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*offence*) is an *aggravated offence* if the member to which the underlying offence relates is:

- (a) a member of a listed threatened species; and
- (b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(g) and (h), and on the day this section commenced, these species were listed threatened species.

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) Strict liability applies to the physical elements of circumstance, that the member is:
  - (a) a member of a listed threatened species; and
  - (b) a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

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

**197 Certain actions are not offences**

Sections 196, 196A, 196B, 196C, 196D, 196E and 207B do not apply to:

- (a) an action authorised by a permit that was issued under section 201 and is in force; or
- (b) an action provided for by, and done in accordance with, a recovery plan in force under Division 5; or
- (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5) or (6) or 18A(1) or (2); or
- (d) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and
  - (ii) is taken in accordance with a management arrangement or authorisation process that is an accredited

- management arrangement or an accredited authorisation process for the purposes of the declaration; or
- (da) an action that:
- (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 18(1), (2), (3), (4), (5), or (6) or 18A(1) or (2); and
  - (ii) is taken in accordance with the bioregional plan to which the declaration relates; or
- (db) in the case of sections 196B, 196C, 196D and 196E—an action that is trading, keeping or moving a member of a listed threatened species or a listed ecological community, if:
- (i) when the member of the species or community was taken, the species or community was not a listed threatened species or a listed threatened ecological community, as the case requires; and
  - (ii) the trading, keeping or moving of the member of the species or community occurs during the period of 6 months that started when the species or community became a listed threatened species or a listed threatened ecological community, as the case requires; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed threatened species or listed threatened ecological community; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

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- (j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A; or
- (l) an action, to the extent that it is covered by subsection 517A(7); or
- (m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:
  - (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
  - (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
  - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
  - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:
  - (i) obtained from an area that is not a Commonwealth area; or
  - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p).

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

### **198 Operation of sections 18 and 18A not affected**

To avoid doubt, sections 196, 196A, 196B, 196C, 196D, 196E, 196F and 197 do not affect the operation of section 18 or 18A.

### **199 Failing to notify taking of listed threatened species or listed ecological community**

- (1) This section applies to an action taken by a person if all of the following conditions are met:
- (a) the person's action either:
    - (i) results in the death or injury of a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area; or
    - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed threatened species (except a conservation dependent species), or a member of a listed threatened ecological community, that is in or on a Commonwealth area;
  - (b) the person's action does not constitute an offence against section 196, 196A, 196B, 196C, 196D or 196E, otherwise than because of paragraph 197(db);
  - (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 197 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 196, 196A, 196B, 196C, 196D or 196E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 204 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
- (a) that the action was taken; and

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- (b) of other particulars (if any) about the action that are prescribed by the regulations.
- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply if:
  - (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
  - (b) the action is in a class of actions:
    - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
    - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.
- (5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
  - (a) fails to do an act; and
  - (b) the failing to do the act results in a contravention of subsection (2).

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

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

## **200 Application for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 201.
- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:

- (a) details of the application; and
- (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

## **201 Minister may issue permits**

- (1) Subject to subsections (3) and (3A), the Minister may, on application by a person under section 200, issue a permit to the person.
- (2) A permit authorises its holder to take an action specified in the permit without breaching section 196, 196A, 196B, 196C, 196D, 196E or 207B.
- (3) The Minister must not issue the permit unless satisfied that:
  - (a) the specified action will contribute significantly to the conservation of the listed threatened species or listed threatened ecological community concerned; or
  - (b) the impact of the specified action on a member of the listed threatened species or listed threatened ecological community concerned is incidental to, and not the purpose of, the taking of the action and:
    - (i) the taking of the action will not adversely affect the survival or recovery in nature of that species or ecological community; and
    - (ii) the taking of the action is not inconsistent with a recovery plan that is in force for that species or ecological community; and
    - (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species or ecological community; or

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- (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species or listed threatened ecological community concerned; or
  - (d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed threatened species or listed threatened ecological community concerned.
- (3A) The Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the listed threatened species or listed threatened ecological community concerned.
- (4) In this Act:
  - indigenous tradition*** means the body of traditions, observances, customs and beliefs of indigenous persons generally or of a particular group of indigenous persons.
- (5) In making a decision on the application, the Minister must consider the comments (if any) received:
  - (a) in response to the invitation under subsection 200(3) for anyone to give the Minister comments on whether the permit should be issued; and
  - (b) within the period specified in the invitation.

