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Time does not run while further information is sought

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

131 Inviting comments from other Ministers before decision

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

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

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

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- (a) inform the person proposing to take the action, and the designated proponent of the action (if the designated proponent is not the person proposing to take the action), of:
 - (i) the decision the Minister proposes to make; and
 - (ii) if the Minister proposes to approve the taking of the action—any conditions the Minister proposes to attach to the approval; and
 - (b) invite each person informed under paragraph (a) to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.
- (2) If the Minister proposes not to approve, for the purposes of a controlling provision, the taking of the action, the Minister must provide to each person informed under paragraph (1)(a), with the invitation given under paragraph (1)(b):
 - (a) a copy of whichever of the following documents applies to the action:
 - (i) an assessment report;
 - (ii) a finalised recommendation report given to the Minister under subsection 93(5);
 - (iii) a recommendation report given to the Minister under section 95C, 100 or 105; and
 - (b) any information relating to economic and social matters that the Minister has considered; and
 - (c) any information relating to the history of a person in relation to environmental matters that the Minister has considered under subsection 136(4); and
 - (d) a copy of any document, or part of a document, containing information of a kind referred to in paragraph 136(2)(e) that the Minister has considered.
- (3) The Minister is not required to provide under subsection (2):
 - (a) information that is in the public domain; or
 - (b) a copy of so much of a document as is in the public domain; or

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

Section 131AB

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

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

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

131A Inviting public comment before decision

Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and

what conditions (if any) to attach to an approval, he or she may publish on the internet:

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

132 Requesting further information for approval decision

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

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

Section 132A

132A Requesting notice from appropriate State or Territory Minister about certain actions

- (1) This section applies to an action that is to be taken in a State or self-governing Territory only if the action:
- (a) is to be taken by a person for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (b) is to be taken by a constitutional corporation; or
 - (c) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: This section also applies in relation to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

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

Section 132B

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

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

133 Grant of approval*Approval*

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

Content of approval

- (2) An approval must:

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

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

Persons who may take action covered by approval

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

Notice of approval

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

Limit on publication of approval

- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
- (a) is:
 - (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets etc.); or

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- (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
- (b) the Minister believes it is in the national interest not to provide.

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

Notice of refusal of approval

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

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

Definition

- (8) In this section:

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

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

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- Minister under subsection 95B(3), as the case requires, relating to the action; and
- (ii) the recommendation report relating to the action given to the Minister under section 95C; or
- (d) if Division 5 of Part 8 (public environment reports) applies to the action:
- (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; or
- (e) if Division 6 of Part 8 (environmental impact statements) applies to the action:
- (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105.

134 Conditions of approval

Condition to inform persons taking action of conditions attached to approval

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

Generally

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

Conditions to protect matters from the approved action

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

This subsection does not limit subsection (1).

Examples of kinds of conditions that may be attached

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

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

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- (g) conditions requiring compliance with a specified industry standard or code of practice; and
- (h) conditions relating to any alternative proposals in relation to the taking of the action covered by the approval (as permitted by subsection 133(1A)).

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

Note: Paragraph (e)—an election is taken to have been made if an approval is varied to add a condition requiring an action management plan, see subsection 143(1A).

Certain conditions require consent of holder of approval

- (3A) The following kinds of condition cannot be attached to the approval of an action unless the holder of the approval has consented to the attachment of the condition:
 - (a) a condition referred to in paragraph (3)(aa), if the activities specified in the condition are not reasonably related to the action;
 - (b) a condition referred to in paragraph (3)(ab).
- (3B) If the holder of the approval has given consent, for the purposes of subsection (3A), to the attachment of a condition:
 - (a) the holder cannot withdraw that consent after the condition has been attached to the approval; and
 - (b) any person to whom the approval is later transferred under section 145B is taken to have consented to the attachment of the condition, and cannot withdraw that consent.

Conditions attached under paragraph (3)(c)

- (3C) A condition attached to an approval under paragraph (3)(c) may require a person taking the action to comply with conditions specified in an instrument of a kind referred to in that paragraph:
 - (a) as in force at a particular time; or
 - (b) as is in force or existing from time to time;even if the instrument does not yet exist at the time the approval takes effect.

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Conditions attached under paragraph (3)(e)

- (3D) When making a decision whether to approve an action management plan, if the Minister believes on reasonable grounds that the Minister does not have enough information to make a decision, the Minister may request the holder of the approval to provide specified information relevant to making the decision.

Considerations in deciding on condition

- (4) In deciding whether to attach a condition to an approval, the Minister must consider:
- (a) any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action; and
 - (aa) information provided by the person proposing to take the action or by the designated proponent of the action; and
 - (b) the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition.

Effect of conditions requiring compliance with conditions specified in another instrument

- (4A) If:
- (a) a condition (the **principal condition**) attached to an approval under paragraph (3)(c) requires a person taking the action to comply with conditions (the **other conditions**) specified in an instrument of a kind referred to in that paragraph; and
 - (b) the other conditions are in excess of the power conferred by subsection (1);
- the principal condition is taken to require the person to comply with the other conditions only to the extent that they are not in excess of that power.

Validity of decision

- (5) A failure to consider information as required by paragraph (4)(aa) does not invalidate a decision about attaching a condition to the approval.

