ca) without the approval of the Environment Minister.

631 After subsection 690(1A)

Insert:

(1B) The part of the report mentioned in paragraph (1A)(b) must include, for any declaration in force under section 36H of the *Environment Protection and Biodiversity Conservation Act 1999*, an analysis of the extent to which the conditions mentioned in subsection 36H(2) of that Act continue to be met in relation to the NOPSEMA management or authorisation framework (within the meaning of that Act) to which the declaration relates.

632 Subsection 690(1)

Omit "The annual report prepared by the CEO and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* must also", substitute "The part of the annual report mentioned in paragraph (1A)(b) must".

633 After subsection 690(2A)

Insert:

(2AA) The CEO must also give to the Environment Minister a copy of so much of the part of the annual report mentioned in paragraph (1A)(b) as relates specifically to the analysis mentioned in subsection 690(1B).

634 After subsection 695(2)

Insert:

(2A) Without limiting the matters to be covered by a review under subsection (1), the review must include, for any declaration in force under section 36H of the *Environment Protection and Biodiversity Conservation Act 1999*, an assessment of the extent to which the conditions mentioned in subsection 36H(2) of that Act continue to be met in relation to the NOPSEMA management or authorisation framework (within the meaning of that Act) to which the declaration relates.

635 After subsection 695(4)

Insert:

(4A) The responsible Commonwealth Minister must give a copy of a report under subsection (4) that includes the assessment mentioned in subsection (2A) to the Environment Minister, within 10 business days after the report is made available to the responsible Commonwealth Minister.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

636 Subsections 17(1) and (2)

Omit ", subject to subsection (4),".

637 Subsections 17(3) and (4)

Repeal the subsections.

Part 2—Amendments relating to penalties

Division 1—Amendments relating to criminal penalties

Environment Protection and Biodiversity Conservation Act 1999

638 Subsections 15A(3), 15C(13), 17B(3), 18A(3), 20A(3), 22A(7) and 24A(7)

Omit "420 penalty units", substitute "1,000 penalty units".

639 Subsections 24C(1), (3), (5) and (7) and 24E(1), (2) and (3) (penalty)

Omit "420 penalty units", substitute "1,000 penalty units".

640 Subsections 27A(5), 27C(3) and 142A(4)

Omit "120 penalty units", substitute "1,000 penalty units".

Division 2—Amendments relating to civil penalties

Environment Protection and Biodiversity Conservation Act 1999

641 Subsection 12(1) (penalty)

Repeal the penalty.

642 After subsection 12(1)

Insert:

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

643 Subsections 15B(1), (2), (3), (4) and (5) (penalty)

Repeal the penalty.

644 After subsection 15B(6)

Insert:

(7) Subsections (1), (2), (3), (4) and (5) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

645 Subsection 16(1) (penalty)

Repeal the penalty.

646 After subsection 16(1)

Insert:

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

647 Subsections 18(1), (2), (3), (4), (5) and (6) (penalty)

Repeal the penalty.

648 At the end of section 18

Add:

Civil penalties

(7) Subsections (1), (2), (3), (4), (5) and (6) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

649 Subsection 20(1) (penalty)

Repeal the penalty.

650 After subsection 20(1)

Insert:

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

651 Subsections 21(1), (2) and (3) (penalty)

Repeal the penalty.

652 After subsection 21(3)

Insert:

(3A) Subsections (1), (2) and (3) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

653 Subsections 23(1), (2) and (3) (penalty)

Repeal the penalty.

654 After subsection 23(3)

Insert:

Civil penalties

(3A) Subsections (1), (2) and (3) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

655 Subsections 24B(1) and (2) (penalty)

Repeal the penalty.

656 After subsection 24B(2)

Insert:

Civil penalties

(2A) Subsections (1) and (2) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

657 Subsections 24D(1), (2) and (3) (penalty)

Repeal the penalty.

658 After subsection 24D(3)

Insert:

(3A) Subsections (1), (2) and (3) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

659 Subsection 25(1) (penalty)

Repeal the penalty.

660 After subsection 25(1)

Insert:

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

661 Paragraph 25AA(3)(b)

Omit "and (7)".

662 Subsections 26(1) and (2) (penalty)

Repeal the penalty.

663 After subsection 26(2)

Insert:

Civil penalties

(2A) Subsections (1) and (2) are civil penalty provisions.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

664 Subsection 27B(1) (penalty)

Repeal the penalty.

665 After subsection 27B(1)

Insert:

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

666 Subsection 28(1) (penalty)

Repeal the penalty (not including the notes).

667 After subsection 28(1)

Insert:

(1A) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of a civil penalty provision of this Part, see section 481A.

668 Subsection 142(1) (penalty)

Repeal the penalty.

669 After subsection 142(1)

Insert:

(1AA) Subsection (1) is a civil penalty provision.

Note: For the maximum pecuniary penalty for a contravention of subsection (1), see section 481A.

670 Subsection 142(1A) (note)

Repeal the note.

671 Subsection 481(2)

Omit all the words after "appropriate".

672 After subsection 481(2)

Insert:

Maximum pecuniary penalty

(2A) The pecuniary penalty must not be more than:

(a) the relevant amount specified for the provision; or

(b) for a contravention of a civil penalty provision of Part 3 or 12A, or of subsection 142(1)—the maximum penalty amount worked out under section 481A for a contravention of the provision by the person.

Note: Part 3 deals with requirements for environmental approvals and subsection 142(1) deals with contravening a condition attached to an

approval of the taking of an action. Part 12A deals with bioregional planning.

673 After section 481

Insert:

481A Maximum amount of civil penalty for certain contraventions

(1) For the purposes of subsection 481(2A), the maximum penalty amount for a contravention by an individual of a civil penalty provision of Part 3 or 12A, or of subsection 142(1), is the greater of the following:

(a) 5,000 penalty units;

(b) if the Court can determine either or both of the benefit derived and the detriment avoided because of the contravention:

(i) if the Court can determine both the benefit derived and the detriment avoided—the sum of those amounts, multiplied by 3; or

(ii) otherwise—whichever of the benefit derived and the detriment avoided the Court can determine, multiplied by 3.

(2) For the purposes of subsection 481(2A), the maximum penalty amount for a contravention by a body corporate of a civil penalty provision of Part 3 or 12A, or of subsection 142(1), is the greatest of the following:

(a) 50,000 penalty units;

(b) if the Court can determine either or both of the benefit derived and the detriment avoided because of the contravention:

(i) if the Court can determine both the benefit derived and the detriment avoided—the sum of those amounts, multiplied by 3; or

(ii) otherwise—whichever of the benefit derived and the detriment avoided the Court can determine, multiplied by 3;

(c) either:

(i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in

which the body corporate contravened, or began to contravene, the provision; or

(ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

*Meaning of **annual turnover***

(3) The ***annual turnover***, of a body corporate during a 12-month period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period, other than:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate; or

(b) supplies that are input taxed; or

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or

(d) supplies that are not made in connection with an enterprise that the body corporate carries on; or

(e) supplies that are not connected with Australia.

(4) Expressions used in subsection (3) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(5) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

*Meanings of **benefit derived** and **detriment avoided***

(6) The ***benefit derived*** because of a contravention of a civil penalty provision is the total value of all benefits that one or more persons obtained that are reasonably attributable to the contravention.

(7) The ***detriment avoided*** because of a contravention of a civil penalty provision is the total value of all detriments that one or more persons avoided that are reasonably attributable to the contravention.

674 Section 528

Insert:

annual turnover has the meaning given by subsection 481A(3).

benefit derived has the meaning given by subsection 481A(6).

detriment avoided has the meaning given by subsection 481A(7).

Part 3—Application and transitional provisions

675 Definitions

In this Part:

commencement day for an amendment (including a repeal of a provision) made by this Act, or for a provision inserted by this Act, means:

(a) if the amendment or provision commences on a day, and a notifiable instrument specifies that the amendment or provision applies in relation to a matter or thing on and after a different day (the ***application day***)—the application day, to the extent that the amendment or provision applies to the matter or thing; and

(b) otherwise—the day the amendment or provision commences.

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

676 NOPSEMA management or authorisation frameworks

(1) In addition to the actions mentioned in section 36G of the principal Act, that section is taken to apply to an action if:

(a) at a time before any declaration has been made under section 36H of the principal Act (including at a time before the commencement day), the action was approved in accordance with a NOPSEMA management or authorisation framework; and

(b) after the action was approved, a declaration comes into operation under section 36H of the principal Act (whether or not the declaration remains in operation); and

(c) the declaration specifies the class of actions to which the action belongs (whether or not the action was approved in accordance with the NOPSEMA management or authorisation framework specified in the declaration); and

(d) the action is taken in accordance with the NOPSEMA management or authorisation framework that regulates the action.

(2) For the purposes of subitem (1), a declaration made under section 36H of the principal Act may specify actions in a class of actions by reference to their taking having been approved, in accordance with a NOPSEMA management or authorisation framework, before any declaration has been made under section 36H of the principal Act (including at a time before the commencement day).

(3) A NOPSEMA management or authorisation framework mentioned in paragraph (1)(a) or (1)(d):

(a) may be a framework that is no longer in force at the time the declaration is made; and

(b) may be a framework that does not meet the requirements in subsection 36H(2).

677 Bilateral agreements

Application generally

(1) The amendments of Part 5 of the principal Act made by this Act apply in relation to a bilateral agreement entered into, or varied, on or after the commencement day.

Review of bilateral agreements

(2) Despite subitem (1), section 65C of the principal Act, as inserted by this Act, applies in relation to a bilateral agreement entered into on or after the commencement day.

Exclusion determinations and use of assessments under management arrangements and assessment processes

(3) Despite subitem (1), section 65B of the principal Act, as inserted by this Act, applies in relation to a bilateral agreement whether the agreement was entered into before, on or after the commencement day.

(4) The following amendments or provisions of the principal Act, as made or inserted by this Act, apply in relation to a bilateral agreement entered into under the principal Act regardless of whether the agreement was entered into before, on or after the commencement day:

(a) section 69A;

(b) paragraph 74AA(1)(b);

(c) subsection 91(3);

(d) paragraphs 130(1B)(a) and (b);
(e) paragraph 130(2)(d);
(f) paragraph 158A(1)(d);
(g) the amendment of paragraph 303FRA(3)(a).

678 Defences in section 74AA etc.

Subsections 74AA(2A), (2C) and (2D) of the principal Act, as inserted by this Act, apply in relation to conduct engaged in on or after the commencement day, whether the conduct relates to an action referred under section 68, 69 or 71 of the principal Act before, on or after the commencement day.

679 Section 78A

Subsections 78A(1A) to (2C) of the principal Act, as inserted by this Act, apply in relation to a reconsideration request made under section 78A of the principal Act on or after the commencement day.

680 Reconsideration of decision that action is not controlled action because taken in particular manner

Sections 79A to 79D of the principal Act, as inserted by this Act, apply on and after the commencement day in relation to a decision under subsection 75(1) that an action is not a controlled action because the Minister believes it will be taken in a particular manner:

(a) whether the decision was made before, on or after the commencement day; and
(b) whether the decision relates to an action referred under section 68, 69 or 71 of the principal Act before, on or after the commencement day.

681 Section 79E

Section 79E of the principal Act, as inserted by this Act, applies in relation to a decision (the ***first decision***) that is revoked under subsection 78(1) of the principal Act on or after the commencement day, whether the first decision was made before, on or after that day.

682 Section 79F

(1) Subsection 77(3) and section 79F of the principal Act, as inserted by this Act, apply in relation to a decision made under section 75 of the

principal Act, that an action is not a controlled action, on or after the commencement day.

(2) Subitem (1) applies regardless of whether the action to which the decision relates was referred under section 68, 69 or 71 of the principal Act before the commencement day.

683 Replacement of assessment approaches with streamlined assessment

(1) The following amendments and provisions of the principal Act, as made or inserted by this Act, do not apply in relation to an action if the Minister decided under section 87 of the principal Act on the approach to be used for the assessment of the relevant impacts of the action before the commencement day:

(a) the repeal of Divisions 3A, 4 and 5 of Part 8 and the insertion of Division 5A of Part 8;

(b) the amendments of section 78B;

(c) the repeal of subsections 87(4A) and (5) and the insertion of paragraph 87(5)(a);

(d) the amendment of subsection 108(2);

(e) the amendment of subsection 130(1B);

(f) the amendments of subsection 131AA(2);

(g) the amendment of subsection 133(8);

(h) the amendments of section 135A;

(i) the repeal of paragraphs 136(2)(ba), (bc) and (c) and the substitution of paragraph 136(2)(c);

(j) the amendments of section 168;

(k) the amendment of section 169;

(l) the amendments of section 170A;

(m) the amendments of section 170BA (other than subsection 170BA(2A) as inserted by this Act).

(2) Unless subitem (1) applies, the amendments and provisions mentioned in that subitem have effect on and after the commencement day, including in relation to an action:

(a) referred under section 68, 69 or 71 of the principal Act before that day; or

(b) for which a decision was made under 75 of the principal Act before that day.

684 Assessment by environmental impact statement

The following amendments and provisions of the principal Act, as made or inserted by this Act, apply in relation to a decision made under section 87 of the principal Act that the relevant impacts of an action must be assessed under Division 6 of Part 8 of the principal Act, on or after the commencement day:

(a) subsection 101A(5);

(b) paragraph 103(2)(a);

(c) subsection 103(4);

(d) subsection 104(4);

(e) the amendments of subsection 105(1).