**202 Conditions of permits**

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
  - (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.
- (3) Without limiting subsections (1) and (2), conditions of a permit may include conditions stating the period within which the action specified in the permit may be taken.

### **203 Contravening conditions of a permit**

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

### **204 Authorities under permits**

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and
  - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.



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**205 Transfer of permits**

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

**206 Suspension or cancellation of permits**

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

**206A Review of decisions about permits**

- (1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:
  - (a) to issue or refuse a permit; or
  - (b) to specify, vary or revoke a condition of a permit; or
  - (c) to impose a further condition of a permit; or
  - (d) to transfer or refuse to transfer a permit; or
  - (e) to suspend or cancel a permit.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**207 Fees**

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

## **Subdivision BA—Protecting critical habitat**

### **207A Register of critical habitat**

- (1) The Minister must cause to be kept in accordance with the regulations (if any) a register in which the Minister may list habitat identified by the Minister in accordance with the regulations as being critical to the survival of a listed threatened species or listed threatened ecological community.
- (1A) In considering whether to list habitat, the Minister must take into account the potential conservation benefit of listing the habitat.
- (1B) Subsection (1) does not limit the matters:
  - (a) that the Minister may take into account in considering whether to list habitat; or
  - (b) that the regulations may require or permit the Minister to take into account in considering whether to list habitat.
- (2) The regulations must require the Minister to consider scientific advice in identifying the habitat.
- (3) The register must be made available for public inspection in accordance with the regulations (if any).
- (3A) Particular material included in the register does not have to be made available for public inspection if the Minister considers that the interests of relevant landholders could be impeded or compromised by:
  - (a) the disclosure of the material; or
  - (b) without limiting paragraph (a)—the presence or actions of persons if the material were disclosed.
- (4) Habitat listed in the register in relation to a species or ecological community is **critical habitat** for the species or ecological community.

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**207B Offence of knowingly damaging critical habitat**

- (1) A person commits an offence if:
- (a) the person takes an action; and
  - (b) the person knows that the action significantly damages or will significantly damage critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
  - (c) the habitat is in or on a Commonwealth area.

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

Note 2: This section does not apply in the circumstances described in section 197. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.
- (4) To avoid doubt, this section does not affect the operation of Division 2, 3 or 4.

**207C Sale or lease of Commonwealth land containing critical habitat**

- (1) This section applies to a Commonwealth agency that executes a contract for the sale or lease to someone else of Commonwealth land that includes critical habitat for a listed threatened species or listed threatened ecological community. It does not matter whether the Commonwealth agency executes the contract for the Commonwealth or on its own behalf.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the critical habitat.

- (3) The Commonwealth agency must take reasonable steps to ensure as far as practicable that the covenant binds the successors in title of the buyer or lessee (as appropriate).

## **Subdivision C—Miscellaneous**

### **208A Minister may accredit plans, regimes or policies**

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
- (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
  - (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
  - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
    - (i) made by a State or self-governing Territory; and
    - (ii) in force under a law of the State or self-governing Territory; or
  - (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
  - (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;
- if the Minister is satisfied that:
- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed threatened species (other than conservation dependent species) are not killed or injured as a result of the fishing; and

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- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

- (2) An instrument under subsection (1) is not a legislative instrument.

**208 Regulations**

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed threatened species or listed threatened ecological communities killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed threatened species or listed threatened ecological communities may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed threatened species or listed threatened ecological communities; and
- (d) provide for the protection and conservation of listed threatened species or listed threatened ecological communities; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

## **Division 2—Migratory species**

### **Subdivision A—Listing**

#### **209 Listed migratory species**

- (1) The Minister must:
  - (a) establish a list of migratory species for the purposes of this Act; and
  - (b) amend the list, as necessary, so that it includes all species required to be included in the list under subsection (3).
- (2) The Minister must establish the list within 30 days after the commencement of this Act.
- (3) The list must include:
  - (a) all migratory species that are:
    - (i) native species; and
    - (ii) from time to time included in the appendices to the Bonn Convention; and
  - (b) all migratory species from time to time included in annexes established under JAMBA and CAMBA; and
  - (c) all native species from time to time identified in a list established under, or an instrument made under, an international agreement approved by the Minister under subsection (4).

The list must not include any other species.
- (4) The Minister may, by legislative instrument, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of migratory species.
- (6) The Minister may correct an inaccuracy or update the name of a migratory species.

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- (7) The list of migratory species made under subsection (1), and any amendments to the list made under paragraph (1)(b) or subsection (6), are legislative instruments, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the list or any amendments.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the list or any amendments. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

- (8) In this Act:

*migratory species* has the meaning given by Article I of the Bonn Convention.