134A Inviting public comment before approving action management plan

- (1) Before approving an action management plan, the Minister may publish:
- (a) the plan; and
 - (b) an invitation for anyone to give the Minister, within 11 business days, written comments on the plan.
- (2) The regulations may provide for requirements relating to the way the Minister must publish the plan and invitation to comment.

135 Certain approvals and conditions must not give preference

- (1) This section deals with the approval:
- (a) for the purposes of section 21 or 22A of a nuclear action:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation; or
 - (b) for the purposes of section 25 of an action that is prescribed for the purposes of subsection 25(1) and is taken:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation.
- (2) The Minister must not grant the approval, or attach a condition to the approval, that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

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135A Publication of recommendation reports

- (1) This section applies in relation to the following reports:
 - (a) a finalised recommendation report given to the Minister under subsection 93(5);
 - (b) a recommendation report given to the Minister under section 95C, 100 or 105.
- (2) Subject to subsections (3) and (4), the Secretary must provide a copy of a report to which this section applies to a person who asks for it (either at no charge or at a reasonable charge determined by the Secretary).
- (3) The Secretary is not required to provide a copy of the report under subsection (2) to anyone until after the Minister has decided, for the purposes of each controlling provision, whether or not to approve the taking of the action concerned.
- (4) The Secretary may refuse to provide, under subsection (2), a copy of so much of the report as:
 - (a) is:
 - (i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
 - (ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (b) the Secretary is satisfied is commercial-in-confidence.
- (5) The Secretary must not be satisfied that a part of the report is commercial-in-confidence unless a person demonstrates to the Secretary that:
 - (a) release of the information in that part would cause competitive detriment to the person; and
 - (b) the information in that part is not in the public domain; and

- (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
- (d) the information in that part is not readily discoverable.

Subdivision B—Considerations for approvals and conditions

136 General considerations

Mandatory considerations

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

Factors to be taken into account

- (2) In considering those matters, the Minister must take into account:
 - (a) the principles of ecologically sustainable development; and
 - (b) the assessment report (if any) relating to the action; and
 - (ba) if Division 3A of Part 8 (assessment on referral information) applies to the action—the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
 - (bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
 - (ii) the recommendation report relating to the action given to the Minister under section 95C; and

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- (c) if Division 5 (public environment reports) of Part 8 applies to the action:
 - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; and
- (ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
 - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105; and
- (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action—the report of the commissioners; and
- (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
- (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
- (fa) any relevant advice obtained by the Minister from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in accordance with section 131AB; and
- (g) if a notice relating to the action was given to the Minister under subsection 132A(3)—the information in the notice.

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

Person's environmental history

- (4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister

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may consider whether the person is a suitable person to be granted an approval, having regard to:

- (a) the person's history in relation to environmental matters; and
- (b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and
- (c) if the person is a body corporate that is a subsidiary of another body or company (the *parent body*)—the history in relation to environmental matters of the parent body and its executive officers.

Minister not to consider other matters

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

137 Requirements for decisions about World Heritage

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

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

137A Requirements for decisions about National Heritage places

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

- (a) the National Heritage management principles; or

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

138 Requirements for decisions about Ramsar wetlands

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

139 Requirements for decisions about threatened species and endangered communities

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

140 Requirements for decisions about migratory species

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

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

140A No approval for certain nuclear installations

The Minister must not approve 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.

Division 2—Requirement to comply with conditions

142 Compliance with conditions on approval

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

Civil penalty:

- (a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
 - (b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.
- (1A) Subsection (1) does not apply to a person who is not the holder of the approval if:
- (a) the person was not informed of the condition; and
 - (b) the person could not reasonably have been expected to be aware of the condition.

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

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

142A Offence of breaching conditions on approval

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

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

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

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

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

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

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

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

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

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

142B Strict liability offence for breach of approval condition

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

Penalty: 60 penalty units.

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

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

Chapter 4 Environmental assessments and approvals

Part 9 Approval of actions

Division 2 Requirement to comply with conditions

Section 142B

Note 3: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

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

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

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

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

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

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

Division 3—Variation of conditions and suspension and revocation of approvals

143 Variation of conditions attached to approval

- (1) The Minister may, by written instrument, revoke, vary or add to any conditions (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if:
- (a) any condition attached to the approval has been contravened;
or
 - (b) both of the following conditions are satisfied:
 - (i) the action has had a significant impact that was not identified in assessing the action on any matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
 - (ii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or
 - (ba) all of the following conditions are satisfied:
 - (i) the action has had a significant impact on a matter protected by a provision of Part 3 for which the approval has effect, or the Minister believes the action will have such an impact;
 - (ii) the Minister is satisfied that the impact is substantially greater than the impact that was identified in assessing the action;
 - (iii) the Minister believes it is necessary to revoke, vary or add a condition to protect the matter from the impact; or
 - (c) the holder of the approval agrees to the proposed revocation, variation or addition, or the Minister has extended the period for which the approval has effect under section 145D, and the Minister is satisfied that any conditions attached to the approval after the proposed revocation, variation or addition are necessary or convenient for:

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- (i) protecting a matter protected by any provision of Part 3 for which the approval has effect; or
 - (ii) repairing or mitigating damage to a matter protected by a provision of Part 3 for which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action).
- (1A) If, under paragraph (1)(c), the holder of an approval agrees to conditions mentioned in paragraph 134(3)(e) (about an action management plan) being added and attached to the approval, the holder is taken to have made an election under section 132B before the approval was granted.
- (1B) The holder of an approval may request the Minister, in writing, to vary a condition attached to an approval of an action.
- (2) The Minister may, by written instrument, revoke any condition (other than the condition referred to in subsection 134(1A)) attached to an approval under this Part of an action if the Minister is satisfied that the condition is not needed to protect any matter protected by a provision of Part 3 for which the approval has effect.
- (3) 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 may have 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.
- (4) The revocation, variation or addition takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.
- (5) As soon as possible after making the instrument, the Minister must:

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- (a) give a copy of it to the holder of the approval; and
- (b) publish the instrument in accordance with the regulations.