685 Assessment approach

Section 92 of the principal Act, as inserted by this Act, applies in relation to an action referred under section 68, 69 or 71 of the principal Act on or after the commencement day.

686 Requests for information

The amendments of sections 76, 89 and 132 of the principal Act made by this Act apply in relation to decisions the Minister is to make in relation to an action, whether the action was referred under section 68, 69 or 71 of that Act before, on or after the commencement day.

687 Repeal of paragraphs 78(1)(ba) to (ca)

The amendments of subsection 78(1) of the principal Act made by this Act apply in relation to a decision made under subsection 75(1) made on or after the commencement day.

688 Greenhouse gas emissions information

The following provisions of the principal Act, as inserted by this Act, apply in relation to an action referred under section 68, 69 or 71 of that Act on or after the commencement day:

(a) subsection 72(4);

(b) section 84A;

(c) paragraph 87(5)(b) and subsection 87(5A);

(d) paragraph 103(1)(aa);
(e) paragraph 103(2)(b);
(f) section 107A;
(g) subsection 170BA(2A).

689 Publication of recommendation reports

The amendments of subsections 135A(2), (3) and (4) of the principal Act made by this Act apply in relation to a recommendation report given to the Minister on or after the commencement day (including a recommendation report prepared before that day).

690 Considerations for approvals under Part 9

(1) The following amendments or provisions of the principal Act, as made or inserted by this Act, apply to a decision made under Part 9 of the principal Act on or after the commencement day, if the referral to which the decision relates was made under section 68, 69 or 71 of the principal Act on or after the commencement day:

(a) the amendments of paragraphs 134(1)(b) and (2)(b);
(b) the amendment of subparagraph 134(3)(aa)(ii);
(c) subsections 134(3AA), (3AB), (3AC), (3E), (3F) and (3G);
(d) section 136A;
(e) section 136B;
(f) section 136C;
(g) sections 138 and 139;
(h) subsection 143(2A);
(i) section 143AA;
(j) subsection 145D(3A);
(k) sections 527F, 527H, 527J and 527K so far as they apply in relation to provisions mentioned in paragraphs (a) to (j).

(2) The following provisions of the principal Act, as inserted by this Act, apply to a decision made under Part 9 of the principal Act on or after the commencement day, whether the referral to which the decision relates was made, or the taking of the action approved, before, on or after the commencement day:

(a) subsection 143(2B);
(b) subsection 144(2B);

(c) subsection 144(2C);
(d) subsection 145(2C);
(e) subsection 145(2D);
(f) subsection 145B(3A);
(g) subsection 145D(3B).

(3) Section 145AA of the principal Act, as inserted by this Act, applies in relation to an approval whether the approval was given before, on or after the commencement day.

691 National interest approvals

Division 2A of Part 11 of the principal Act (national interest proposals), as inserted by this Act, applies in relation to an action referred under section 68, 69 or 71 of the principal Act on or after the commencement day.

692 Duties in relation to certain authorisations

(1) Section 159 of the principal Act, as inserted by this Act, applies in relation to doing a thing specified in subsection 159(2) on or after the commencement day.

(2) The amendments made by this Act specified in subitem (3) do not apply in relation to an action if, before the commencement day, the proposal to authorise the action was referred to the Minister under section 161 of the principal Act as in force immediately before the commencement day.

(3) The amendments are the following:
(a) the repeal of Subdivision A of Division 4 of Part 11 of the principal Act;
(b) the repeal of provisions of Part 3 of the principal Act that refer to an action described in subsection 160(2).

693 Minor amendments of management or authorisation frameworks or manners of assessment

Section 56C of the principal Act, as inserted by this Act, applies in relation to a bilateral agreement with a State or self-governing Territory that is in force on or after the commencement day, whether the agreement was entered into before, on or after the commencement day.

694 Management or authorisation frameworks

Section 71A of the principal Act, as inserted by this Act, applies in relation to an action proposed to be taken on or after the commencement day, unless the proposal to take the action was referred under section 68, 69 or 71 of the principal Act before the commencement day.

695 Management or authorisation frameworks

Section 65D of the principal Act, as inserted by this Act, applies in relation to a bilateral agreement that is in force on or after the commencement day, whether the agreement was entered into before, on or after the commencement day.

696 Strategic assessments

(1) The amendments of section 146 of the principal Act made by this Act apply in relation to an agreement entered into on or after the commencement day.

(2) The amendments of section 146B of the principal Act made by this Act apply in relation to an approval given under section 146B of the principal Act on or after the commencement day.

(3) Section 146BA of the principal Act, as inserted by this Act, applies in relation to an approval under section 146B whether the approval is granted before, on or after the commencement day.

(4) Subparagraph 146D(1)(b)(ia) of the principal Act, as inserted by this Act, applies in relation to an approval given under section 146B of the principal Act on or after the commencement day.

(5) The repeal of subsections 146D(3) and (4) of the principal Act by this Act does not affect the application of Division 2 of Part 9 of the principal Act, or the validity of a thing done under section 134 or Division 3 or 4 of Part 9 of the principal Act, before the commencement day in relation to an approval of the taking of an action that is taken to have been given under Part 9 of the principal Act because of paragraph 146D(1)(b) of the principal Act.

(6) The following amendments or provisions of the principal Act, as made or inserted by this Act, apply in relation to an approval given under section 146B of the principal Act whether the approval is given before, on or after the commencement day:

(a) the amendments of section 146C;
(b) subsection 146D(3);
(c) sections 146DA to 146DG;
(d) sections 146DJ to 146DL.

(7) Sections 146DH and 146DI of the principal Act, as inserted by this Act, apply in relation to a policy, plan or program endorsed by the Minister before, on or after the commencement day.

(8) If:

(a) an approval under section 146B of the principal Act is in force immediately before the commencement day; and
(b) the approval names the person to whom the approval is granted;

then on and after that commencement:

(c) the person is taken to be named in the approval under paragraph 146B(2)(ba) of the principal Act; and
(d) if, immediately before that commencement, paragraph 146D(1)(b) of the principal Act did not apply to the person—the Minister is taken, under that paragraph, to have approved under Part 9 of the principal Act, for the purposes of each controlling provision for each controlled action, the taking of the action by the person.

Note: The effect of this subitem is that the person becomes the holder of the approval.

(9) The amendments of section 158A of the principal Act made by this Act apply in relation to an approval given under section 146B of the principal Act before, on or after the commencement day.

(10) The definition of ***responsible person*** inserted in the principal Act by this Act applies in relation to a policy, plan or program:

(a) regardless of whether the policy, plan or program was endorsed before, on or after the commencement day; and
(b) regardless of whether an agreement was made under section 146 of the principal Act before, on or after the commencement day.

697 Nuclear actions

(1) Except as provided by subitems (2) and (3), the amendments of the principal Act specified in subitem (4) apply in relation to an action taken on or after the commencement day.

(2) The amendments do not apply in relation to an action if:

(a) because of a decision made under the principal Act before the commencement day, the action was covered by an exception in subsection 21(4) or 22A(8) immediately before the commencement day; and

(b) the decision continues to have effect in relation to the action.

(3) The amendments do not apply in relation to an action if:

(a) the action was referred to the Minister under section 68, 69 or 71 before the commencement day; and

(b) a decision was pending immediately before the commencement day.

(4) For the purposes of subitem (1), the amendments are the following:

(a) the amendments of subsections 21(1), (2) and (3);

(b) the amendments of section 22;

(c) the amendments of subsections 22A(1), (2), (3), (4), (5) and (6).

698 Repeal of section 158 etc.

(1) Despite the repeal of section 158 of the principal Act by this Act:

(a) an exemption in force under that section immediately before the commencement day (a ***pre-commencement exemption***) continues in effect from the commencement day; and

(b) section 158, as in force immediately before the commencement day, continues to apply in relation to any such exemption.

(2) The provisions of Division 3 of Part 11 of the principal Act, as inserted by this Act, apply in relation to an action whether the taking of the action started before, on or after the commencement day.

(3) Additionally, the following provisions of the principal Act, as inserted by this Schedule, apply in relation to a pre-commencement exemption

in the same way they apply to a national interest exemption granted on or after the commencement day:

(a) section 157U (surrender of national interest exemption);

(b) section 157V (Minister may request further information), to the extent it applies in relation to section 157U.

(4) Subitem (1) does not prevent the Minister revoking an exemption for an action to which that subitem applies and granting an exemption for the action under the provisions specified in subitem (2).

699 Repeal of section 303A etc.

(1) Despite the repeal of section 303A of the principal Act by this Act:

(a) an exemption in force under that section immediately before the commencement day (a ***pre-commencement exemption***) continues in effect from the commencement day; and

(b) section 303A, as in force immediately before the commencement day, continues to apply in relation to any such exemption.

(2) The provisions of Division 7A of Part 13 of the principal Act, as inserted by this Act, apply in relation to an action regardless of whether the taking of the action started before, on or after the commencement day.

(3) Additionally, the following provisions of the principal Act, as inserted by this Act, apply in relation to a pre-commencement exemption in the same way they apply to a Part 13 exemption granted on or after the commencement day:

(a) section 302M (surrender of Part 13 exemption);

(b) section 302N (Minister may request further information), to the extent it applies in relation to the section 302M.

(4) Subitem (1) does not prevent the Minister revoking an exemption for an action to which that subitem applies and granting an exemption for the action under the provisions specified in subitem (2).

700 Repeal of section 303CB

If an instrument was in force under section 303CB of the principal Act immediately before the commencement day, then, despite the repeal of that section by this Act, the instrument continues in force on and after the commencement day as if it were an instrument made under section 303CB of the principal Act as inserted by this Act.

701 Subdivision AA of Division 1 of Part 13

(1) The amendments made by this Schedule to Subdivision AA of Division 1 of Part 13 of the principal Act apply in relation to an assessment period for a Subdivision A List that starts on or after the commencement day.

(2) An appointment as a member of, or to chair, the Indigenous Advisory Committee made by the Minister under subsection 505A(3) of the principal Act before the commencement day, that was in force immediately before the commencement day, continues in force (and may be dealt with) on and after the commencement day as if it were an appointment as a member of the Committee under subsection 505A(4), or to co-chair the Committee under subsection 505A(5) (as the case may be), as inserted by this Part.

(3) The amendments made by this Schedule to paragraphs 505D(1)(b) and (2)(a), and subsections 505D(3) and (4) (as added by this Schedule), of that Act, apply in relation to a request that is made on or after the commencement day.

702 National Heritage and Commonwealth Heritage lists

(1) The following amendments and provisions of the principal Act made or inserted by this Act apply in relation to places included in the National Heritage List or the Commonwealth Heritage List, whether included before, on or after the commencement day:

(a) subsection 324JJ(5A) and 341JI(5A);

(b) sections 324LA, 324LB and 324LC and 341LA, 341LB and 341LC;

(c) the amendments of sections 324M and 324R and 341M and 341R;

(d) sections 324N and 341N.

(2) The following provisions of the principal Act inserted by this Act apply in relation to places whether nominated for inclusion on the National Heritage List or the Commonwealth Heritage List before, on or after the commencement day:

(a) section 324JIA;

(b) section 341JHA.

(3) To avoid doubt, sections 324B and 341BA of the principal Act, as inserted by this Act, apply in relation to places whether nominated, assessed or included in the National Heritage List or the Commonwealth Heritage List before, on or after the commencement day.

(4) The amendments of Divisions 1A and 3A of Part 15 of the principal Act made by this Act, other than the amendments specified in subitems (1) to (3), do not apply in relation to an assessment period that starts before the commencement day.

703 Critical habitat amendments

(1) The register kept in accordance with subsection 207A(1) of the principal Act immediately before the commencement day continues in effect on and after the commencement day as if it had been made under subsection 207A(1) of the principal Act as amended by this Act.

(2) Habitat listed on the register immediately before the commencement day is taken on and after the commencement day to be registered critical habitat within the meaning of subsection 207A(1AA) of the principal Act as amended by this Act (whether or not it is critical habitat within the meaning of subsection 207A(4) as amended by this Act).

(3) A reference in any of the following instruments to habitat critical to the survival of a listed threatened species or ecological community is taken, on and after the commencement day, to be a reference to critical habitat of the species or ecological community within the meaning of subsection 207A(4) of the principal Act as amended by this Act:

(a) a recovery plan;

(b) an approved conservation advice.

704 Audit amendments

(1) Division 12 of Part 17 of the principal Act, as inserted by this Act, applies in relation to:

(a) an environmental authority; or

(b) an environmental order; or

(c) an environmental exemption; or

(d) a marine park permission; or

(e) a marine park order;

made (however described) before, on or after the commencement day.

(2) Sections 458 and 462 of the principal Act, as inserted by this Act, apply in relation to an action taken before, on or after the commencement day.

705 Directed environmental audits

(1) This item applies if:

(a) notice requiring an environmental audit was given under section 458 of the principal Act before the commencement day; and

(b) the holder of the relevant environmental authority did not give the Minister a written report in relation to the environmental audit under section 461 of the principal Act before the commencement day.

(2) Despite the amendments made by this Act:

(a) Division 12 of Part 17 of the principal Act as in force immediately before the commencement day; and

(b) any instrument made under that Division as in force immediately before the commencement day;

continue to apply in relation to the environmental audit as if those amendments had not been made.

706 Environment protection orders

(1) Division 13A of Part 17 of the principal Act, as inserted by this Act, applies in relation to an environmental authority made (however described) before, on or after the commencement day.

(2) Subsection 474A(1) of the principal Act, as inserted by this Act, applies in relation to a contravention occurring before, on or after the commencement day.