**Subdivision B—Permit system**

**210 Subdivision does not apply to members of listed threatened species or cetaceans**

This Subdivision does not apply to a member of a listed migratory species that is a member of a listed threatened species or a cetacean.

**211 Killing or injuring member of listed migratory species**

- (1) A person commits an offence if:
- (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a species; and
  - (c) the member is a member of a listed migratory species; and
  - (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

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Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(c) and (d).

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

**211A Strict liability for killing or injuring member of listed migratory species**

- (1) A person commits an offence if:
- (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a migratory species; and
  - (c) the member is a member of a listed migratory species; and
  - (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

(2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

**211B Taking etc. member of listed migratory species**

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps or moves a member of a species; and
  - (b) the member is a member of a listed migratory species; and
  - (c) the member is in or on a Commonwealth area.

Penalty:



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- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

**211C Strict liability for taking etc. member of listed migratory species**

- (1) A person commits an offence if:
  - (a) the person takes, trades, keeps or moves a member of a migratory species; and
  - (b) the member is a member of a listed migratory species; and
  - (c) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

**211D Trading etc. member of listed migratory species taken in Commonwealth area**

- (1) A person commits an offence if:
    - (a) the person trades, keeps or moves a member of a species; and
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- (b) the member is a member of a listed migratory species; and
- (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

**211E Strict liability for trading etc. member of listed migratory species taken in Commonwealth area**

- (1) A person commits an offence if:

- (a) the person trades, keeps or moves a member of a migratory species; and
- (b) the member is a member of a listed migratory species; and
- (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 211F.

Note 2: This section does not apply in the circumstances described in section 212. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

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**211F Aggravated offence—member of listed migratory species that is a dugong or turtle**

- (1) For the purposes of this Subdivision, an offence against section 211, 211A, 211B, 211C, 211D or 211E (the *underlying offence*) is an *aggravated offence* if the member to which the underlying offence relates is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are members of the species mentioned in paragraphs 248(2)(f), (g) and (h), and on the day this section commenced, these species were listed migratory species.

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.
- (3) Strict liability applies to the physical element of circumstance, that the member is a member of a species mentioned in paragraph 248(2)(f), (g) or (h).

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

**212 Certain actions are not offences**

- (1) Sections 211, 211A, 211B, 211C, 211D and 211E do not apply to:
- (a) an action authorised by a permit that was issued under section 216 and is in force; or
  - (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made or adopted under Division 5 and in force; or
  - (c) an action that is covered by an approval in operation under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); or
  - (d) an action that:
    - (i) is one of a class of actions declared by the Minister under section 33 not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and
    - (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited

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management arrangement or an accredited authorisation process for the purposes of the declaration; or

(da) an action that:

- (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require an approval under Part 9 for the purposes of subsection 20(1) or 20A(1) or (2); and
- (ii) is taken in accordance with the bioregional plan to which the declaration relates; or

(db) in the case of sections 211B, 211C, 211D and 211E—an action that is trading, keeping or moving a member of a listed migratory species, if:

- (i) when the member of the species was taken, the species was not a listed migratory species; and
- (ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed migratory species; or

(e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by a member of a listed migratory species; or

(f) an action that is reasonably necessary to prevent a risk to human health; or

(g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or

(h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

(i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or

(j) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or

(k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A; or

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- (l) an action, to the extent that it is covered by subsection 517A(7); or
- (m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:
  - (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
  - (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
  - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
  - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:
  - (i) obtained from an area that is not a Commonwealth area; or
  - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (m), (n), (o) or (p); or
- (r) an action that is taken in the course of recreational fishing and the action:
  - (i) consists of, or involves, taking, trading, keeping or moving; or
  - (ii) results in the death or injury of;  
a shortfin mako shark, a longfin mako shark or a porbeagle shark.

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

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- (2) For the purposes of paragraph (1)(r), **recreational fishing** includes (but is not limited to) the following types of fishing:
- (a) fishing from a charter boat (within the meaning of the *Fisheries Management Act 1991*), including fishing by the person in charge of the boat, the crew of the boat or any other person on the boat;
  - (b) fishing in a fishing competition (whether or not in a professional capacity);
  - (c) fishing that is undertaken primarily for:
    - (i) inclusion on a website, or in a film, video, television program or radio program; or
    - (ii) description or representation in a magazine, newspaper, book or other such document.