Note: If the holder is not satisfied with changed conditions attached to the approval of the holder's action, he or she can ask the Minister to reverse the change by making another change to the conditions under this section.

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

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

143A Variation of action management plan

Written application required

- (1) If an action management plan is a condition of an approval of an action, the holder of the approval may, at any time, apply to the Minister for a variation of the action management plan.
- (2) An application for a variation must be:
 - (a) in writing; and
 - (b) accompanied by:
 - (i) any information or documents required by the regulations; and
 - (ii) the application fee (if any) prescribed by the regulations.

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Minister may approve a variation of action management plan

- (3) The Minister may approve a variation to an action management plan if requested to do so.
- (4) When making a decision whether to vary an action management plan, if the Minister believes on reasonable grounds that the application does not include enough information, the Minister may request the applicant to provide specified information relevant to making the decision.
- (5) If the holder of an approval applies for a variation of an action management plan, the Minister must notify the person, in writing, of the Minister's decision.

144 Suspension of approval

- (1) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of Part 3 for a specified period (which must not start before the day on which the instrument is made) if the Minister believes on reasonable grounds that:
 - (a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or
 - (b) the conditions specified in subsection (2) are satisfied.
- (2) The conditions are that:
 - (a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and
 - (b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.
- (2A) The Minister may, by written instrument, suspend the effect of an approval under this Part for the purposes of a specified provision of

Part 3 for a specified period (which must not start before the day on which the instrument is made) if:

- (a) either:
 - (i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or
 - (ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable grounds that the thing has not been done within that time; and
 - (b) the Minister is satisfied that:
 - (i) the approval would not have been granted without that condition being attached; or
 - (ii) because of the failure to comply with the requirement, the suspension is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.
- (3) In deciding whether or not to suspend an approval of the taking of an action by a person, the Minister may have 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.
- (4) During the specified period, the specified provision of Part 3 applies as if the Minister had not given the approval.
- (5) As soon as possible after making the instrument, the Minister must:
- (a) give a copy of it to the holder of the approval; and
 - (b) publish the instrument in accordance with the regulations.

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145 Revocation of approval

- (1) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:
 - (a) a significant impact on the matter protected by the provision has occurred because of the contravention of a condition attached to the approval; or
 - (b) the conditions specified in subsection (2) are satisfied.
- (2) The conditions are that:
 - (a) the action has had, or the Minister believes that the action will have, a significant impact that was not identified in assessing the action on a matter protected by a provision of Part 3 for which the approval has effect; and
 - (b) the approval would not have been granted if information that the Minister has about that impact had been available when the decision to approve the action was made.
- (2A) The Minister may, by written instrument, revoke an approval under this Part of an action for the purposes of a specified provision of Part 3 if he or she believes that:
 - (a) the impacts that the action has had, will have or is likely to have were not accurately identified in information available to the Minister when the approval was given; and
 - (b) the information did not accurately identify those impacts because of negligence or a deliberate act or omission by the person proposing to take the action or the designated proponent of the action.
- (2B) The Minister may, by written instrument, revoke an approval under this Part for the purposes of a specified provision of Part 3 if:
 - (a) either:
 - (i) the Minister believes on reasonable grounds that there has been a contravention of a condition attached to the approval; or
 - (ii) if a condition attached to the approval is to the effect that the approval is subject to a thing being done within a particular time—the Minister believes on reasonable

- grounds that the thing has not been done within that time; and
- (b) the Minister is satisfied that:
- (i) the approval would not have been granted without that condition being attached; or
 - (ii) because of the failure to comply with the requirement, the revocation is reasonably necessary to protect a matter protected by a provision of Part 3 for which the approval has effect.
- (3) In deciding whether or not to revoke an approval of the taking of an action by a person, the Minister may have 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.
- (4) The revocation takes effect on the day specified in the instrument. The Minister must not specify a day earlier than the day the instrument is made.
- (5) As soon as possible after making the instrument, the Minister must:
- (a) give a copy of it to the person who was the holder of the approval; and
 - (b) publish the instrument in accordance with the regulations.

145A Reinstating suspended or revoked approval

Application

- (1) This section applies if the Minister has, by written instrument:
- (a) suspended an approval under this Part of the taking of an action by a person; or

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- (b) revoked an approval under this Part of the taking of an action by a person.

Requesting reinstatement of approval

- (2) Within 2 months after receiving a copy of the instrument under this Division, the person who was the holder of the approval may request the Minister to reinstate the approval.

Deciding whether to reinstate approval

- (3) Within 20 business days of receiving the request, the Minister must decide whether or not to reinstate the approval.

Considerations for decision

- (4) Subdivision B of Division 1 applies to the decision whether or not to reinstate the approval in the same way as it applies to a decision whether or not to approve the taking of an action.