707 Annual reports

The amendments of section 516A of the principal Act made by this Act apply in relation to the following:

(a) an annual report given to a Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* on or after the commencement day;

(b) a document given to a Minister under section 97 of that Act on or after the commencement day.

708 Part 20B

Part 20B of the principal Act, as inserted by this Act, applies in relation to information whether obtained or generated before, on or after the commencement day.

709 Use of biodiversity certificates for environmental offsetting purposes

(1) Paragraph 45(1)(ea) of the *Nature Repair Act 2023*, as inserted by this Act, applies in relation to a methodology determination made or varied on or after the commencement day.

(2) The repeal and substitution of subsection 76A(1) of the *Nature Repair Act 2023*, as made by this Act, applies in relation to a biodiversity certificate regardless of whether the biodiversity certificate was issued before, on or after the commencement day.

710 Pre-commencement bioregional plans

A bioregional plan that is in force under the principal Act immediately before the commencement day for Part 12A of the principal Act is taken, on and after that commencement day, to be a bioregional guidance plan made in accordance with section 176 of the principal Act.

711 Part 12A

Actions started before commencement

(1) Part 12A of the principal Act, as inserted by this Act, applies to the taking of an action by a person if the person started taking the action on or after the commencement day.

Actions referred to the Minister before commencement

(2) Part 12A of the principal Act, as inserted by this Act, does not apply to the taking of an action by a person if:

(a) at any time before the commencement day, the action was referred to the Minister under section 68, 69 or 71 of the principal Act; and

(b) immediately before the commencement day:

(i) the Minister had not decided under Division 2 of Part 7 of the principal Act whether the action is a controlled action; or

(ii) the Minister had decided that the action is a controlled action, but had not yet decided whether to approve the taking of the action under section 133 of that Act.

712 Imposing a condition to pay restoration contribution charge

Paragraphs 134(3)(ac) and (3A)(c) of the principal Act, as inserted by this Act, apply to the following decisions made on or after the commencement day, whether the referral to which the decision relates was made before, on or after the commencement day:

(a) a decision whether to approve the taking of an action under section 133 of the principal Act;

(b) a decision whether to revoke, vary or add conditions to an approval under section 143 of the principal Act;

(c) a decision whether to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program under section 146B of the principal Act.

713 Conservation agreements

(1) The amendments specified in subitem (2) apply to:

(a) the entering into of a conservation agreement on or after the commencement day; or

(b) the variation of a conservation agreement on or after the commencement day (whether or not the conservation agreement being varied was entered into before, on or after the commencement day).

(2) For the purposes of subitem (1), the amendments are the amendments made by this Act of the following provisions of the principal Act:

(a) section 305;

(b) paragraph 306(1)(a), so far as the amendment includes a reference to restoration;

(c) section 306A;

(d) section 307;

(e) section 307A;

(f) section 308;

(g) section 309;

(h) section 310;

(i) section 312.

714 Part 2 of this Schedule

(1) The amendments made by Part 2 of this Schedule apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.

(2) The amendments made by Part 2 of this Schedule apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the commencement day.

715 Transitional rules

(1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:

(a) the amendments or repeals made by this Schedule or any other Schedule to this Act; or

(b) the enactment of this Act, the *National Environmental Protection Agency Act 2025* or the *Environment Information Australia Act 2025*; or

(c) the application of the DCCEEW Enterprise Agreement (within the meaning of Part 3 of Schedule 2 to this Act), as it applies in relation to the National Environmental Protection Agency in accordance with Division 2 of Part 3 of Schedule 2 to this Act.

(2) The rules may modify the effect of this Part, or Division 3 of Part 3 of Schedule 2 to this Act, in relation to specified matters or things. However, any rules that do so must be made before the end of the period of 12 months beginning on the commencement day.

(3) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund;

(e) directly amend the text of this Act, the *National Environmental Protection Agency Act 2025* or the *Environment Information Australia Act 2025*.

(4) This Act (other than subitem (3) of this item) does not limit the rules that may be made for the purposes of subitem (1) of this item.

Schedule 2—Consequential amendments and transitional provisions for the National Environmental Protection Agency Act 2025

Part 1—Main amendments

Environment Protection and Biodiversity Conservation Act 1999

1 Subsection 25B(1)

Omit "Minister", substitute "CEO".

2 Subsection 25B(2)

Omit "Minister" (wherever occurring), substitute "CEO".

3 Subsection 25B(4)

Omit "Minister", substitute "CEO".

4 Subsection 25B(5)

Omit "Minister" (wherever occurring), substitute "CEO".

5 Section 25C

Omit "Minister", substitute "CEO".

6 Subsection 25D(4)

Omit "Minister", substitute "CEO".

7 Subsections 25E(1) and (2)

Omit "Minister", substitute "CEO".

8 Subsections 25F(1) and (2)

Omit "Minister", substitute "CEO".

9 Subsection 74(3) (note)

Repeal the note.

10 Subsection 199(2)

Omit "Secretary", substitute "CEO".

11 Paragraph 199(4)(a)

Omit "Secretary", substitute "CEO".

12 Subparagraph 199(4)(b)(i)

Repeal the subparagraph, substitute:

(i) that is specified in an agreement or arrangement between the Secretary, or CEO, and a Commonwealth agency or an agency of a State or self-governing Territory; and

13 Subparagraph 199(4)(b)(ii)

Omit "Secretary", substitute "CEO".

14 Subsection 200(1)

Omit "Minister", substitute "CEO".

15 Subsection 200(3)

Omit "Minister" (first occurring), substitute "CEO".

16 Subsection 200(3)

Omit "the internet", substitute "NEPA's website".

17 Paragraph 200(3)(b)

Omit "Minister", substitute "CEO".

18 Subsection 200(3) (note)

Repeal the note.

19 Section 201 (heading)

Omit "**Minister**", substitute "**CEO**".

20 Subsections 201(1), (3) and (3A)

Omit "Minister", substitute "CEO".

21 Subsection 201(5)

Omit "Minister" (wherever occurring), substitute "CEO".

22 Subsection 202(2)

Omit "Minister", substitute "CEO".

23 Subsection 204(6)

Omit "Minister", substitute "CEO".

24 Section 205

Omit "Minister", substitute "CEO".

25 Section 206

Omit "Minister", substitute "CEO".

26 Subsection 206A(2)

Omit "by the Minister", substitute "by the CEO".

27 Subsection 206A(2)

Omit "of the Minister", substitute "of the CEO under section 59 of the *National Environmental Protection Agency Act 2025*".

28 Subsection 214(2)

Omit "Secretary", substitute "CEO".

29 Paragraph 214(4)(a)

Omit "Secretary", substitute "CEO".

30 Subparagraph 214(4)(b)(i)

Repeal the subparagraph, substitute:

(i) that is specified in an agreement or arrangement between the Secretary, or CEO, and a Commonwealth agency or an agency of a State or self-governing Territory; and

31 Subparagraph 214(4)(b)(ii)

Omit "Secretary", substitute "CEO".

32 Subsection 215(1)

Omit "Minister", substitute "CEO".

33 Subsection 215(3)

Omit "Minister" (first occurring), substitute "CEO".

34 Subsection 215(3)

Omit "the internet", substitute "NEPA's website".

35 Paragraph 215(3)(b)

Omit "Minister", substitute "CEO".

36 Subsection 215(3) (note)

Repeal the note.

37 Section 216 (heading)

Omit "**Minister**", substitute "**CEO**".

38 Subsections 216(1) and (3)

Omit "Minister", substitute "CEO".

39 Subsection 216(4)

Omit "Minister" (wherever occurring), substitute "CEO".

40 Subsection 217(2)

Omit "Minister", substitute "CEO".

41 Subsection 219(6)

Omit "Minister", substitute "CEO".

42 Section 220

Omit "Minister", substitute "CEO".

43 Section 221

Omit "Minister", substitute "CEO".

44 Subsection 221A(2)

Omit "by the Minister", substitute "by the CEO".

45 Subsection 221A(2)

Omit "of the Minister", substitute "of the CEO under section 59 of the *National Environmental Protection Agency Act 2025*".

46 Subsection 232(2)

Omit "Secretary", substitute "CEO".

47 Paragraph 232(4)(a)

Omit "Secretary", substitute "CEO".

48 Subparagraph 232(4)(b)(i)

Repeal the subparagraph, substitute:

(i) that is specified in an agreement or arrangement between the Secretary, or CEO, and a Commonwealth agency or an agency of a State or self-governing Territory; and

49 Subparagraph 232(4)(b)(ii)

Omit "Secretary", substitute "CEO".

50 Subsection 237(1)

Omit "Minister", substitute "CEO".

51 Subsection 237(3)

Omit "Minister" (first occurring), substitute "CEO".

52 Subsection 237(3)

Omit "the internet", substitute "NEPA's website".

53 Paragraph 237(3)(b)

Omit "Minister", substitute "CEO".

54 Subsection 237(3) (note)

Repeal the note.

55 Section 238 (heading)

Omit "**Minister**", substitute "**CEO**".

56 Subsections 238(1), (3) and (3AA)

Omit "Minister", substitute "CEO".

57 Subsection 238(3A)

Omit "Minister" (wherever occurring), substitute "CEO".

58 Subsection 238(4)

Omit "Minister", substitute "CEO".

59 Subsection 239(2)

Omit "Minister", substitute "CEO".

60 Subsection 241(6)

Omit "Minister", substitute "CEO".

61 Section 242

Omit "Minister", substitute "CEO".

62 Section 243

Omit "Minister", substitute "CEO".

63 Subsection 243A(2)

Omit "by the Minister", substitute "by the CEO".

64 Subsection 243A(2)

Omit "of the Minister", substitute "of the CEO under section 59 of the *National Environmental Protection Agency Act 2025*".

65 Subsection 256(2)

Omit "Secretary", substitute "CEO".

66 Paragraph 256(4)(a)

Omit "Secretary", substitute "CEO".

67 Subparagraph 256(4)(b)(i)

Repeal the subparagraph, substitute:

(i) that is specified in an agreement or arrangement between the Secretary, or CEO, and a Commonwealth agency or an agency of a State or self-governing Territory; and

68 Subparagraph 256(4)(b)(ii)

Omit "Secretary", substitute "CEO".

69 Subsection 257(1)

Omit "Minister", substitute "CEO".

70 Subsection 257(3)

Omit "Minister" (first occurring), substitute "CEO".

71 Subsection 257(3)

Omit "the internet", substitute "NEPA's website".

72 Paragraph 257(3)(b)

Omit "Minister", substitute "CEO".

73 Subsection 257(3) (note)

Repeal the note.

74 Section 258 (heading)

Omit "**Minister**", substitute "**CEO**".

75 Subsections 258(1) and (3)

Omit "Minister", substitute "CEO".

76 Subsection 258(4)

Omit "Minister" (wherever occurring), substitute "CEO".

77 Subsection 259(2)

Omit "Minister", substitute "CEO".

78 Subsection 261(6)

Omit "Minister", substitute "CEO".

79 Section 262

Omit "Minister", substitute "CEO".

80 Section 263

Omit "Minister", substitute "CEO".

81 Subsection 263A(2)

Omit "by the Minister", substitute "by the CEO".

82 Subsection 263A(2)

Omit "of the Minister", substitute "of the CEO under section 59 of the *National Environmental Protection Agency Act 2025*".

83 Section 391 (heading)

After "**Minister**", insert "**and CEO**".

84 Subsection 391(1) (heading)

Omit "*Taking*", substitute "*Minister to take*".

85 After subsection 391(1)

Insert:

CEO to take account of precautionary principle

(1A) The CEO must take account of the precautionary principle in making a decision listed in the table in subsection (4), to the extent the CEO can do so consistently with the other provisions of this Act.

86 Subsection 391(3) (at the end of the heading)

Add "*by Minister*".

87 Subsection 391(3) (table heading)

After "**considered**", insert "**by Minister**".

88 Subsection 391(3) (table items 3 to 6)

Repeal the items.

89 At the end of section 391

Add:

Decisions in which precautionary principle must be considered by CEO

(4) The decisions are:

Decisions in which precautionary principle must be considered by CEO

Item	Section decision is made under	Nature of decision
1	201	whether or not to grant a permit
2	216	whether or not to grant a permit
3	238	whether or not to grant a permit
4	258	whether or not to grant a permit

90 Section 396

Omit "Minister" (wherever occurring), substitute "CEO".

91 Subsection 398(1)

Omit "The Minister", substitute "The CEO".

92 Subsections 398(3) and (4) and 399(1) and (2)

Omit "Minister" (wherever occurring), substitute "CEO".

93 Subsection 438(3)

Omit "Secretary", substitute "CEO".

94 Paragraphs 438(4)(b) and (c)

Omit "Secretary", substitute "CEO".

95 Subsections 444C(1) and (4)

Omit "Secretary" (wherever occurring), substitute "CEO".

96 Subsections 444E(1) and 444G(3)

Omit "Secretary", substitute "CEO".

97 Paragraphs 444G(4)(b) and (c)

Omit "Secretary", substitute "CEO".

98 Subsection 446(1B)

Omit "Secretary", substitute "CEO".

99 Paragraphs 446(1C)(c) and (d)

Omit "Secretary", substitute "CEO".

100 Subsections 449(1) to (3)

Omit "Secretary" (wherever occurring), substitute "CEO".

101 Section 449A (heading)

Omit "**Secretary**", substitute "**CEO**".

102 Subparagraphs 449A(1)(b)(i) to (iii)

Omit "Secretary", substitute "CEO".