**213 Operation of sections 20 and 20A not affected**

To avoid doubt, sections 211, 211A, 211B, 211C, 211D, 211E, 211F and 212 do not affect the operation of section 20 or 20A.

**214 Failing to notify taking etc. of listed migratory species**

- (1) This section applies to an action taken by a person if all of the following conditions are met:
- (a) the person's action either:
    - (i) results in the death or injury of a member of a listed migratory species that is in or on a Commonwealth area; or
    - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed migratory species that is in or on a Commonwealth area;
  - (b) the person's action does not constitute an offence against section 211, 211A, 211B, 211C, 211D or 211E, otherwise than because of paragraph 212(db) or (r);
  - (c) the person's action is not an action that the person was authorised by a permit to take.

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Note 1: Section 212 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 211, 211A, 211B, 211C, 211D or 211E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 219 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

- (a) that the action was taken; and
- (b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

- (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
- (b) the action is in a class of actions:
  - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
  - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:

- (a) fails to do an act; and
- (b) the failing to do the act results in a contravention of subsection (2).

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

**215 Application for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 216.
- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:
  - (a) details of the application; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

**216 Minister may issue permits**

- (1) Subject to subsection (3), the Minister may, on application by a person under section 215, issue a permit to the person.
- (2) A permit authorises its holder to take an action specified in the permit without breaching section 211, 211A, 211B, 211C, 211D or 211E.
- (3) The Minister must not issue the permit unless satisfied that:
  - (a) the specified action will contribute significantly to the conservation of the listed migratory species concerned or other listed migratory species; or
  - (b) the impact of the specified action on a member of the listed migratory species concerned is incidental to, and not the purpose of, the taking of the action and:



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- (i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and
    - (ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and
    - (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or
  - (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed migratory species concerned, or a population of that species; or
  - (d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed migratory species concerned.
- (4) In making a decision on the application, the Minister must consider the comments (if any) received:
- (a) in response to the invitation under subsection 215(3) for anyone to give the Minister comments on whether the permit should be issued; and
  - (b) within the period specified in the invitation.

**217 Conditions of permits**

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
  - (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.

**218 Contravening conditions of a permit**

The holder of a permit commits an offence punishable on conviction by a fine not exceeding 300 penalty units if:

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- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

**219 Authorities under permits**

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and
  - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

**220 Transfer of permits**

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

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**221 Suspension or cancellation of permits**

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

**221A Review of decisions about permits**

- (1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:
  - (a) to issue or refuse a permit; or
  - (b) to specify, vary or revoke a condition of a permit; or
  - (c) to impose a further condition of a permit; or
  - (d) to transfer or refuse to transfer a permit; or
  - (e) to suspend or cancel a permit.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**222 Fees**

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

**Subdivision C—Miscellaneous**

**222A Minister may accredit plans, regimes or policies**

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
  - (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or

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- (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
- (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
  - (i) made by a State or self-governing Territory; and
  - (ii) in force under a law of the State or self-governing Territory; or
- (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
- (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and
- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

- (2) An instrument under subsection (1) is not a legislative instrument.

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**223 Regulations**

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed migratory species killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed migratory species may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed migratory species; and
- (d) provide for the protection and conservation of listed migratory species; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

**Division 3—Whales and other cetaceans****Subdivision A—Application of Division****224 Application of Division**

- (1) This Division extends to acts, omissions, matters and things outside Australia (whether in a foreign country or not), except so far as the contrary intention appears.
- (2) A provision of this Division that has effect in relation to a place outside the outer limits of the Australian Whale Sanctuary applies only in relation to:
  - (a) Australian citizens; and
  - (b) persons who:
    - (i) are not Australian citizens; and
    - (ii) hold permanent visas under the *Migration Act 1958*; and
    - (iii) are domiciled in Australia or an external Territory; and
  - (c) corporations incorporated in Australia or an external Territory; and
  - (d) the Commonwealth; and
  - (e) Commonwealth agencies; and
  - (f) Australian aircraft; and
  - (g) Australian vessels; and
  - (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).
- (3) This Division applies to a vessel as if it were an Australian vessel if:
  - (a) the vessel is a boat within the meaning of the *Fisheries Management Act 1991*; and
  - (b) a declaration, under subsection 4(2) of that Act, that the vessel is taken to be an Australian boat is in force.