Extra time for decision

- (5) A day is not to be counted for the purposes of subsection (3) if:
 - (a) the Minister and the person who was the holder of the approval agree in writing that it should not be counted; or
 - (b) the Minister has requested the person to provide information under subsection (6) and the day is on or before the day on which the Minister receives the last of the information requested.

Requesting information for decision

- (6) If the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to reinstate the approval, the Minister may request the person who was the holder of the approval to provide specified information relevant to making the decision.

Reversal of decision to suspend or revoke approval

- (7) If the Minister decides to reinstate the approval, it and any conditions attached to it immediately before the suspension or revocation have effect on and after the day of the decision (subject to any future suspension or revocation under this Division).

Notice of decision about reversal

- (8) The Minister must:
- (a) give the person who was the holder of the approval written notice of the Minister's decision; and
 - (b) publish notice of the decision in accordance with the regulations.

Division 4—Transfer of approvals

145B Transfer with Minister's consent

Transfer by written agreement

- (1) A person (the **transferor**) who is the holder of an approval under this Part for the purposes of a provision of Part 3 may transfer the approval to another person (the **transferee**) by written agreement, subject to the Minister's consent.

Transfer ineffective until Minister consents

- (2) The transfer does not have effect for the purposes of this Act until the Minister consents in writing to the transfer. To avoid doubt, the Minister's consent to a transfer cannot take effect before the Minister gives the consent.

Effect of consent

- (3) If the Minister consents to the transfer:
 - (a) this Act (except Division 3) operates in relation to the transferor as if the Minister had revoked the approval when the Minister's consent took effect; and
 - (b) this Act operates in relation to the transferee as if, when the Minister's consent to the transfer took effect, he or she:
 - (i) had approved under this Part for the purposes of the provision of Part 3 the taking of the action by the transferee; and
 - (ii) had attached to the approval the conditions that were attached to the approval of the taking of the action by the transferor.

Considerations in deciding whether to consent

- (4) In deciding whether or not to consent to the transfer, the Minister may consider:

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- (a) whether the transferee would be a suitable person to be granted the approval, having regard to:
 - (i) the transferee's history in relation to environmental matters; and
 - (ii) if the transferee is a body corporate—the history of its executive officers in relation to environmental matters; and
 - (iii) if the transferee 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; and
- (b) whether the transferee can comply with the conditions attached to the approval.

Giving copies of consents to transferor and transferee

- (5) The Minister must give the transferor and the transferee a copy of the consent each.

Section 145C

Division 5—Extension of period of effect of approval

145C Application to Minister to extend period of effect of approval

- (1) Subject to subsection (2), the holder of an approval under this Part may apply, in writing, to the Minister to extend the period (the *approval period*) for which the approval has effect.
- (2) Subsection (1) does not apply if:
 - (a) the approval has been suspended or revoked under this Part and has not been reinstated; or
 - (b) the approval has otherwise ceased to have effect.
- (3) An application under subsection (1) must include the information (if any) prescribed by the regulations.

145D Minister must decide whether or not to extend approval period

- (1) Within 20 business days after receiving an application under subsection 145C(1), the Minister must decide, in writing, whether or not to extend the approval period.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 145E.
- (2) The Minister may decide to extend the approval period only if the Minister is satisfied that the extension will not result in a substantial increase in, or substantial change in the nature of, the adverse impacts (if any) the action:
 - (a) has or will have; or
 - (b) is likely to have;on the matter protected by each provision of Part 3 for which the approval has effect.
- (3) In considering the matter referred to in subsection (2), the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Division:

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- (a) matters relevant to any matter protected by a provision of Part 3 for which the approval has effect;
 - (b) economic and social matters.
- (4) As soon as possible after deciding whether or not to extend the approval period, the Minister must:
 - (a) give a copy of the decision to the holder of the approval; and
 - (b) if the decision is to extend the approval period—publish the decision in accordance with the regulations.

145E Minister may request further information for making decision

- (1) If the Minister believes on reasonable grounds that he or she does not have enough information to decide whether or not to extend the approval period, the Minister may request the holder of the approval to provide specified information relevant to making the decision.
- (2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 145D(1) 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.

Part 10—Strategic assessments

Division 1—Strategic assessments generally

Subdivision A—Assessment of actions to be taken in accordance with policy, plan or program

146 Minister may agree on strategic assessment

- (1) The Minister may agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3.
- (1A) The agreement may also provide for the assessment of other certain and likely impacts of actions under the policy, plan or program if:
 - (a) the actions are to be taken in a State or self-governing Territory; and
 - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the assessment deal with those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the actions; and
 - (c) the actions:
 - (i) are to be taken by any 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 or by a constitutional corporation; or
 - (ii) are actions whose regulation is appropriate and adapted to give effect to Australia's obligation under an agreement with one or more other countries.