103 Subsections 449A(2), 449BA(1), 450A(1) and (2), 450B(2), 451(2) to (4) and 452(1)

Omit "Secretary" (wherever occurring), substitute "CEO".

104 Section 453

Omit "Secretary", substitute "CEO".

105 Subsections 454(5) and 456AB(3)

Omit "Secretary", substitute "CEO".

106 Paragraphs 456AB(4)(c) and (d)

Omit "Secretary", substitute "CEO".

107 Subsection 456AC(3)

Omit "Secretary", substitute "CEO".

108 Paragraphs 456AC(4)(b) and (c)

Omit "Secretary", substitute "CEO".

109 Subsection 458(1)

Omit "Minister" (wherever occurring), substitute "CEO".

110 Paragraph 458(2)(c)

Omit "Minister", substitute "CEO".

111 Subsections 459(1) and (4)

Omit "Minister", substitute "CEO".

112 Paragraph 460(1)(c)

Omit "Minister's", substitute "CEO's".

113 Subsection 461(2)

Omit "Minister" (wherever occurring), substitute "CEO".

114 Paragraph 475(1)(a)

Repeal the paragraph, substitute:

(a) the CEO; or

(aa) if the conduct relates to a Commonwealth reserve or a conservation zone—the Director; or

115 Subsection 476(1)

Repeal the subsection (not including the note), substitute:

Applications for injunctions

(1) If a person bound by a conservation agreement engages or proposes to engage in conduct consisting of an act or omission that constitutes a contravention of the agreement, any of the following persons may apply to the Federal Court for an injunction:

(a) another person bound by the agreement;

(b) the CEO;

(c) if the conduct relates to a Commonwealth reserve or a conservation zone—the Director.

116 Subsection 480A(5)

Repeal the subsection, substitute:

(5) Application to the Federal Court for a remediation order may be made by:

(a) the CEO personally; or

(b) if the contravention relates to a Commonwealth reserve or a conservation zone—the Director personally.

117 Section 480B

Omit "Minister", substitute "CEO or Director (whichever applied for the remediation order under subsection 480A(5))".

118 Division 14B of Part 17 (heading)

Omit "**Minister's**", substitute "**CEO's**".

119 Section 480D (heading)

Omit "**Minister**", substitute "**CEO**".

120 Subsections 480D(1) and (2)

Omit "Minister" (wherever occurring), substitute "CEO".

121 Paragraphs 480E(2)(e) and (i)

Omit "Minister" (wherever occurring), substitute "CEO".

122 Subsections 480F(1) and (2)

Omit "Minister" (wherever occurring), substitute "CEO".

123 Section 480G

Omit "Minister", substitute "CEO".

124 Paragraph 480H(2)(b)

Omit "Minister", substitute "CEO".

125 Section 480J (heading)

Omit "**Ministerial**", substitute "**CEO's**".

126 Subsections 480J(1) to (4)

Omit "Minister" (wherever occurring), substitute "CEO".

127 Paragraphs 480J(4)(a) and (b)

Omit "Minister's", substitute "CEO's".

128 Paragraph 480K(1)(c)

Omit "Minister", substitute "CEO".

129 Subsections 480L(1) and 480N(1)

Omit "Minister" (wherever occurring), substitute "CEO".

130 Subsection 481(1)

Repeal the subsection, substitute:

Application for order

(1) Within 6 years of a person (the ***wrongdoer***) contravening a civil penalty provision, either of the following persons may apply on behalf of the Commonwealth to the Federal Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty:

(a) the CEO;

(b) if the contravention relates to a Commonwealth reserve or a conservation zone—the Director.

131 Subsections 486DA(1) to (3), 486DB(1) and 486E(1)

Omit "Minister" (wherever occurring), substitute "CEO".

132 Subsection 486E(2) (paragraph (a) of the definition of *official*)

Omit "Minister", substitute "CEO".

133 Subsection 486E(2) (paragraph (b) of the definition of *official*)

Repeal the paragraph, substitute:

(b) a member of the staff of NEPA;

134 Section 486F (heading)

Omit "**Minister**", substitute "**CEO**".

135 Subsection 486F(1)

Omit "Minister", substitute "CEO".

136 Section 486G (heading)

Omit "**Minister**" (wherever occurring), substitute "**CEO**".

137 Subsection 486G(1)

Omit "Minister", substitute "CEO".

138 After subparagraph 491(1)(b)(iv)

Insert:

or (v) the CEO; or

(vi) a member of the staff of NEPA; or

(vii) a person whose services are made available to NEPA under section 54 of the *National Environmental Protection Agency Act 2025*;

139 Section 498 (heading)

Omit "**Minister**", substitute "**CEO**".

140 Subsection 498(1)

Omit "Minister", substitute "CEO".

141 Paragraph 498(2)(a)

Omit "Minister's", substitute "CEO's".

142 Subsection 499(1)

Omit "Minister", substitute "CEO".

143 Subsection 499(2)

Omit "Minister", substitute "CEO".

144 Paragraph 499(3)(b)

After "Minister", insert "or the CEO".

145 Subsection 499(4)

Omit "or the Minister", substitute ", the Minister or the CEO".

146 Paragraph 505D(2)(a)

Omit "that is".

147 At the end of subsection 505D(2)

Add:

; (c) at the request of the CEO—to provide scientific advice to the CEO in relation to a matter protected by a provision of Part 3, to the extent the matter relates to the CEO's functions under this Act.

148 Subsections 514Y(1) and (2)

Repeal the subsections, substitute:

(1) This section applies if:

(a) a fee is worked out by a person to whom a function or power is delegated under:

(i) section 515 or 515AAA of this Act; or

(ii) for a fee in relation to a function or power of the CEO under this Act—subsection 59(1) of the *National Environmental Protection Agency Act 2025*; and

(b) a method prescribed by the regulations under subsection 520(4C) of this Act has been used to work out the fee; and

(c) the person required to pay the fee is dissatisfied with the way the method was used.

(2) The person may apply to the following persons for reconsideration of the way the method was used to work out the fee:

(a) for a fee that relates to a function or power of the CEO under this Act—the CEO;

(b) for all other fees—the Secretary.

149 Subsection 514YA(1)

Omit "Secretary", substitute "CEO or Secretary, as applicable,".

150 After subsection 514YA(1)

Insert:

(1A) The person who undertakes the reconsideration of a fee that relates to a function or power of the CEO under this Act must be:

(a) the CEO; or

(b) a member of the staff of NEPA who:

(i) was not involved in working out the fee; and

(ii) occupies a position that is senior to that occupied by any person involved in working out the fee.

151 Subsection 514YA(2)

After "reconsideration", insert "of any other fee".

152 Subsection 514YA(3)

Omit "Secretary", substitute "CEO or Secretary, as applicable,".

153 Section 514YB

Omit "Secretary", substitute "CEO or Secretary, as applicable,".

154 Section 515 (heading)

After "**Delegation**", insert "**to officer or employee in the Department, Director or other person**".

155 After section 515

Insert:

515AAA Delegation to CEO or member of staff of NEPA

Delegation by Minister

(1) The Minister may, by signed instrument, delegate all or any of the Minister's powers or functions under this Act to:

(a) the CEO; or

(b) a member of the staff of NEPA who meets the requirements in subsection (4).

Note: A power or function delegated to the CEO or a member of staff cannot be subdelegated by the CEO or staff member.

(2) Despite subsection (1), the Minister must not delegate under that subsection any of the Minister's powers or functions that the Minister must not delegate under subsection 515(1A).

Delegation by Secretary

(3) The Secretary may, by signed instrument, delegate all or any of the Secretary's powers or functions under this Act to:

(a) the CEO; or

(b) a member of the staff of NEPA who meets the requirements in subsection (4).

Note: A power or function delegated to the CEO or a member of staff cannot be subdelegated by the CEO or staff member.

Delegates' levels

(4) A member of the staff of NEPA meets the requirements in this subsection if the person:

(a) is an SES employee or acting SES employee; or

(b) holds, or is acting in, an Executive Level 1 or 2 position.

Note: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Directions to delegates

(5) A delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the delegator.

156 Subsections 515AA(5) and 515AB(5)

After "section 515", insert "or 515AAA".

157 At the end of Part 20

Add:

515AC Publication of instruments of delegation

(1) The Minister must establish and maintain, on the Department's website, a register of delegations of powers and functions made by the Minister under this Part.

(2) The Secretary must establish and maintain, on the Department's website, a register of delegations of powers and functions made by the Secretary under this Part.

(3) A register must contain a copy of instruments of delegation made by the Minister or Secretary (as applicable) and in force from time to time.

(4) A register may contain any other information or documents the Minister or Secretary (as applicable) considers likely to be useful.

158 Part 20A (heading)

Omit "**on the internet**".

159 Section 515A (heading)

Omit "**on the internet**".

160 Section 515A (after the heading)

Insert:

(1) The CEO must, each week, publish on NEPA's website a list of:
  (a) all permits issued or granted by the CEO under sections 201, 216, 238 and 258 in the immediately preceding week; and
  (b) for the immediately preceding week, all matters required by this Act to be made available by the CEO to the public.

161 Section 515A

Before "Without", insert "(2)".

162 Section 515A

Omit "the internet", substitute "the Department's website".

163 Paragraph 515A(a)

After "granted", insert "by the Minister".

164 Paragraph 515A(b)

After "all", insert "other".

165 Subsection 518(1)

Omit "or the Secretary", substitute ", the Secretary or the CEO".

166 Subsections 520(4A) and 521A(1)

Omit "or Secretary" (wherever occurring), substitute ", Secretary or CEO".

167 Section 528

Insert:

> ***CEO*** has the same meaning as in the *National Environmental Protection Agency Act 2025*.
>
> Note: This is a reference to the CEO of NEPA.
>
> ***NEPA*** has the same meaning as in the *National Environmental Protection Agency Act 2025*.
>
> Note: NEPA is short for the National Environmental Protection Agency.
>
> ***staff of NEPA*** means the staff of NEPA referred to in section 53 of the *National Environmental Protection Agency Act 2025*.

168 Clause 3 of Schedule 1 (heading)

Omit "**Minister**", substitute "**CEO**".

169 Subclause 3(1) of Schedule 1

Omit "Minister", substitute "CEO".

170 Subclauses 4(1) and (2) of Schedule 1

Omit "Minister", substitute "CEO".

171 Clause 6 of Schedule 1 (heading)

Omit "**Secretary**", substitute "**CEO**".

172 Subclause 6(1) of Schedule 1

Omit "Secretary", substitute "CEO".

173 Subclause 7(3) of Schedule 1 (heading)

Omit "*Secretary*", substitute "*CEO*".

174 Subclause 7(3) of Schedule 1

Omit "Secretary", substitute "CEO".

175 Paragraph 11(1)(d) of Schedule 1

Omit "Minister", substitute "CEO".

176 Subclause 11(3) of Schedule 1

Omit "Minister", substitute "CEO".

177 Subparagraph 17(3)(c)(i) of Schedule 1

Omit "the Secretary, the Director, the Chief Executive Officer of the Great Barrier Reef Marine Park Authority or an SES Band 3 employee in the Department", substitute "the CEO, the Director or the Chief Executive Officer of the Great Barrier Reef Marine Park Authority".

178 Subclause 17(13) of Schedule 1

Repeal the subclause (not including the note).

179 Subclause 27(1) of Schedule 1

Omit "Secretary", substitute "CEO".

180 Subclause 32(9) of Schedule 1 (definition of *senior authorising officer*)

Omit "Secretary" (wherever occurring), substitute "CEO".

181 Paragraph 38(3)(b) of Schedule 1

Omit "the Secretary, the Director, the Chief Executive Officer of the Great Barrier Reef Marine Park Authority or an SES Band 3 employee in the Department", substitute "the CEO, the Director or the Chief Executive Officer of the Great Barrier Reef Marine Park Authority".

182 Subclause 38(4) of Schedule 1

Omit "Secretary, Director, Chief Executive Officer or SES Band 3 employee", substitute "CEO, Director or Chief Executive Officer of the Great Barrier Reef Marine Park Authority".

183 Subclause 38(11) of Schedule 1

Repeal the subclause (not including the note), substitute:

Definitions

(11) In this clause:

senior authorising officer means an authorised officer, or detention officer, who has been authorised, or is included in a class of authorised officers or detention officers who have been authorised, by the CEO to perform the functions of a senior authorising officer under this clause.

184 Subclauses 41(1), (2) and (3) of Schedule 1

Omit "Secretary", substitute "CEO".

185 Subclauses 52(1), (2) and (3) of Schedule 1

Omit "Secretary", substitute "CEO".

186 Paragraph 53(2)(g) of Schedule 1

After "the Department", insert "or NEPA".

187 Subclauses 54(1) and (2) of Schedule 1

Omit "Secretary", substitute "CEO".

Environment Protection (Sea Dumping) Act 1981

188 Subsection 4(1)

Insert:

CEO has the same meaning as in the *National Environmental Protection Agency Act 2025*.

Note: This is a reference to the CEO of the National Environmental Protection Agency.

189 Subsection 4B(2)

Omit "The Minister", substitute "The CEO".

190 Paragraph 4B(2)(a)

Omit "issuing", substitute "the issue of".

191 Subsection 4C(1)

Omit "The Minister", substitute "The CEO".

192 Paragraph 4C(1)(a)

Omit "issuing", substitute "the issue of".

193 Subsection 16(1)

Repeal the subsection, substitute:

(1) If the Minister considers that a regulated occurrence is likely to result in an interference with the exercise of the sovereign rights of Australia as a coastal State:

(a) to explore the seabed and subsoil beneath Australian waters; and

(b) to exploit the natural resources of the seabed and subsoil beneath Australian waters;

the Minister may arrange for any steps to be taken that the Minister considers proper to repair or remedy any condition, or to mitigate any damage, arising from the occurrence.