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**Subdivision B—Australian Whale Sanctuary and important cetacean habitat areas**

**225 Australian Whale Sanctuary**

- (1) The Australian Whale Sanctuary is established in order to give formal recognition of the high level of protection and management afforded to cetaceans in Commonwealth marine areas and prescribed waters.
- (2) The *Australian Whale Sanctuary* comprises:
  - (a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:
    - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
    - (ii) waters within the limits of a State or the Northern Territory; and
  - (b) any waters over the continental shelf, except:
    - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
    - (ii) waters within the limits of a State or the Northern Territory; and
    - (iii) waters covered by paragraph (a); and
  - (c) so much of the coastal waters of a State or the Northern Territory as are prescribed waters.

Note: This subsection is subject to subsection 5(3).

**226 Prescribed waters**

- (1) The regulations may declare the whole, or a specified part, of the coastal waters of a State or the Northern Territory to be prescribed waters.

- (2) Before the Governor-General makes a regulation under subsection (1), the Minister must obtain the agreement of the relevant Minister of the State or the Northern Territory.

## **227 Coastal waters**

- (1) Section 15B of the *Acts Interpretation Act 1901* does not apply in relation to this Division.
- (2) The ***coastal waters*** of a State or the Northern Territory are:
- (a) the part or parts of the territorial sea that are:
    - (i) within 3 nautical miles of the baseline of the territorial sea; and
    - (ii) adjacent to that State or Territory; and
  - (b) any marine or tidal waters that are inside that baseline and are adjacent to that State or Territory but are not within the limits of a State or that Territory.
- Note: Generally the baseline is the lowest astronomical tide along the coast but it also includes lines enclosing bays and indentations that are not bays and straight baselines that depart from the coast.
- (3) Any part of the territorial sea that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (2), taken to be adjacent to New South Wales.

## **228 Minister may make declaration for coastal waters**

- (1) If the Minister is satisfied that a law of a State or the Northern Territory adequately protects cetaceans in the coastal waters, or a part of the coastal waters, of the State or Territory, the Minister may make a declaration accordingly, whether or not those coastal waters or that part are prescribed waters.
- (2) A declaration must be in writing.



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**228A Important cetacean habitat areas**

- (1) The Minister may, by legislative instrument, declare a specified area in the Australian Whale Sanctuary to be an important cetacean habitat area.
- (2) The regulations may specify criteria to be applied by the Minister in determining whether to declare an area to be an important cetacean habitat area. If regulations are made for the purposes of this section, the Minister may declare an area to be an important cetacean habitat area only if he or she is satisfied that the area meets the criteria prescribed by the regulations.

**Subdivision C—Offences**

**229 Killing or injuring a cetacean**

- (1) A person commits an offence if:
  - (a) the person takes an action; and
  - (b) the action results in the death or injury of a cetacean; and
  - (c) the cetacean is in:
    - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

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- (2) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

**229A Strict liability for killing or injuring a cetacean**

- (1) A person commits an offence if:
- (a) the person takes an action; and
  - (b) the action results in the death or injury of a cetacean; and
  - (c) the cetacean is in:
    - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**229B Intentionally taking etc. a cetacean**

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps, moves or interferes with a cetacean; and
  - (b) the cetacean is in:
    - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the

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Northern Territory for which a declaration under section 228 is in force); or

- (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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

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

- (3) The offence is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

- (4) In this Act:

**interfere** with a cetacean includes harass, chase, herd, tag, mark or brand the cetacean.

**trade** a cetacean:

- (a) includes:

- (i) buy the cetacean, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
  - (ii) sell the cetacean, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or
  - (iii) cause or allow any of the acts referred to in subparagraph (i) or (ii) to be done; but
- (b) does not include export the cetacean from Australia or an external Territory or import it into Australia or an external Territory.

Note: For provisions relating to export or import, see Part 13A.

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**229C Strict liability for taking etc. a cetacean**

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps, moves or interferes with a cetacean; and
  - (b) the cetacean is in:
    - (i) the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force); or
    - (ii) waters beyond the outer limits of the Australian Whale Sanctuary.

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

Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a) and (b).

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

- (3) The offence is punishable on conviction by a fine not exceeding 500 penalty units.

**229D Treating cetaceans***Treating unlawfully killed or taken cetaceans*

- (1) A person commits an offence if:
- (a) the person treats a cetacean; and
  - (b) the cetacean has been:
    - (i) killed in contravention of section 229 or 229A; or
    - (ii) taken in contravention of section 229B or 229C.