Note: Paragraph (1A)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

- (1B) The agreement must provide for:
-

- (a) the preparation of terms of reference for a report on the impacts to which the agreement relates; or
 - (b) all of the following:
 - (i) the preparation of draft terms of reference for a report on the impacts to which the agreement relates;
 - (ii) the publication of the draft terms of reference for public comment for a period of at least 28 days that is specified by the Minister;
 - (iii) the finalisation of the terms of reference, to the Minister's satisfaction, taking into account the comments (if any) received on the draft terms of reference.
- (2) The agreement must provide for:
- (a) the preparation of a draft of a report on the impacts to which the agreement relates; and
 - (b) the publication of the draft report for public comment for a period of at least 28 days that is specified by the Minister; and
 - (c) the finalisation of the report, taking into account the comments (if any) received after publication of the draft report; and
 - (d) the provision of the report to the Minister; and
 - (e) the making of recommendations by the Minister to the person about the policy, plan or program (including recommendations for modification of the policy, plan or program); and
 - (f) the endorsement of the policy, plan or program by the Minister if he or she is satisfied that:
 - (i) the report adequately addresses the impacts to which the agreement relates; and
 - (ii) either the recommended modifications of the policy, plan or program (if any) have been made or any modifications having the same effect have been made; and
 - (g) any other matter prescribed by the regulations.
-

Section 146A

Note 1: If the impacts of actions under a policy, plan or program are assessed under an agreement under this Part, the Minister may decide on a less onerous approach for an assessment relating to an individual action under the policy, plan or program. See section 87.

Note 2: If the Minister endorses a policy, plan or program embodied in a 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 do not need approval for the purposes of a specified provision of Part 3.

- (3) If the agreement relates to actions to be taken in a State or self-governing Territory, the Minister must tell the appropriate Minister of the State or Territory:
- (a) that the agreement has been made; and
 - (b) what those actions are (in general terms).

Subdivision B—Approval of taking of actions in accordance with endorsed policy, plan or program

146A Definition

In this Subdivision and Subdivision C:

endorsed policy, plan or program means a policy, plan or program that has been endorsed by the Minister in accordance with an agreement as mentioned in paragraph 146(2)(f).

146B Minister may approve taking of actions in accordance with endorsed policy, plan or program

- (1) Subject to Subdivision C, the Minister may approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

Note: Subdivision C sets out matters that the Minister must take into account in deciding whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program.

- (2) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program must:

Section 146B

- (a) be in writing; and
 - (b) specify the action or class of actions that may be taken in accordance with the endorsed policy, plan or program; and
 - (c) specify each provision of Part 3 for which the approval has effect; and
 - (d) specify the period for which the approval has effect; and
 - (e) set out the conditions attached to the approval.
- (2A) An approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program may specify the person or persons who may take the action or an action in the class of actions.
- (3) The Minister must:
- (a) give a copy of the approval to the person responsible for the adoption or implementation of the endorsed policy, plan or program; and
 - (b) provide a copy of the approval to a person who asks for it (either at no charge or for a reasonable charge determined by the Minister).
- (4) However, the Minister must not provide under subsection (3) a copy of so much of the approval as:
- (a) is:
 - (i) an exempt document under section 47 of the *Freedom of Information Act 1982* (trade secrets); or
 - (ii) a conditionally exempt document under section 47G of that Act (business documents) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or
 - (b) the Minister believes it is in the national interest not to provide.

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

Section 146C

- (5) An approval given under subsection (1) is not a legislative instrument.

146C Inviting comments from other Ministers before deciding whether or not to approve taking of actions in accordance with endorsed policy, plan or program

- (1) Before the Minister (the *Environment Minister*) decides whether or not to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, he or she must:
- (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the action or class of actions of the decision the Environment Minister proposes to make; and
 - (b) invite each Minister informed to give the Environment Minister, within 10 business days, comments on the proposed decision.
- (2) A Minister who is invited to comment may make comments:
- (a) that relate to economic and social matters relating to the action or class of actions to which the proposed decision relates; and
 - (b) that may be considered by the Environment Minister consistently with the principles of ecologically sustainable development.

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

146D Effect of approval of taking of actions in accordance with endorsed policy, plan or program

- (1) If an approval under section 146B is in force, the following provisions have effect:
- (a) the Minister is taken to have decided under Division 2 of Part 7 that:
 - (i) each action specified in the approval under paragraph 146B(2)(b), or each action in a class of

Section 146D

actions specified in the approval under that paragraph, is a controlled action; and

- (ii) each provision of Part 3 specified in the approval under paragraph 146B(2)(c) is a controlling provision for each such controlled action;
- (b) the Minister is taken to have approved under Part 9, for the purposes of each controlling provision for each controlled action, the taking of the action by any of the following:
 - (i) the person or persons (if any) specified in the approval under subsection 146B(2A) as the person or persons who may take the action;
 - (ii) any other person who may take the action in accordance with the endorsed policy, plan or program.
- (2) Parts 7 and 8 and paragraph 170A(c) do not apply in relation to an action if an approval of the taking of the action, or an approval of the taking of a class of actions that includes the action, in accordance with an endorsed policy, plan or program is in force under section 146B.
- (3) Subject to subsection (4), section 134 and Divisions 2, 3 and 4 of Part 9 apply in relation to an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b).

Note: Section 134 deals with conditions of approvals, Division 2 of Part 9 deals with compliance with conditions, Division 3 of Part 9 deals with variation of conditions and suspension and revocation of approvals and Division 4 of Part 9 deals with transfer of approvals.

- (4) Subsection 145A(4) applies in relation to a decision whether or not to reinstate an approval of the taking of an action that is taken to have been given under Part 9 because of paragraph (1)(b), as if:
 - (a) the reference to Subdivision B of Division 1 of Part 9 were a reference to Subdivision C of this Division; and
 - (b) the reference to a decision whether or not to approve the taking of an action were a reference to a decision whether or not to approve, under this Subdivision, the taking of an action in accordance with an endorsed policy, plan or program.