(1A) If the CEO considers that a regulated occurrence is likely to:

(a) cause an obstruction, or constitute a danger, to vessels; or

(b) result in harm to human or marine life;

the CEO may arrange for any steps to be taken that the CEO considers proper to repair or remedy any condition, or to mitigate any damage, arising from the occurrence.

194 Paragraph 17(1)(b)

Omit "Minister has exercised his or her", substitute "Minister or CEO has exercised the Minister's or CEO's".

195 Subsection 17(2)

Omit "Minister of his or her", substitute "Minister or CEO of the Minister's or CEO's".

196 Subsection 17(3)

After "Minister", insert "or CEO, as applicable".

197 Section 18

Omit "Minister" (wherever occurring), substitute "CEO".

198 Subsections 19(1) and (2)

Omit "Minister", substitute "CEO".

199 Subsection 19(3)

Omit "Minister must grant", substitute "CEO must grant".

200 Paragraph 19(3)(a)

Omit "Minister", substitute "CEO".

201 Subsections 19(4) and (7)

Omit "Minister", substitute "CEO".

202 Subsection 19(7)

Omit "Minister's", substitute "CEO's".

203 Subsection 19(7B)

Omit "Minister" (wherever occurring), substitute "CEO".

204 Subsections 19(8A) and (9), 20(1) and 21(1)

Omit "Minister" (wherever occurring), substitute "CEO".

205 Section 23 (heading)

Omit "**Minister**", substitute "**CEO**".

206 Section 23

Omit "Minister" (wherever occurring), substitute "CEO".

207 Subsection 24(1)

Omit "Minister", substitute "CEO".

208 Paragraphs 24(2)(a) and (b)

Omit "Minister", substitute "CEO".

209 Section 25

Repeal the section.

210 Section 26

Omit "Minister", substitute "CEO".

211 Section 28

Omit "Minister" (wherever occurring), substitute "CEO".

212 Subsection 38(4)

Omit "Minister", substitute "CEO".

213 At the end of section 38

Add:

(5) The CEO must not give a certificate stating a matter specified in paragraph (4)(g) unless the CEO has first consulted the Minister about that matter.

214 Subsection 39(1)

Omit "Minister", substitute "CEO".

215 After section 39

Insert:

39A Disclosure of information

(1) The Minister may disclose information obtained under this Act to:

(a) the CEO; or

(b) an agency, body or person prescribed by the regulations;

if the Minister reasonably believes that the information will enable or assist the agency, body or person to perform its functions or exercise its powers.

(2) This section does not limit any other powers the Minister has to disclose information to a person.

216 Subsections 40(3) and (4)

Omit "Minister" (wherever occurring), substitute "CEO".

Hazardous Waste (Regulation of Exports and Imports) Act 1989

217 Section 4

Insert:

CEO has the same meaning as in the *National Environmental Protection Agency Act 2025*.

Note: This is a reference to the CEO of NEPA.

NEPA has the same meaning as in the *National Environmental Protection Agency Act 2025*.

Note: NEPA is short for the National Environmental Protection Agency.

218 Subsections 4A(2), (3) and (5) to (7) and 4B(3), (5) and (6)

Omit "Minister" (wherever occurring), substitute "CEO".

219 Paragraphs 7(1)(a) and (2)(a)

Omit "Minister", substitute "CEO".

220 Subsection 12(1)

Omit "Minister", substitute "CEO".

221 Paragraph 12(2)(a)

Omit "Minister", substitute "CEO".

222 Subsection 13(1)

Omit "Minister", substitute "CEO".

223 Paragraph 13(2)(a)

Omit "Minister", substitute "CEO".

224 Subsection 13A(1)

Omit "Minister", substitute "CEO".

225 Paragraph 13A(2)(a)

Omit "Minister", substitute "CEO".

226 Subsections 13B(2), (3) and (5)

Omit "Minister" (wherever occurring), substitute "CEO".

227 Paragraphs 13D(1)(b) to (d)

Omit "Minister", substitute "CEO".

228 Subsections 13E(1), (3) and (5)

Omit "Minister" (wherever occurring), substitute "CEO".

229 Sections 13F and 14

Omit "Minister" (wherever occurring), substitute "CEO".

230 Section 15 (heading)

Omit "**Minister**", substitute "**CEO**".

231 Sections 15 to 16B

Omit "Minister" (wherever occurring), substitute "CEO".

232 Sections 16D to 17A, 18A and 18B

Omit "Minister" (wherever occurring), substitute "CEO".

233 Subsections 19(1) and (2), 19A(1), 20(3), 21(3), 21A(2) and 22(1) to (2A)

Omit "Minister" (wherever occurring), substitute "CEO".

234 Paragraphs 22(2C)(a) and (b)

Omit "Minister", substitute "CEO".

235 Subsection 24(1)

Omit "Minister" (wherever occurring), substitute "CEO".

236 Section 24A

Omit "Minister" (wherever occurring), substitute "CEO".

237 Subsection 24B(1)

Omit "Minister" (wherever occurring), substitute "CEO".

238 Paragraphs 25(1)(a) and (b)

Omit "Minister", substitute "CEO".

239 Section 26

Omit "Minister" (wherever occurring), substitute "CEO".

240 Section 26A (heading)

Omit "**Minister**", substitute "**CEO**".

241 Sections 26A and 26B

Omit "Minister" (wherever occurring), substitute "CEO".

242 Subsection 26C(1)

Omit "Minister", substitute "CEO".

243 Paragraph 26C(2)(d)

Omit "Minister", substitute "CEO".

244 Section 26D

Omit "Minister" (wherever occurring), substitute "CEO".

245 Sections 26F and 26G

Omit "Minister" (wherever occurring), substitute "CEO".

246 Subdivision D of Division 4 of Part 2 (heading)

Omit "**Minister's**", substitute "**CEO's**".

247 Section 26H (heading)

Omit "**Minister's**", substitute "**CEO's**".

248 Sections 26H and 26J

Omit "Minister" (wherever occurring), substitute "CEO".

249 Subsections 26K(1), 32(1) to (3) and (5) and 32A(2)

Omit "Minister" (wherever occurring), substitute "CEO".

250 Section 33 (heading)

Omit "**Department's**", substitute "**NEPA's**".

251 Subsection 33(1)

Omit "Minister must cause to be published on the Department's", substitute "CEO must publish on NEPA's".

252 Paragraph 33(1)(a)

Omit "Minister", substitute "CEO".

253 Subsections 33(2), (2A) and (3)

Omit "Minister", substitute "CEO".

254 Subsection 33(4)

Repeal the subsection.

255 Subsections 33G(1) to (3)

Omit "Minister" (wherever occurring), substitute "CEO".

256 Subsection 33G(3)

Omit "cause to be published, on the Department's", substitute "publish on NEPA's".

257 Subsection 33G(4)

Omit "Minister" (wherever occurring), substitute "CEO".

258 Part 3 (heading)

Omit "**Ministerial orders**", substitute "**Orders**".

259 Division 1 of Part 3 (heading)

Omit "**Ministerial orders**", substitute "**Orders**".

260 Subsections 34(1), (3) and (4), 35(1), (3) and (4) and 35A(1), (3) and (4)

Omit "Minister", substitute "CEO".

261 Sections 36, 38 and 38A

Omit "Minister" (wherever occurring), substitute "CEO".

262 Section 38B (heading)

Omit "**Minister**", substitute "**CEO**".

263 Section 38B

Omit "Minister" (wherever occurring), substitute "CEO".

264 Paragraph 38H(1)(a)

Omit "Minister", substitute "CEO".

265 Subsection 41B(1)

Omit "Minister", substitute "CEO".

266 Paragraph 41B(2)(a)

Omit "Minister", substitute "CEO".

267 Subsection 41B(3) (heading)

Omit "*Minister*", substitute "*CEO*".

268 Subsection 41B(3)

Omit "Minister", substitute "CEO".

269 Subsection 41B(4) (heading)

Omit "*Minister*", substitute "*CEO*".

270 Subsection 41B(4)

Omit "Minister" (wherever occurring), substitute "CEO".

271 Subsection 41B(5) (heading)

Omit "*Minister*", substitute "*CEO*".

272 Subsection 41B(5)

Omit "Minister" (wherever occurring), substitute "CEO".

273 Subsection 41B(6) (heading)

Omit "*Minister*", substitute "*CEO*".

274 Subsection 41B(6)

Omit "Minister" (wherever occurring), substitute "CEO".

275 Subsection 41C(3)

Omit "Minister" (wherever occurring), substitute "CEO".

276 Subsection 41C(5)

Omit "Minister" (wherever occurring), substitute "CEO".

277 Subsection 41C(6)

Omit "Minister", substitute "CEO".

278 Subsection 41E(1)

Omit "Secretary" (wherever occurring), substitute "CEO".

279 Subsection 42(1)

Omit "Minister", substitute "CEO".

280 Paragraphs 42(3)(b) and (d)

Omit "whom a Minister of the Crown of the State, or Minister of the Territory, has agreed may be appointed as inspectors".

281 At the end of section 42

Add:

(4) The CEO must not appoint an officer or employee of a State or Territory, or a member of the police force of a State or Territory, as an inspector unless the appointment is in accordance with an arrangement made by the CEO with the appropriate Minister of that State or Territory.

282 Paragraphs 43(3)(d) and 45(2)(d)

Omit "Secretary", substitute "CEO".

283 Subsection 50(1)

Omit "Secretary", substitute "CEO".

284 Paragraph 50(2)(d)

Omit "Minister" (wherever occurring), substitute "CEO".

285 Section 51

Omit "Secretary" (wherever occurring), substitute "CEO".

286 Subsections 53(1), 56AA(2), 56AB(3) and 56AC(2)

Omit "Secretary", substitute "CEO".

287 Paragraph 56AD(2)(a)

Omit "Secretary", substitute "CEO".

288 At the end of section 58D

Add:

; (e) the CEO.

289 Paragraph 59A(1)(b)

Omit "Minister", substitute "CEO".

290 Section 60A

Repeal the section.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

291 Subsections 3A(9) and (11)

Omit "Minister" (wherever occurring), substitute "CEO".

292 Subsections 3A(12) and (13)

Repeal the subsections.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

293 Section 3A (paragraph beginning "There are certain")

Omit "Minister", substitute "CEO".

294 Section 7

Insert:

CEO has the same meaning as in the *National Environmental Protection Agency Act 2025*.

Note: This is a reference to the CEO of the National Environmental Protection Agency.

295 Section 7 (paragraph (c) of the definition of *inspector*)

Omit "Secretary", substitute "CEO".

296 Section 7

Insert:

reviewer has the meaning given by section 65X.

297 Section 12A (paragraphs beginning "There are certain" and "The Minister")

Omit "Minister" (wherever occurring), substitute "CEO".

298 Paragraphs 13AB(2)(a) and (b)

Omit "Minister", substitute "CEO".

299 Subsections 13B(1) and (2) and 14(1)

Omit "Minister" (wherever occurring), substitute "CEO".

300 Paragraph 14(2)(b)

Omit "Minister", substitute "CEO".

301 Section 15

Omit "Minister" (wherever occurring), substitute "CEO".

302 Subsection 16(1) (heading)

Omit "*Minister*", substitute "*CEO*".

303 Subsections 16(1) and (3A) to (6A) and 17(1) and (2)

Omit "Minister" (wherever occurring), substitute "CEO".

304 Paragraph 17(3)(b)

Omit "Minister", substitute "CEO".

305 Subsection 18(1) (table items 1, 4 and 8, column 2)

Omit "Minister", substitute "CEO".

306 Subsections 18(4), (6) and (8) and 19AA(1)

Omit "Minister" (wherever occurring), substitute "CEO".

307 Paragraph 19AA(3)(c)

Omit "Minister", substitute "CEO".

308 Subsection 19AA(4)

Omit "Minister" (wherever occurring), substitute "CEO".

309 Section 19AB

Omit "Minister" (wherever occurring), substitute "CEO".

310 Subsections 19AC(1) and (3)

Omit "Minister", substitute "CEO".

311 Subsection 19AC(3)

Omit "Minister's", substitute "CEO's".

312 Subsections 19AC(4) and (5)

Omit "Minister" (wherever occurring), substitute "CEO".

313 Section 19AD

Omit "Minister" (wherever occurring), substitute "CEO".

314 Paragraph 19AE(b)

Omit "Minister", substitute "CEO".

315 Subsection 19B(1)

Omit "Minister", substitute "CEO".

316 Paragraph 19B(2)(c)

Omit "Minister", substitute "CEO".

317 Subsections 19B(4), (6) and (8), 19C(1) and 19D(1) to (3) and (5)

Omit "Minister", substitute "CEO".

318 Subsection 19D(6) (table items 1 and 3, column 2)

Omit "Minister", substitute "CEO".

319 Subsections 19D(7), 20(1) and (4) and 21(1)

Omit "Minister" (wherever occurring), substitute "CEO".

320 Section 22A

Omit "Minister" (wherever occurring), substitute "CEO".

321 Paragraph 27(1)(b)

Omit "Minister", substitute "CEO".

322 Subsections 28(1) to (3) and (6) and 29(1) and (3)

Omit "Minister" (wherever occurring), substitute "CEO".

323 Section 32

Omit "Minister", substitute "CEO".

324 Subsections 33(1) and (3)

Omit "Minister", substitute "CEO".