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

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Note 2: This section does not apply in the circumstances described in section 231. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) An offence against subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

*Treating unlawfully imported cetaceans*

- (2A) A person commits an offence if:
- (a) the person treats a cetacean; and
  - (b) the cetacean has been unlawfully imported.

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.

- (2B) An offence against subsection (2A) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

- (3) In this Act:

***treat*** a cetacean means divide or cut up, or extract any product from, the cetacean.

**230 Possession of cetaceans**

*Possession of unlawfully killed cetaceans*

- (1) A person commits an offence if:
- (a) the person has in his or her possession:
    - (i) a cetacean; or
    - (ii) a part of a cetacean; or
    - (iii) a product derived from a cetacean; and
  - (b) the cetacean has been:
    - (i) killed in contravention of section 229 or 229A; or

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(ii) taken in contravention of section 229B or 229C.

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

- (2) An offence against subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.

*Possession of unlawfully imported cetaceans*

- (3) A person commits an offence if:
- (a) the person has in his or her possession:
    - (i) a cetacean; or
    - (ii) a part of a cetacean; or
    - (iii) a product derived from a cetacean; and
  - (b) the cetacean, part or product, as the case may be, has been unlawfully imported.

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.

- (4) An offence against subsection (3) is punishable on conviction by imprisonment for not more than 5 years or a fine not exceeding 1,000 penalty units, or both.

## **231 Certain actions are not offences**

Sections 229, 229A, 229B, 229C, 229D and 230 do not apply to:

- (a) an action authorised by a permit that was issued under section 238 and is in force; or
- (aa) an action that is whale watching carried out in accordance with regulations referred to in paragraph 238(3)(c), but only if:
  - (i) the whale watching is not carried out for a commercial purpose; or

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- (ii) the whale watching is carried out in an area that is not an important cetacean habitat area; or
- (b) an action provided for by, and taken in accordance with, a recovery plan, or a wildlife conservation plan, made or adopted under Division 5 and in force; or
- (ba) an action that is covered by an approval in operation 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); or
- (bb) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require 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); and
  - (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or
- (bc) an action that:
  - (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require 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); and
  - (ii) is taken in accordance with the bioregional plan to which the declaration relates; or
- (c) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering of a cetacean; or
- (d) an action that is reasonably necessary to prevent a risk to human health; or
- (e) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (f) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or

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- (g) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (ga) an action that is taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245; or
- (i) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (j) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (k) an action that consists of the transit of a cetacean through a Commonwealth area in circumstances where the cetacean was:
  - (i) obtained from an area that is not a Commonwealth area; or
  - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (ba), (bb), (bc), (ga), (h), (i) or (j).

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

**232 Action to be taken on killing etc. cetaceans**

- (1) This section applies to an action taken by a person if all of the following conditions are met:
  - (a) the person's action:
    - (i) results in the injury or death of a cetacean, or consists of taking a cetacean, in the Australian Whale Sanctuary (but not the coastal waters, or a part of the coastal waters of a State or the Northern Territory for which a declaration under section 228 is in force) or in waters beyond the outer limits of the Australian Whale Sanctuary; or



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- (ii) consists of treating a cetacean killed, injured or taken in contravention of section 229, 229A, 229B or 229C;
- (b) the person's action does not constitute an offence against section 229, 229A, 229B, 229C or 229D;
- (c) the person's action is not an action that the person was authorised by a permit to take.

Note 1: Section 231 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 229, 229A, 229B, 229C or 229D.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 241 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

- (2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:
  - (a) that the action was taken; and
  - (b) of other particulars (if any) about the action that are prescribed by the regulations.
- (3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.
- (4) Subsection (2) does not apply if:
  - (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
  - (b) the action is in a class of actions:
    - (i) that are specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
    - (ii) that the agreement or arrangement provides are to be notified to the Secretary by the agency.

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

- (5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if the person:
- (a) fails to do an act; and
  - (b) the failing to do the act results in a contravention of subsection (2).

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

## **Subdivision E—Miscellaneous offences**

### **236 Offences relating to foreign whaling vessels**

- (1) The master of a foreign whaling vessel commits an offence if the vessel is brought into a port in Australia or an external Territory and the master has not obtained the written permission of the Minister for the vessel to be brought into the port.

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

- (2) Subsection (1) is an offence of strict liability.

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

- (3) An offence against subsection (1) is punishable on conviction by a fine not exceeding 500 penalty units.