Section 146E

**Subdivision C—Considerations for approving taking of actions
in accordance with endorsed policy, plan or program**

146E Minister must comply with this Subdivision

The Minister must comply with this Subdivision in deciding:

- (a) 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) in the case of a decision to approve the taking of such an action or class of actions, what conditions (if any) to attach to the approval.

Note: For the meaning of *endorsed policy, plan or program*, see section 146A.

146F General considerations

- (1) The Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:
 - (a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the approval;
 - (b) economic and social matters.
- (2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.

146G Approvals relating to declared World Heritage properties

If the approval relates to a declared World Heritage property, the Minister must not act inconsistently with:

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

146H Approvals relating to National Heritage places

If the approval relates to a National Heritage place, the Minister must not act inconsistently with:

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

146J Approvals relating to declared Ramsar wetlands

If the approval relates to a declared Ramsar wetland, the Minister must not act inconsistently with Australia's obligations under the Ramsar Convention.

146K Approvals relating to listed threatened species and ecological communities

- (1) This section applies if the approval relates to a listed threatened species or a listed threatened ecological community.
- (2) The Minister must not act inconsistently with:
 - (a) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (b) a recovery plan for the species or community or a threat abatement plan.
- (3) The Minister must have regard to any approved conservation advice for the species or community.

Section 146L

146L Approvals relating to listed migratory species

If the approval relates to a listed migratory species, the Minister must not act inconsistently with 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).

146M No approvals relating to nuclear actions

The Minister must not approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program if the action, or an action in the class of actions, consists of, or involves 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.

Division 2—Assessment of Commonwealth-managed fisheries

147 Simplified outline of this Division

The following is a simplified outline of this Division:

The Australian Fisheries Management Authority must make agreements under Division 1 for the assessment of actions in fisheries managed under the *Fisheries Management Act 1991*. An agreement must be made whenever it is proposed to make a management plan or a determination not to have a plan. An agreement must be made within 5 years of the commencement of this Act for all fisheries that did not have plans at that commencement.

The Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under Division 1 for the assessment of actions permitted by policies or plans for managing fishing in Torres Strait. All policies or plans must be covered by an agreement within 5 years after the commencement of this Act.

A further agreement for assessment must be made if the impact of the actions is significantly greater than assessed under an earlier agreement.

If the Minister endorses a policy or plan assessed under an agreement under Division 1, the Minister must make a declaration that actions under the policy or plan do not need approval under Part 9 for the purposes of section 23 or 24A (which protect the marine environment).

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148 Assessment before management plan is determined

Plans under the Fisheries Management Act 1991

- (1) Before the Australian Fisheries Management Authority determines a plan of management for a fishery under section 17 of the *Fisheries Management Act 1991*, the Authority must:
 - (a) make an agreement with the Minister under section 146 for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and
 - (b) consider any recommendations made by the Minister under the agreement.

Plans under the Torres Strait Fisheries Act 1984

- (2) Before the Minister administering the *Torres Strait Fisheries Act 1984* determines a plan of management for a fishery under section 15A of that Act, he or she must:
 - (a) make an agreement under section 146 with the Minister (the **Environment Minister**) administering this section for assessment of the impacts of actions under the plan on each matter protected by a provision of Part 3; and
 - (b) consider any recommendations made by the Environment Minister under the agreement.

149 Assessment before determination that no plan required

Before the Australian Fisheries Management Authority determines under subsection 17(1A) of the *Fisheries Management Act 1991* that a plan of management is not warranted for a fishery, the Authority must:

- (a) make an agreement with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions permitted under the Authority's policy for managing the fishery; and
- (b) consider any recommendations made by the Minister under the agreement.

150 Assessment of all fisheries without plans must be started within 5 years

Fisheries managed under the Fisheries Management Act 1991

- (1) This section applies to fisheries (as defined in the *Fisheries Management Act 1991*):
- (a) that are managed under that Act (whether as a result of arrangements under section 71 or 72 of that Act or not); and
 - (b) for which there were not plans of management in force under that Act when this Act commenced.

Two-thirds of fisheries to be covered by agreements in 3 years

- (2) Before the day that is the third anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing at least $\frac{2}{3}$ of the fisheries.

All fisheries to be covered by agreements in 5 years

- (3) Before the day that is the fifth anniversary of this Act commencing, the Australian Fisheries Management Authority must make agreements with the Minister under section 146 for assessment of the impacts of actions on each matter protected by a provision of Part 3, being actions that are permitted under the Authority's policies for managing the fisheries.

Agreement not needed if fishery already subject to agreement

- (4) However, subsection (3) does not require another agreement to be made in relation to a fishery if an agreement relating to the fishery has been made, before the day mentioned in that subsection, by the Authority and the Minister under section 146 because of subsection 148(1) or section 149.

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151 Assessment of all Torres Strait fisheries to be started within 5 years

Fisheries managed under the Torres Strait Fisheries Act 1984

- (1) This section applies to actions that:
- (a) are involved in fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act); and
 - (b) were not covered by a plan of management in force under section 15A of that Act when this Act commenced.