325 Paragraph 35(1)(b)

Omit "Minister", substitute "CEO".

326 Subsections 35(3) and 35A(1) and (1A)

Omit "Minister", substitute "CEO".

327 Section 36

Omit "Minister" (wherever occurring), substitute "CEO".

328 Paragraph 36C(1)(b)

Omit "Minister", substitute "CEO".

329 Subsection 36C(2)

After "Minister", insert "or the CEO".

330 Subsections 36F(1) and (4) and 36G(1)

Omit "Minister", substitute "CEO".

331 Paragraph 36G(2)(b)

Omit "Minister", substitute "CEO".

332 Subsections 36H(1) and (1A)

Omit "Minister", substitute "CEO".

333 Subsection 45A(3)

After "Minister", insert "or the CEO".

334 Subsections 46(1) and (1A) and 48(2)

Omit "Minister", substitute "CEO".

335 Section 48A

Omit "Secretary" (wherever occurring), substitute "CEO".

336 Subsections 49(1) and (2)

Omit "Secretary", substitute "CEO".

337 Subsection 49(2)

Omit "the Minister", substitute "the CEO".

338 Subsection 49(3)

Omit "Secretary" (wherever occurring), substitute "CEO".

339 Subsection 49A(1)

Omit "Secretary", substitute "CEO".

340 Paragraphs 50(3)(e) and 52(2)(e)

Omit "Secretary", substitute "CEO".

341 Subsection 54(1)

Omit "Secretary", substitute "CEO".

342 Paragraph 54(3)(b)

Omit "Secretary", substitute "CEO".

343 Subsections 54(4) and 60(2)

Omit "Secretary", substitute "CEO".

344 Paragraphs 60(3)(b) and 60A(2)(e)

Omit "Secretary", substitute "CEO".

345 Subsection 61(1)

Omit "Minister", substitute "CEO".

346 Subsections 62(2), 63(3) and 64(2)

Omit "Secretary", substitute "CEO".

347 Subsection 64(4)

Repeal the subsection.

348 Subsection 64A(2)

Omit "Secretary", substitute "CEO".

349 Section 64B (heading)

Omit "**Secretary**", substitute "**CEO**".

350 Subsections 64B(1) and (2)

Omit "Secretary", substitute "CEO".

351 Section 65W

Omit "Minister" (wherever occurring), substitute "CEO".

352 Section 65X

Before "Each", insert "(1)".

353 Section 65X

Omit "Minister", substitute "CEO".

354 Paragraph 65X(d)

Repeal the paragraph.

355 At the end of section 65X

Add:

The CEO is the ***reviewer*** for the decision.

(2) A decision of the Minister under section 19A to terminate a licence is also a ***reviewable decision***. The Minister is the ***reviewer*** for the decision.

356 Subsections 65Y(1) and 65Z(1)

Omit "Minister" (wherever occurring), substitute "reviewer".

357 Subparagraph 65Z(2)(b)(ii)

Omit "Minister", substitute "reviewer".

358 Subsections 65ZA(1) to (3) and 65ZB(1), (2) and (5)

Omit "Minister" (wherever occurring), substitute "reviewer".

359 Paragraph 65ZC(a)

Omit "Minister", substitute "reviewer".

360 Subsection 66A(1)

After "Minister", insert "or CEO".

361 Subsection 66A(1)

After "Act", insert "that confers a power or function on the Minister or CEO, as applicable".

362 Subsection 67A(2)

Omit "or 20".

363 Sections 67AA and 67B

Repeal the sections.

364 Paragraphs 69(1)(b) and (2)(b)

Omit "Minister", substitute "CEO".

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995

365 Subsections 3A(7) and (9)

Omit "Minister" (wherever occurring), substitute "CEO".

366 Subsections 3A(10) and (11)

Repeal the subsections.

Product Emissions Standards Act 2017

367 Subsection 7(1)

Insert:

> ***CEO*** has the same meaning as in the *National Environmental Protection Agency Act 2025*.
>
> Note: This is a reference to the CEO of the National Environmental Protection Agency.

368 Paragraphs 10(2)(a) and 11(2)(b)

Omit "Secretary", substitute "CEO".

369 Subsection 11(4)

Omit "Secretary", substitute "CEO".

370 Section 19

Omit "Secretary", substitute "CEO".

371 Section 21 (heading)

Omit "**Secretary**", substitute "**CEO**".

372 Subsection 21(1)

Omit "Secretary" (wherever occurring), substitute "CEO".

373 Paragraph 21(2)(a)

Omit "Secretary", substitute "CEO".

374 Subsections 21(3) and 22(2) and (3)

Omit "Secretary", substitute "CEO".

375 Paragraphs 22(5)(a) and (b)

Omit "Secretary", substitute "CEO".

376 Paragraphs 24(3)(e), 25(2)(e) and 27(2)(b)

Omit "Secretary", substitute "CEO".

377 Subsection 33(2)

Omit "Minister", substitute "CEO".

378 Paragraph 33(3)(b)

Omit "Minister", substitute "CEO".

379 Subsection 39(1)

Omit "Minister", substitute "CEO".

380 Subsections 41(1) to (3)

Omit "Secretary" (wherever occurring), substitute "CEO".

381 Section 42

Omit "Secretary" (wherever occurring), substitute "CEO".

382 Subsection 43(1)

Omit "Secretary" (first occurring), substitute "Minister".

383 Paragraph 43(1)(a)

Repeal the paragraph, substitute:

(a) the CEO; or

384 Subsection 43(1)

Omit "Secretary" (second occurring), substitute "Minister".

385 Subsection 43(2)

Omit "Secretary", substitute "Minister".

386 Subsections 44(1) and (2)

Omit "Minister" (wherever occurring), substitute "CEO".

387 Section 46

Repeal the section.

Recycling and Waste Reduction Act 2020

388 Section 4 (heading)

After "**Minister**", insert "**and CEO**".

389 Section 4

After "Minister", insert "and CEO".

390 Section 5 (paragraphs beginning "Conditions" and "The second")

Omit "Minister", substitute "CEO".

391 Section 5 (paragraph beginning "The Minister has")

Omit "has", substitute "and CEO have".

392 Section 5 (paragraph beginning "Certain")

After "Minister", insert "or CEO,".

393 Section 10

Insert:

> ***CEO*** has the same meaning as in the *National Environmental Protection Agency Act 2025*.
>
> Note: This is a reference to the CEO of NEPA.
>
> ***NEPA*** has the same meaning as in the *National Environmental Protection Agency Act 2025*.
>
> Note: NEPA is short for the National Environmental Protection Agency.
>
> ***reviewer***: see subsection 153(1).

394 Subsection 10 (definition of *Secretary*)

Repeal the definition.

395 Section 12

Omit "Minister" (wherever occurring), substitute "CEO".

396 Section 16 (paragraphs beginning "The Minister may, on" and "The holder")

Omit "Minister" (wherever occurring), substitute "CEO".

397 Section 16 (paragraph beginning "The Minister must publish")

Repeal the paragraph, substitute:

> The Minister must publish certain information on the Department's website about exemptions that have been granted.
>
> The CEO must publish on NEPA's website certain information about export licences that have been granted.
>
> The information includes the name of the holder, and the kind of regulated waste material, covered by the exemption or licence.
>
> The Minister and CEO must also prepare quarterly reports containing the information.

398 Paragraph 18(2)(c)

After "Minister", insert "or CEO".

399 Paragraphs 19(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) for a declaration given as a condition of an exemption in relation to regulated waste material:

(i) if the Minister has approved, in writing, a manner for giving the declaration—be given in an approved manner; and

(ii) if the Minister has approved a form for the declaration—include the information required by the form and be accompanied by any documents required by the form; and

(b) for any other declaration:

(i) if the CEO has approved, in writing, a manner for giving the declaration—be given in an approved manner; and

(ii) if the CEO has approved a form for the declaration—include the information required by the form and be accompanied by any documents required by the form; and

400 Subsection 19(3)

After "Minister", insert "or CEO".

401 Subsection 33(1)

Omit "Minister", substitute "CEO".

402 Section 34 (heading)

Omit "**Minister**", substitute "**CEO**".

403 Section 34

Omit "Minister" (wherever occurring), substitute "CEO".

404 Subsections 35(1) and (3)

Omit "Minister" (wherever occurring), substitute "CEO".

405 Paragraph 36(2)(i)

Omit "Minister", substitute "CEO".

406 Subsection 38(2)

Omit "Minister", substitute "CEO".

407 Paragraph 38(4)(b)

Omit "Minister", substitute "CEO".

408 Section 39 (heading)

Omit "**Minister**", substitute "**CEO**".

409 Subsection 39(1)

Omit "Minister" (wherever occurring), substitute "CEO".

410 Subsection 39(3)

Omit "Minister" (wherever occurring), substitute "CEO".

411 Subsections 39(4) to (6)

Omit "Minister" (wherever occurring), substitute "CEO".

412 Section 40

Omit "Minister" (wherever occurring), substitute "CEO".

413 Section 41

Omit "Minister", substitute "CEO".

414 Subsections 42(1) and (3) to (6) and 43(1) and (3)

Omit "Minister" (wherever occurring), substitute "CEO".

415 Division 2 of Part 6 of Chapter 2 (heading)

Omit "**Minister**", substitute "**CEO**".

416 Section 44 (heading)

Omit "**Minister**", substitute "**CEO**".

417 Subsections 44(1) to (5) and 45(1)

Omit "Minister" (wherever occurring), substitute "CEO".

418 Paragraph 45(3)(a)

Omit "Minister", substitute "CEO".

419 Subsections 45(4) and 46(1) and (2)

Omit "Minister" (wherever occurring), substitute "CEO".

420 Paragraph 46(3)(c)

Omit "Minister", substitute "CEO".

421 Subsections 46(4) and 47(1)

Omit "Minister" (wherever occurring), substitute "CEO".

422 Paragraph 47(2)(b)

Omit "Minister" (wherever occurring), substitute "CEO".

423 Subsection 47(3) (heading)

Omit "*Minister*", substitute "*CEO*".

424 Subsections 47(3) and (4) and 48(1)

Omit "Minister" (wherever occurring), substitute "CEO".

425 Paragraph 48(2)(a)

Omit "Minister", substitute "CEO".

426 Subsection 49(2)

Omit "Minister" (wherever occurring), substitute "CEO".

427 Section 50

Omit "Minister", substitute "CEO".

428 Subsections 53(1), (3) and (4)

Omit "Minister" (wherever occurring), substitute "CEO".

429 Division 2 of Part 8 of Chapter 2 (heading)

Omit "**Minister**", substitute "**CEO**".

430 Subsections 54(1) and (2)

Omit "Minister" (wherever occurring), substitute "CEO".

431 Paragraph 54(3)(b)

Omit "Minister", substitute "CEO".

432 Subsections 54(4) and 55(1)

Omit "Minister" (wherever occurring), substitute "CEO".

433 Subsection 55(2) (heading)

Omit "*Minister*", substitute "*CEO*".

434 Subsections 55(2) and (3) and 56(1)

Omit "Minister" (wherever occurring), substitute "CEO".

435 Paragraph 56(2)(a)

Omit "Minister", substitute "CEO".

436 Section 58 (heading)

Omit "**Minister**", substitute "**CEO**".

437 Subsection 58(2)

Omit "Minister", substitute "CEO".

438 Paragraph 60(1)(a)

Omit "Minister", substitute "CEO".

439 Subsection 60(2)

Omit "Minister", substitute "CEO".

440 Paragraph 60(3)(a)

Omit "Minister", substitute "CEO".

441 Section 61 (heading)

Omit "**Minister**", substitute "**CEO**".

442 Subsection 61(1)

Omit "Minister", substitute "CEO".

443 Paragraph 61(2)(a)

Omit "Minister", substitute "CEO".

444 Section 63 (heading)

Omit "**Minister's**", substitute "**CEO's**".

445 Subsections 63(1) and (2)

Omit "Minister", substitute "CEO".

446 Paragraph 63(3)(b)

Omit "Minister", substitute "CEO".

447 Section 64 (heading)

Omit "**Minister**", substitute "**CEO**".

448 Subsection 64(1)

Omit "Minister", substitute "CEO".

449 Paragraphs 64(2)(a) and (b)

Omit "Minister", substitute "CEO".

450 Subsection 64(3)

Omit "Minister", substitute "CEO".

451 Subsection 65(1)

Omit "and export licence".

452 Subsection 65(1)

Omit "or 4".

453 Paragraphs 65(1)(a) to (d)

Omit "or licence".

454 Subsection 65(2)

Repeal the subsection, substitute:

(2) The CEO must publish on NEPA's website the following information in relation to each export licence granted by the CEO under Part 4:

(a) the name of the holder of the licence;

(b) each kind of regulated waste material covered by the licence;

(c) the day the licence takes effect;

(d) whether the licence remains in force for a specified period or until a specified event occurs.

(3) However, the Minister or CEO must not publish any information under subsection (1) or (2) if the Minister or CEO, as applicable, is satisfied that:

(a) there is a risk that publishing the information might substantially prejudice the commercial interests of a person; and

(b) publishing the information is not in the public interest.

455 Section 65A (heading)

Repeal the heading, substitute:

65A Quarterly reports by Minister

456 Subsection 65A(1)

Omit "and export licences".

457 Paragraph 65A(3)(a)

Omit "or export licence".

458 Subsection 65A(4) (note)

Omit "or export licences".

459 Subsection 65A(4) (note)

Omit "65(2)", substitute "65(3)".