- (4) Subsection (1) does not apply if:

- (a) the vessel is brought into the port in accordance with a prescribed agreement between Australia and any other country or countries; or
- (b) the vessel is brought into the port under the direction of a person exercising powers under a law of the Commonwealth or of a State; or
- (c) an unforeseen emergency renders it necessary to bring the vessel into the port in order to secure the safety of the vessel or human life.

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

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(5) In this Act:

***foreign whaling vessel*** means a vessel, other than an Australian vessel, designed, equipped or used for:

- (a) killing, taking, treating or carrying cetaceans; or
- (b) supporting the operations of a vessel or vessels designed, equipped or used for killing, taking, treating or carrying cetaceans.

***master***, in relation to a foreign whaling vessel, means the person (other than a ship's pilot) in charge or command of the vessel.

**Subdivision F—Permit system**

**237 Application for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 238.
- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:
  - (a) details of the application; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

**238 Minister may issue permits**

- (1) Subject to subsections (3) to (4), the Minister may, on application by a person under section 237, issue a permit to the person.

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- (2) A permit authorises its holder to take an action specified in the permit without breaching sections 229, 229A, 229B, 229C, 229D and 230.
- (3) The Minister must not issue the permit unless satisfied that:
  - (a) the specified action will contribute significantly to the conservation of cetaceans; or
  - (b) if the specified action will interfere with cetaceans, the interference is incidental to, and not the purpose of, the taking of the action and:
    - (i) the taking of the action will not adversely affect the conservation status of a species of cetacean or a population of that species; and
    - (ii) the taking of the action is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean; and
    - (iii) the holder of the permit will take all reasonable steps to minimise the interference with cetaceans; or
  - (c) the specified action is whale watching (other than whale watching covered by paragraph 231(aa)) and:
    - (i) the whale watching is carried out in accordance with the regulations (if any) made for the purposes of this section; or
    - (ii) the whale watching will not adversely affect the conservation status of a species of cetacean or a population of that species, and is not inconsistent with a recovery plan or wildlife conservation plan that is in force for a species of cetacean.
- (3AA) If the specified action would or could relate to a species of cetacean that is a listed threatened species, the Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the species of cetacean.
- (3A) In making a decision on the application, the Minister must consider the comments (if any) received:

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- (a) in response to the invitation under subsection 237(3) for anyone to give the Minister comments on whether the permit should be issued; and
  - (b) within the period specified in the invitation.
- (4) The Minister must not grant a permit authorising its holder to kill a cetacean or to take a cetacean for live display.
- (5) In this Act:

***whale watching*** means any activity conducted for the purpose of observing a cetacean, including but not limited to being in the water for the purposes of observing or swimming with a cetacean, or otherwise interacting with a cetacean.

**239 Conditions of permits**

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
  - (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.

**240 Contravening conditions of a permit**

The holder of a permit commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and
- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

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

**241 Authorities under permits**

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any

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action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.

- (2) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and
  - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

**242 Transfer of permits**

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

**243 Suspension or cancellation of permits**

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

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**243A Review of decisions about permits**

- (1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:
  - (a) to issue or refuse a permit; or
  - (b) to specify, vary or revoke a condition of a permit; or
  - (c) to impose a further condition of a permit; or
  - (d) to transfer or refuse to transfer a permit; or
  - (e) to suspend or cancel a permit.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**244 Fees**

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

**Subdivision G—Miscellaneous**

**245 Minister may accredit plans, regimes or policies**

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
  - (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or
  - (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
  - (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
    - (i) made by a State or self-governing Territory; and
    - (ii) in force under a law of the State or self-governing Territory; or

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- (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
- (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and
- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

- (2) An instrument under subsection (1) is not a legislative instrument.

## 246 Vesting of whales in Commonwealth

(1) If:

- (a) a cetacean is:
  - (i) in the Australian Whale Sanctuary, other than the coastal waters, or a part of the coastal waters, of a State or the Northern Territory for which a declaration under section 228 is in force; or
  - (ii) in waters beyond the outer limits of the Australian Whale Sanctuary; and



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- (a) a person kills, injures or takes the cetacean, whether or not in contravention of this Division;  
the cetacean vests, by force of this section, in the Commonwealth.
- (2) The Commonwealth is not liable in any action, suit or proceedings in respect of any matter relating to a cetacean at any time before the taking of possession of the cetacean by the Commonwealth.

**247 Regulations**

The regulations may:

- (a) provide for the transportation, treatment and disposal of cetaceans killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which cetaceans may be killed, taken or interfered with otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to cetaceans; and
- (d) provide for the protection and conservation of cetaceans; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.