Policies for all actions to be covered by agreements in 5 years

- (2) Before the day that is the fifth anniversary of this Act commencing, the Minister administering the *Torres Strait Fisheries Act 1984* must make agreements under section 146 with the Minister administering this section for assessment of the impacts of the actions on each matter protected by a provision of Part 3, being actions that are permitted by policies under that Act.

Agreement not needed if fishery already subject to agreement

- (3) However, subsection (2) does not require another agreement to be made in relation to actions if an agreement covering them has been made under section 146, before the day mentioned in that subsection, by the Ministers mentioned in that subsection because of subsection 148(2).

152 Further assessment if impacts greater than previously assessed

Application

- (1) This section applies if the Minister (the *Environment Minister*) and the Minister administering the *Fisheries Management Act 1991* agree that the impacts that actions:
- (a) included in a fishery managed under that Act; or

(b) permitted under a policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act);
have, will have or are likely to have on a matter protected by a provision of Part 3 are significantly greater than the impacts identified in the most recent report provided to the Environment Minister under an agreement made under section 146 relating to the fishery, policy or plan.

Further assessment for management arrangements under the Fisheries Management Act 1991

- (2) The Australian Fisheries Management Authority must make another agreement with the Minister under section 146 in relation to the Authority's policy for managing the fishery.

Further assessment for policy or plan for Torres Strait fishing

- (3) The Minister administering the *Torres Strait Fisheries Act 1984* must make another agreement under section 146 in relation to the policy or plan for managing fishing (as defined in the *Torres Strait Fisheries Act 1984*) in an area of Australian jurisdiction (as defined in that Act).

153 Minister must make declaration if he or she endorses plan or policy

- (1) This section applies if:
- (a) the Minister makes an agreement under section 146 as required by this Division and endorses under the agreement:
 - (i) a plan of management under the *Fisheries Management Act 1991* for a fishery; or
 - (ii) policies of the Australian Fisheries Management Authority for managing a fishery for which there is not a plan of management under the *Fisheries Management Act 1991*; or
 - (iii) a plan of management under the *Torres Strait Fisheries Act 1984* for a fishery; or

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- (iv) policies for managing fishing under the *Torres Strait Fisheries Act 1984*; and
 - (b) the Minister accredits, under subsection 33(3) of this Act, as an accredited arrangement a management plan or regime consisting of the endorsed plan or policies.
- (2) The Minister must make a declaration under section 33 that actions approved in accordance with the accredited arrangement do not require an approval under Part 9 for the purposes of subsection 23(1), (2) or (3) or subsection 24A(1), (2), (3), (4), (5) or (6).

Note: The declaration and accreditation will allow actions that would otherwise be prohibited by sections 23 and 24A to be taken without approval if they are taken in accordance with the accredited arrangement. See section 32.

154 This Division does not limit Division 1

This Division does not limit Division 1.

Part 11—Miscellaneous rules about assessments and approvals

Division 1—Rules about timing

155 This Chapter ceases to apply to lapsed proposals

- (1) If:
- (a) a person who proposes to take a controlled action or is the designated proponent of an action is required or requested under this Chapter to do something; and
 - (b) the person does not do the thing within a period that the Minister believes is a reasonable period;
- the Minister may give the person a written notice inviting the person to satisfy the Minister within a specified reasonable period that assessment of the action should continue or that the Minister should make a decision about approving the action.
- Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how documents may be served and when they are taken to be served.
- (2) If, by the end of the specified period, the person fails to satisfy the Minister that assessment of the action should continue or that the Minister should make a decision about approving the action, the Minister may declare in writing that this Chapter no longer applies to the action.
- (3) This Chapter (apart from this section) ceases to apply in relation to the action on the date specified in the declaration. The Minister must not specify a date earlier than the date of making of the declaration.
- (4) The Minister must:
- (a) give a copy of the declaration to the person and to the Secretary; and
 - (b) publish the declaration in accordance with the regulations.

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156 General rules about time limits

- (1) If this Chapter specifies a time limit in business days in relation to a controlled action (or an action that the Minister believes may be or is a controlled action), the limit is to be worked out by reference to what is a business day in the place where the action is to be taken.
- (2) A day is not to be counted as a business day for the purposes of subsection (1) if it is not a business day in all the places in which the action is to be taken.
- (3) Failure to comply with a time limit set in this Chapter does not affect the validity of:
 - (a) a decision under this Chapter; or
 - (b) an assessment or approval under this Chapter.

Note: The Minister must make a statement to Parliament about some failures to comply with time limits. See section 518.

Division 1A—Variation of proposals to take actions

156A Request to vary proposal to take an action

- (1) If:
- (a) a proposal (the *original proposal*) by a person to take an action has been referred to the Minister under Division 1 of Part 7; and
 - (b) after the referral is made, the person wishes to change the original proposal;
- the person may, subject to subsection (2), request the Minister to accept a variation (a *varied proposal*) of the original proposal.
- (2) Subsection (1) does not apply if:
- (a) the Minister has made a decision under section 74A to not accept the referral of the original proposal; or
 - (b) the Minister has made a decision under section 75 that the proposed action is not a controlled action; or
 - (c) a particular manner for taking the proposed action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action; or
 - (d) the Minister has made a decision under section 133 approving or refusing to approve the taking of the proposed action; or
 - (e) the referral of the original proposal has been withdrawn under section 170C.
- (3) A request under subsection (1) must:
- (a) be made in a way prescribed by the regulations; and
 - (b) include the information prescribed by the regulations.
- (4) If a request is made under subsection (1), any provisions of this Chapter that would, apart from this subsection, have applied in relation to the original proposal cease to apply to that proposal.