460 At the end of Part 10 of Chapter 2

Add:

65B Quarterly reports by CEO

(1) The CEO must prepare a report in relation to export licences for each quarter of each financial year.

(2) The CEO must do so as soon as practicable after the end of each quarter of each financial year.

(3) The report must contain:

(a) the information set out in paragraphs 65(2)(a) to (d) for each export licence granted during that quarter; and

(b) the information (if any) prescribed by the rules.

(4) However, the CEO must not publish any information in the report if the CEO must not publish that information under section 65.

Note: In some circumstances, the CEO must not publish information about export licences on NEPA's website (see subsection 65(3)).

(5) The CEO must publish a copy of the report on NEPA's website.

461 Section 66 (paragraph beginning "Under co-regulatory")

Omit "Minister", substitute "CEO".

462 Section 66 (paragraph beginning "The Minister must publish")

Omit "and approved co-regulatory arrangement".

463 Section 66 (after the paragraph beginning "The Minister must publish")

Insert:

The CEO must publish on NEPA's website specified information about every approved co-regulatory arrangement.

464 Subsection 76(4) (heading)

Omit "*Minister*", substitute "*CEO*".

465 Subsections 76(4), (6), (8) and (9) and 77(5)

Omit "Minister" (wherever occurring), substitute "CEO".

466 Section 78

Omit "Minister" (wherever occurring), substitute "CEO".

467 Subsection 80(2) (note)

Omit "Minister", substitute "CEO".

468 Subsection 81(1) (notes 1 and 2)

Omit "Minister", substitute "CEO".

469 Section 82 (heading)

Omit "**Minister**", substitute "**CEO**".

470 Subsection 82(1)

Omit "Minister", substitute "CEO".

471 Paragraph 82(2)(a)

Omit "Minister", substitute "CEO".

472 Section 83 (heading)

Omit "**Minister**", substitute "**CEO**".

473 Subsection 83(1)

Omit "Minister", substitute "CEO".

474 Paragraphs 83(2)(a) to (d)

Omit "Minister", substitute "CEO".

475 Subsection 84(1)

Omit "Minister", substitute "CEO".

476 Subsection 85(1) (heading)

Omit "*Minister*", substitute "*CEO*".

477 Subsection 85(1)

Omit "Minister" (wherever occurring), substitute "CEO".

478 Subsection 85(2) (heading)

Omit "*Minister*", substitute "*CEO*".

479 Subsections 85(2) and (4)

Omit "Minister" (wherever occurring), substitute "CEO".

480 Subsection 85(5) (heading)

Omit "*Minister*", substitute "*CEO*".

481 Subsections 85(5) and (6) and 86(1)

Omit "Minister" (wherever occurring), substitute "CEO".

482 Paragraphs 86(2)(a) and (b)

Omit "Minister's", substitute "CEO's".

483 Section 87

Omit "Minister" (wherever occurring), substitute "CEO".

484 Subsection 88(1)

Omit "Minister" (wherever occurring), substitute "CEO".

485 Paragraph 88(2)(a)

Omit "Minister", substitute "CEO".

486 Subsections 88(4) and (5)

Omit "Minister" (wherever occurring), substitute "CEO".

487 Subsection 89(1) (heading)

Omit "*Minister*", substitute "*CEO*".

488 Subsection 89(1)

Omit "Minister" (wherever occurring), substitute "CEO".

489 Subsection 89(2)

Omit "Minister" (wherever occurring), substitute "CEO".

490 Paragraph 90(1)(a)

Omit "Minister", substitute "CEO".

491 Subsection 90(2)

Omit "Minister", substitute "CEO".

492 Paragraph 90(3)(a)

Omit "Minister", substitute "CEO".

493 Section 91

Omit "Minister" (wherever occurring), substitute "CEO".

494 Subsection 91(5)

Omit "Minister's", substitute "CEO's".

495 Section 95

Repeal the section, substitute:

95 Publishing information about arrangements

(1) The Minister must publish the following information on the Department's website for each accredited voluntary arrangement:

(a) a summary of the arrangement;

(b) the name of the arrangement's administrator;

(c) the contact details for the arrangement's administrator that are prescribed by the rules;

(d) a copy of any report on the operation of the arrangement given to the Minister in accordance with a condition of the arrangement's accreditation (see paragraph 70(3)(f));

(e) the persons authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo.

(2) The CEO must publish the following information on NEPA's website for each approved co-regulatory arrangement:

(a) a summary of the arrangement;

(b) the name of the arrangement's administrator;

(c) the contact details for the arrangement's administrator that are prescribed by the rules;

(d) a copy of any report on the operation of the arrangement given to the CEO in accordance with rules made for the purposes of section 83 (requirements to give reports to the CEO);

(e) a copy of any audit report in relation to the arrangement given to the CEO in accordance with rules made for the purposes of section 112.

(3) However, the Minister or CEO must not publish any information under subsection (1) or (2) if the Minister or CEO, as applicable, is satisfied that:

(a) there is a risk that publishing the information might substantially prejudice the commercial interests of a person; and

(b) publishing the information is not in the public interest.

496 Section 96 (paragraph beginning "The Minister")

Omit "regulated waste material, product stewardship", substitute "accredited voluntary arrangements".

497 Section 96 (after the paragraph beginning "The Minister")

Insert:

The CEO has powers to gather information relating to regulated waste material, co-regulatory product stewardship and matters prescribed by the rules.

498 Section 96 (paragraph beginning "Certain")

After "the Minister", insert "or the CEO,".

499 Paragraphs 97(3)(e) and 99(2)(e)

Omit "Secretary", substitute "CEO".

500 Subsections 101(2), 102(2) and (3), 103(2) and 104(2)

Omit "Secretary", substitute "CEO".

501 Subdivision A of Division 3 of Part 2 of Chapter 4 (heading)

Omit "**Minister**", substitute "**CEO**".

502 Subsection 108(1)

Omit "Minister", substitute "CEO".

503 Paragraphs 109(1)(b), (c) and (e)

Repeal the paragraphs.

504 After subsection 109(1)

Insert:

(1A) The CEO may require an audit to be conducted in relation to:

(a) an approved co-regulatory arrangement; or

(b) a member of an approved co-regulatory arrangement; or

(c) persons required by rules made for the purposes of subsection 92(1) to take, or not to take, specified action in relation to a specified product.

505 Paragraph 109(2)(b)

Omit "(1)(b)", substitute "(1A)(a)".

506 Paragraph 109(2)(c)

Omit "(1)(c)", substitute "(1A)(b)".

507 Paragraph 109(2)(e)

Omit "(1)(e)", substitute "(1A)(c)".

508 Subsection 109(5)

After "(1)", insert "and (1A)".

509 Section 110

Omit "Minister", substitute "CEO".

510 Section 111

After "Minister" (wherever occurring), insert "or CEO".

511 Subsection 112(1)

After "Minister", insert "or CEO".

512 Paragraph 112(3)(f)

After "Minister", insert "or the CEO".

513 Section 116 (heading)

Omit "**Minister**", substitute "**CEO**".

514 Subsections 116(1) and (3)

Omit "Minister" (wherever occurring), substitute "CEO".

515 Paragraph 116(5)(d)

Omit "Minister", substitute "CEO".

516 Subsections 120(2) to (5)

Omit "Minister", substitute "CEO".

517 Paragraph 120(6)(a)

Omit "Minister", substitute "CEO".

518 Subsection 121(2)

Omit "Minister", substitute "CEO".

519 Paragraph 121(3)(a)

Omit "Minister", substitute "CEO".

520 Section 122

Repeal the section.

521 Subsection 123(1)

Omit "Secretary", substitute "CEO".

522 Paragraph 123(2)(a)

Omit "Secretary", substitute "CEO".

523 Subsections 123(3) to (5)

Omit "Secretary", substitute "CEO".

524 Paragraph 124(1)(c)

Omit "Secretary", substitute "CEO".

525 Subsections 125(1) to (3)

Omit "Secretary", substitute "CEO".

526 Subsection 125(4) (heading)

Omit "*Secretary*", substitute "*CEO*".

527 Subsections 125(4) to (7)

Omit "Secretary" (wherever occurring), substitute "CEO".

528 Subparagraph 125(9)(a)(ii)

Omit "Secretary", substitute "CEO".

529 Subsections 126(1) and (2), 128(1) and 129(1)

Omit "Secretary" (wherever occurring), substitute "CEO".

530 Subdivision A of Division 2 of Part 3 of Chapter 4 (heading)

Omit "**Secretary's**", substitute "**CEO's**".

531 Subsection 130(1)

Omit "Secretary", substitute "CEO".

532 Paragraph 130(2)(a)

Omit "Secretary", substitute "CEO".

533 Subsections 130(3) and 131(1)

Omit "Secretary" (wherever occurring), substitute "CEO".

534 Paragraph 131(3)(a)

Omit "Secretary", substitute "CEO".

535 Subsection 131(4)

Omit "Secretary", substitute "CEO".

536 Subsection 131(5) (paragraph (a) of the note)

Omit "Minister", substitute "CEO".

537 Subsection 131(5) (paragraph (b) of the note)

Omit "Secretary" (wherever occurring), substitute "CEO".

538 Subsection 131(6)

Omit "Secretary" (wherever occurring), substitute "CEO".

539 Subsection 132(1)

Omit "Secretary", substitute "CEO".

540 Paragraph 132(2)(a)

Omit "Secretary", substitute "CEO".

541 Subsections 133(1) and (2)

Omit "Secretary" (wherever occurring), substitute "CEO".

542 Paragraphs 133(3)(a) and (b)

Omit "Secretary", substitute "CEO".

543 Subsection 134(1)

Omit "Secretary", substitute "CEO".

544 Subsection 134(2) (heading)

Omit "*Secretary*", substitute "*CEO*".

545 Subsections 134(2) and (3) and 135(1) and (2)

Omit "Secretary" (wherever occurring), substitute "CEO".

546 Subsection 135(3) (paragraph (a) of the note)

Omit "Minister", substitute "CEO".

547 Subsection 135(3) (paragraph (b) of the note)

Omit "Secretary" (wherever occurring), substitute "CEO".

548 Subsections 135(4) and (5)

Omit "Secretary" (wherever occurring), substitute "CEO".

549 Subsections 136(1) and (2)

Omit "Secretary", substitute "CEO".

550 Section 137 (heading)

Omit "**Secretary**", substitute "**CEO**".

551 Subsection 137(2)

Omit "Secretary" (wherever occurring), substitute "CEO".

552 Subsection 139(2) (heading)

Omit "*Secretary*", substitute "*CEO*".

553 Subsection 139(2)

Omit "Secretary", substitute "CEO".

554 Paragraphs 143(1)(a) to (f)

Repeal the paragraphs, substitute:

(a) an accredited voluntary arrangement; or

(b) a matter prescribed by the rules.

555 After subsection 143(1)

Insert:

(1A) The CEO may, by notice in writing given to a person, require the person, within a reasonable time stated in the notice, to give the CEO any information, or produce to the CEO any documents, specified in the notice that relate to:

(a) any regulated waste material that has been, or is intended to be, exported; or
(b) waste material export charges; or
(c) an approved co-regulatory arrangement in relation to a product; or
(d) requirements made under rules made for the purposes of subsection 92(1) (mandatory product stewardship requirements); or
(e) a matter prescribed by the rules.

556 Paragraph 143(2)(a)

After "(1)", insert "or (1A)".

557 Subsection 151(1) (table items 2 to 10, column 2)

Omit "Minister", substitute "CEO".

558 Subsection 151(1) (table item 14, columns 1 and 2)

Omit "Minister", substitute "CEO".

559 Subsection 151(1) (table items 15 and 16, column 2)

Omit "Minister", substitute "CEO".

560 Subsection 151(1) (table item 17, columns 1 and 2)

Omit "Minister", substitute "CEO".

561 Subsection 151(1) (table item 18, column 2)

Omit "Minister", substitute "CEO".

562 Subsection 151(1) (table item 19, column 2)

Omit "Secretary", substitute "CEO".

563 Subsection 151(1) (table item 20, columns 1 and 2)

Omit "Secretary", substitute "CEO".

564 Subsection 151(1) (table items 21 to 28, column 2)

Omit "Secretary", substitute "CEO".

565 Subsection 153(1)

Repeal the subsection, substitute:

(1) A person affected by a reviewable decision (other than a decision made by the Minister or CEO personally) may apply in writing to the following persons (each a ***reviewer***) for review (the ***internal review***) of the decision:

(a) for a decision specified in items 1 and 11 to 13 of the table in subsection 151(1)—the Minister;

(b) for a decision specified in items 2 to 10 and 14 to 28 of the table in subsection 151(1)—the CEO.

566 Subsections 153(2) to (4)

Omit "Minister" (wherever occurring), substitute "reviewer".

567 Paragraph 154(1)(a)

After "Minister", insert "or CEO".

568 Paragraph 154(1)(b)

Omit "Minister", substitute "reviewer".

569 Subsection 155(3)

Repeal the subsection, substitute:

(3) Without limiting subsection (1) or (2), the rules may provide for the following persons to make decisions in relation to the matters specified in paragraph (2)(e) or (g):

(a) for a fee charged in relation to an accredited voluntary arrangement—the Minister;

(b) for all other fees—the CEO.

570 Section 158

Repeal the section, substitute:

158 Minister or CEO may direct that activities not be carried out

If a fee under this Act is due and payable by a person (the ***debtor***), the following persons may refuse to carry out, and direct a person

not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the fee has been paid:

(a) for a fee charged in relation to an accredited voluntary arrangement—the Minister;

(b) for all other fees—the CEO.

571 Section 161 (heading)

Omit "**Minister**", substitute "**CEO**".

572 Subsection 161(2)

Omit "Minister", substitute "CEO".

573 Subparagraph 163(2)(b)(ii)

Omit "Secretary", substitute "CEO".

574 Subsections 166(1) to (3) and 167(2)

Omit "Secretary" (wherever occurring), substitute "CEO".

575 Section 171 (paragraph beginning "There is a test")

Omit "the Minister".

576 Section 171 (paragraph beginning "The Minister and")

Repeal the paragraph, substitute:

The Minister may delegate the Minister's powers and functions, other than the power to make rules or to publish a Minister's priority list, to certain persons. The *National Environmental Protection Agency Act 2025* provides for the CEO to delegate the CEO's powers and functions to certain persons.

577 Paragraphs 172(1)(a) and (b)

Omit "Minister", substitute "relevant person".

578 Subsections 172(2) and (4)

Omit "Minister" (wherever occurring), substitute "relevant person".

579 At the end of section 172

Add:

(5) In this section:

relevant person means:

(a) for an application made to the Minister—the Minister; or

(b) for an application made to the CEO—the CEO.

580 Subsection 175(2)

Omit "Minister" (first occurring), substitute "relevant decision-maker".

581 Paragraph 175(2)(d)

Omit "Minister" (wherever occurring), substitute "CEO".

582 Subsection 175(3)

Omit "Minister", substitute "relevant decision-maker".

583 After subsection 175(4)

Insert:

(5) In this section:

relevant decision-maker means:

(a) for a decision in relation to an accredited voluntary arrangement—the Minister; or

(b) otherwise—the CEO.

584 Section 179 (note)

Omit "Secretary", substitute "CEO".

585 At the end of subsection 180(3)

Add:

; (e) the CEO;

(f) a member of the staff of NEPA referred to in section 53 of the *National Environmental Protection Agency Act 2025*.

586 Subsection 182(1)

Omit "Secretary may", substitute "CEO may".

587 Subsection 182(1)

Omit "Secretary's", substitute "CEO's".

588 Subsection 182(1)

Omit "Secretary or", substitute "CEO or".

589 Subsections 182(3) to (5)

Omit "Secretary" (wherever occurring), substitute "CEO".

590 Section 187

Repeal the section.

Underwater Cultural Heritage Act 2018

591 Subsection 9(1)

Insert:

> ***CEO*** has the same meaning as in the *National Environmental Protection Agency Act 2025*.
>
> Note: This is a reference to the CEO of the National Environmental Protection Agency.

592 Paragraph 41(3)(e)

Omit "Secretary", substitute "CEO".

593 Paragraph 42(2)(e)

Omit "Secretary", substitute "CEO".

594 Paragraph 44(2)(b)

Omit "Secretary", substitute "CEO".

595 Subsection 47(3)

Omit "Minister", substitute "CEO".

596 After section 54

Insert:

54A Disclosure of information

(1) The Minister may disclose information obtained under this Act to:

(a) the CEO; or

(b) an agency, body or person prescribed by the Underwater Cultural Heritage Rules;

if the Minister reasonably believes that the information will enable or assist the agency, body or person to perform its functions or exercise its powers.

(2) This section does not limit any other powers the Minister has to disclose information to a person.

597 Section 57

Repeal the section.

598 Subsections 60(1) to (4)

Omit "Secretary" (wherever occurring), substitute "CEO".

Part 2—Contingent amendments

Environment Protection (Sea Dumping) Act 1981

599 Subsection 19(7C)

Omit "Minister" (wherever occurring), substitute "CEO".

Part 3—Transitional provisions

Division 1—Preliminary

600 Definitions

(1) In this Part:

applies, in relation to an enterprise agreement, has the same meaning as in the *Fair Work Act 2009*.

covers, in relation to an enterprise agreement, has the same meaning as in the *Fair Work Act 2009*.

DCCEEW Enterprise Agreement means the *Department of Climate Change, Energy, the Environment and Water Enterprise Agreement 2024-2027* approved by the Fair Work Commission, as in operation immediately before the transition time.

designated person means:

(a) the Minister; or

(b) the Secretary of the Department; or

(c) an SES Band 3 employee (within the meaning of clause 17 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999* as in force immediately before the transition time).

environmental law means:

(a) the *Environment Protection and Biodiversity Conservation Act 1999*; or

(b) the *Environment Protection (Sea Dumping) Act 1981*; or

(c) the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*; or

(d) the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*; or

(e) the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; or

(f) the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*; or

(g) the *Product Emissions Standards Act 2017*; or

(h) the *Recycling and Waste Reduction Act 2020*; or

(i) the *Underwater Cultural Heritage Act 2018*; or
(j) the Regulatory Powers Act to the extent that it applies in relation to an Act mentioned in any of paragraphs (a) to (i).

transferred: a ***transferred*** function, power or duty is a function, power or duty that:

(a) immediately before the transition time, was conferred or imposed on one or more persons under an environmental law, or under a legislative instrument made under an environmental law, as in force before the transition time; but
(b) immediately after the transition time, is conferred or imposed by the environmental law, or by the legislative instrument, on the CEO instead, or the CEO and one or more of those persons.

transition time means the commencement of this item.

(2) An expression used in this Part that is defined for the purposes of the *National Environmental Protection Agency Act 2025* has the same meaning in this Part as it has in that Act.

Division 2—Provisions relating to establishment of National Environmental Protection Agency

601 Transfer of documents and records to NEPA

(1) This item applies to a document or record if:

(a) immediately before the transition time, the document or record was in the possession of the Department; and
(b) the document or record was:
(i) given to or received by the Department; or
(ii) brought into existence;
for the purposes of the performance of a transferred function or a transferred duty or the exercise of a transferred power.

(2) The documents and records are to be transferred to NEPA after the transition time.

(3) For the purposes of the definitions of ***protected information*** and ***relevant information*** in section 5 of the *National Environmental Protection Agency Act 2025*, any document or record that is transferred

under subitem (2) of this item is taken to be information obtained by an entrusted person under, or in accordance with, that Act.

602 DCCEEW Enterprise Agreement

(1) From the transition time, the DCCEEW Enterprise Agreement:

(a) continues to cover and apply to APS employees who:

(i) it covered and applied to immediately before the transition time; and

(ii) at the transition time, are APS employees in NEPA; and

(b) covers and applies to APS employees in NEPA at the classification levels covered by the DCCEEW Enterprise Agreement whose employment in NEPA commences at or after the transition time; and

(c) covers and applies to the CEO as the Agency Head (within the meaning of the *Public Service Act 1999*) of the APS employees in NEPA; and

(d) has effect in relation to NEPA, at and after the transition time, as if:

(i) a reference to the Secretary of the Department were a reference to the CEO; and

(ii) a reference to the Department were a reference to NEPA.

(2) Subitem (1) does not:

(a) prevent the variation or termination of the DCCEEW Enterprise Agreement, as it covers and applies to APS employees in NEPA and the CEO, in accordance with law; or

(b) prevent the terms and conditions of employment of APS employees in NEPA from being varied at or after the transition time:

(i) in accordance with those terms and conditions; or

(ii) by or under a law; or

(c) affect the operation of section 58 of the *Fair Work Act 2009*.

Note: Section 58 of the *Fair Work Act 2009* deals with the interaction between one or more enterprise agreements.

Division 3—Other transitional provisions

603 First review of the *National Environmental Protection Agency Act 2025*

For the purposes of the first review conducted under section 61 of the *National Environmental Protection Agency Act 2025*, the reference in subsection 61(2) of that Act to the period since the previous review was completed is taken to be a reference to the period since that Act commenced.

604 Things done by or in relation to designated person

(1) This item applies if:

(a) a thing done at a time (the ***initial time***) before the transition time by or in relation to a designated person under an environmental law was in effect at the transition time; and

(b) immediately after the transition time, the environmental law provides for that thing to be done by, or in relation to, the CEO instead of the designated person because of amendments made by Parts 1 and 2 of this Schedule.

(2) The thing has effect, and may be dealt with, after the transition time as if it had been done at the initial time by or in relation to the CEO, under the environmental law as in force immediately after the transition time.

605 References in permit conditions, instruments etc. to designated person

(1) This item applies if:

(a) because of item 604, any of the following things have effect after the transition time as if the thing had been done by the CEO:

(i) a permit, licence or other authorisation (however described) issued by a designated person;

(ii) an instrument (other than a legislative instrument) made by a designated person;

(iii) an agreement entered into by a designated person; and

(b) a condition of the permit, licence or other authorisation, or a provision of the instrument or agreement, refers to a thing

that may or must be done by, or in relation to, the designated person.

(2) From the transition time, the provision has effect as if the reference were to the thing being done by or in relation to the CEO.

606 Amendments relating to disclosure of information

The following provisions, as in force from the transition time, apply to the disclosure of information from the transition time, whether the information was obtained before, at or after that time:

(a) section 39A of the *Environment Protection (Sea Dumping) Act 1981*;

(b) paragraph 43(1)(a) of the *Product Emissions Standards Act 2017*;

(c) section 54A of the *Underwater Cultural Heritage Act 2018*.

607 Pending proceedings

(1) This item applies if:

(a) immediately before the transition time, a designated person is a party to proceedings instituted by, or against, the designated person under an environmental law in any court or tribunal; and

(b) immediately after the transition time, those kinds of proceedings may be instituted by, or against, the CEO instead of the designated person under the environmental law because of amendments made by Part 1 or 2 of this Schedule.

(2) The CEO is, from the transition time, substituted for the designated person as a party to the proceedings.

608 Application of certain exceptions for notifying actions under the *Environment Protection and Biodiversity Conservation Act 1999*

(1) This item applies in relation to an action, whether taken before or after the transition time, if:

(a) the action is in a class of actions specified in an agreement or arrangement between the Secretary and a Commonwealth

agency, or an agency of a State or self-governing Territory; and

(b) the agreement or arrangement provides the class of actions is to be notified to the Secretary by the agency; and

(c) the agreement or arrangement was entered into before the transition time.

(2) Paragraphs 199(4)(b), 214(4)(b), 232(4)(b) and 256(4)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* have effect after the transition time in relation to the action as if the agreement or arrangement provided that the class of actions were to be notified to the CEO by the agency.

609 Retention of seized things

(1) This item applies in relation to a thing, whether seized before or after the transition time, if:

(a) the Minister or Secretary is authorised by a law, or an order of a court, of the Commonwealth or of a State or Territory to retain, destroy, dispose of or otherwise deal with a thing; and

(b) the law or court order was in force immediately before the transition time.

(2) The following provisions have effect after the transition time in relation to the thing as if the law or court order also authorised the CEO to retain, destroy, dispose of or otherwise deal with the thing:

(a) the following provisions of the *Environment Protection and Biodiversity Conservation Act 1999*:

(i) paragraph 438(4)(c);

(ii) paragraph 444G(4)(c);

(iii) paragraph 446(1C)(d);

(iv) paragraph 456AB(4)(d);

(v) paragraph 456AC(4)(c);

(b) paragraph 66(3)(c) of the *Regulatory Powers (Standard Provisions) Act 2014*.

Schedule 3—Consequential amendments and transitional provisions for the Head of Environment Information Australia

Part 1—Amendments

Environment Protection and Biodiversity Conservation Act 1999

1 Part 21 of Chapter 6 (heading)

Omit "**Reporting**", substitute "**Annual reports**".

2 Division 1 of Part 21 of Chapter 6 (heading)

Repeal the heading.

3 Division 2 of Part 21 of Chapter 6

Repeal the Division.

Part 2—Transitional provisions

4 State of the Environment reports

Under the Environment Information Australia Act 2025

(1) The Head of Environment Information Australia must prepare and publish the first State of the Environment report under subsection 12(1) of the *Environment Information Australia Act 2025* no later than 15 December 2028.

(2) For the purposes of that first report, the national environmental goals mentioned in paragraph 12(2)(b) of that Act are any publicly available environmental targets that the Minister identifies and notifies to the Head as being national environmental goals.

Under the Environment Protection and Biodiversity Conservation Act 1999

(3) Section 516B of the *Environment Protection and Biodiversity Conservation Act 1999*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to the report to be prepared by 31 December 2026.

5 First statement of environmental economic accounts

(1) The Head of Environment Information Australia must prepare and give the first statement of environmental economic accounts to the Minister under subsection 13(4) of the *Environment Information Australia Act 2025* by a date that ensures the Minister has sufficient time to comply with the requirement imposed by subitem (3) of this item.

(2) For the purposes of that first statement, the requirement imposed by subsection 13(6) of that Act is satisfied if the statement identifies or describes one or more environmental economic accounts:

(a) maintained by the Head; or

(b) that the Head proposes to:

(i) maintain; or

(ii) establish and maintain.

(3) For the purposes of section 17 of that Act, the Minister must arrange for that first statement to be tabled in each House of the Parliament no later than 31 October 2027.

6 Use and disclosure of departmental information

Division 4 of Part 4 of the *Environment Information Australia Act 2025* applies in relation to the use or disclosure of departmental information (within the meaning of that Act) on and after the commencement of this Schedule, whether the information is obtained or generated before, on or after that time.

7 First annual report

(1) Section 46 of the *Environment Information Australia Act 2025* applies in relation to a reporting period (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) for the Department that ends after the commencement of this Schedule.

(2) That section applies in relation to the first annual report prepared under that section as if a reference to the reporting period were instead a reference to the period:

(a) starting on the commencement of this Schedule; and

(b) ending at the end of the reporting period.