Note: Provisions that have ceased to apply in relation to the original proposal under subsection (4) will start to apply to that proposal, or to

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the varied proposal, after the Minister has decided whether or not to accept the varied proposal. See section 156D.

156B Minister must decide whether or not to accept a varied proposal

- (1) Within 20 business days after receiving a request under subsection 156A(1) to accept a varied proposal to take an action, the Minister must decide whether or not to accept the varied proposal.

Note: The Minister may request further information for the purpose of making a decision under this subsection. See section 156C.
- (2) The Minister must not decide to accept the varied proposal unless the Minister is satisfied that the character of the varied proposal is substantially the same as the character of the original proposal. This subsection does not limit the matters the Minister may consider in deciding whether or not to accept the varied proposal.
- (3) In considering, for the purposes of subsection (2), whether or not the character of the varied proposal is substantially the same as the character of the original proposal, the Minister must have regard to the change (if any) in:
 - (a) the nature of the activities proposed to be carried out in taking the action; and
 - (b) the nature and extent of the impacts (if any) the action:
 - (i) has or will have; or
 - (ii) is likely to have;on the matter protected by each provision of Part 3.

156C Minister may request further information in relation to a varied proposal

- (1) If the Minister believes on reasonable grounds that a request under subsection 156A(1) to accept a varied proposal to take an action does not include enough information for the Minister to decide whether or not to accept the varied proposal, the Minister may

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request the person proposing to take the action to provide specified information relevant to making the decision.

- (2) If the Minister has requested more information under subsection (1), a day is not to be counted as a business day for the purposes of subsection 156B(1) 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.

156D Effect of Minister's decision to accept or not accept a varied proposal

- (1) If the Minister decides to accept a varied proposal to take an action:
- (a) any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to the varied proposal; and
 - (b) for the purpose of the application of those provisions, anything done in relation to the original proposal is taken to have been done in relation to the varied proposal.
- (2) If the Minister decides not to accept a varied proposal to take an action, any provisions of this Chapter that, because of subsection 156A(4), have ceased to apply in relation to the original proposal start to apply in relation to that proposal.
- (3) For the purpose of the application of the provisions of this Chapter in relation to the varied proposal under subsection (1), or in relation to the original proposal under subsection (2), a day is not to be counted as a business day if it is:
- (a) on or after the day the Minister received the request under subsection 156A(1) to accept the varied proposal; and
 - (b) on or before the day the Minister made the decision under subsection 156B(1).

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156E Notice of decision

- (1) Within 10 business days after deciding under subsection 156B(1) whether or not to accept a varied proposal to take an action, the Minister must give written notice of the decision to:
 - (a) the person proposing to take the action; and
 - (b) the designated proponent of the action (if the designated proponent of the action is not the person proposing to take the action).
- (2) If:
 - (a) the request to accept the varied proposal related to an action that is to be taken in a State or self-governing Territory; and
 - (b) a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance); and
 - (c) the Minister decided to accept the varied proposal;the Minister must also, within the period referred to in subsection (1), give written notice of the decision to the appropriate Minister of the State or Territory.
- (3) If the Minister decided to accept the varied proposal, the Minister must, within the period referred to in subsection (1), publish the request to accept the varied proposal and notice of the decision in accordance with the regulations.

Division 1B—Change of person proposing to take action

156F Change of person proposing to take action

Notice of change of person proposing to take action

- (1) At any time:
- (a) after a proposal by a person to take an action has been referred to the Minister under Division 1 of Part 7; and
 - (b) before the Minister has approved, or refused to approve, the taking of the action under section 133;
- the person (the **first person**) proposing to take the action and another person (the **second person**) may notify the Minister, in writing, that:
- (c) the first person no longer proposes to take the action; and
 - (d) the second person proposes to take the action instead.

Note: A person who is the holder of an approval under Part 9 may transfer the approval to another person under section 145B.

When notice cannot be given

- (2) Subsection (1) does not apply if:
- (a) the Minister has made a decision under section 74A to not accept the referral of the proposal to take the action; or
 - (b) the Minister has made a decision under section 75 that the action is not a controlled action; or
 - (c) a particular manner for taking the action is identified under subsection 77A(1) in the notice given under section 77 in relation to the action.

Requirements for notice

- (3) A notice must:
- (a) include the information (if any) prescribed by the regulations; and

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- (b) be accompanied by the fee (if any) prescribed by the regulations.

Effect of notice

- (4) If a notice is given to the Minister under subsection (1):
 - (a) any provisions of this Chapter that, apart from this paragraph, would have applied to the first person in relation to the action cease to apply to that person and start to apply to the second person; and
 - (b) for the purposes of the application of those provisions:
 - (i) the second person is taken to be named in the referral of the proposal to take the action as the person proposing to take the action; and
 - (ii) the second person is taken to have done anything the first person did in relation to the action; and
 - (iii) anything done in relation to the first person in relation to the action is taken to have been done in relation to the second person.

Publication of notice

- (5) Within 10 business days after receiving a notice under subsection (1), the Minister must publish a copy of the notice in accordance with the regulations.