**Division 4—Listed marine species****Subdivision A—Listing****248 Listed marine species**

- (1) The Minister must, by legislative instrument, establish a list of marine species for the purposes of this Part.
- (2) The list, as first established, must contain only the following:
  - (a) all species in the Family Hydrophiidae (sea-snakes);
  - (b) all species in the Family Laticaudidae (sea-snakes);
  - (c) all species in the Family Otariidae (eared seals);
  - (d) all species in the Family Phocidae (“true” seals);
  - (e) all species in the Genus *Crocodylus* (crocodiles);
  - (f) all species in the Genus *Dugong* (dugong);
  - (g) all species in the Family Cheloniidae (marine turtles);
  - (h) the species *Dermochelys coriacea* (leatherback turtles);
  - (i) all species in the Family Syngnathidae (seahorses, sea-dragons and pipefish);
  - (j) all species in the Family Solenostomidae (ghost pipefish);
  - (k) all species in the Class Aves (birds) that occur naturally in Commonwealth marine areas.
- (3) The Minister must establish the list within 30 days after the commencement of this Act.
- (4) The Minister must cause a notice summarising the information contained in the instrument to be published in accordance with the regulations (if any).

**249 Minister may amend list**

- (1) Subject to this Subdivision, the Minister may, by legislative instrument, amend the list by:
  - (a) including or deleting items from the list; or

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- (b) correcting an inaccuracy or updating the name of a marine species.
- (2) Amendments of a list that delete items from the list take effect on the first day the amendments are no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.
- (3) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument to which paragraph (1)(b) of this section applies.
- (4) When an instrument is laid before each House of the Parliament in accordance with Part 2 of Chapter 3 of the *Legislation Act 2003*, the Minister must cause a statement to be laid before each House with the instrument explaining:
  - (a) in the case of an item that has been included in the list by the instrument—why the item was so included; or
  - (b) in the case of an item that has been deleted from the list by the instrument—why the item was so deleted.
- (5) The Minister must cause a notice summarising the information contained in an amendment under subsection (1) to be published in accordance with the regulations (if any).

**250 Adding marine species to the list**

- (1) The Minister must not add a marine species to the list unless:
  - (a) the Minister is satisfied that it is necessary to include the species in the list in order to ensure the long-term conservation of the species; and
  - (b) the species occurs naturally in a Commonwealth marine area.
- (2) Before adding a marine species to the list, the Minister must consult with each Minister who has an interest in a Commonwealth marine area where the species occurs naturally.

**251 Minister must consider advice from Scientific Committee**

- (1) In deciding whether to add an item to, or delete an item from, the list, the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the scientific aspects of the addition or deletion of the item concerned.
- (2) The Minister must:
  - (a) decide whether to add an item to, or delete an item from, the list; and
  - (b) if the Minister decides to add or delete the item—amend the list accordingly under subsection 249(1);within 90 days after receiving the Scientific Committee's advice on the addition or deletion of the item.
- (3) A member of the Scientific Committee has a duty not to disclose to any other person the advice, or any information relating to the advice, before the end of that period of 90 days unless the disclosure:
  - (a) is for the official purposes of the Scientific Committee; or
  - (b) relates to an addition or deletion included in an amendment of the list that has already been registered as a legislative instrument under the *Legislation Act 2003*.

Note: Amendments of the list to add or delete an item are legislative instruments (see section 249).

**252 Minister to make lists available to the public**

The Minister must, in accordance with the regulations (if any), make copies of up-to-date lists available for purchase, for a reasonable price, at a prescribed place in each State and self-governing Territory.

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**Subdivision B—Permit system**

**253 Subdivision does not apply to members of certain species and cetaceans**

This Subdivision does not apply to a member of a listed marine species that is a member of a listed migratory species, a member of a listed threatened species or a cetacean.

**254 Killing or injuring member of listed marine species**

- (1) A person commits an offence if:
- (a) the person takes an action; and
  - (b) the action results in the death or injury of a member of a species; and
  - (c) the member is a member of a listed marine species; and
  - (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(c) and (d).

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

**254A Strict liability for killing or injuring member of listed marine species**

- (1) A person commits an offence if:
- (a) the person takes an action; and

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- (b) the action results in the death or injury of a member of a marine species; and
- (c) the member is a member of a listed marine species; and
- (d) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b), (c) and (d).

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

**254B Taking etc. member of listed marine species**

- (1) A person commits an offence if:

- (a) the person takes, trades, keeps or moves a member of a species; and
- (b) the member is a member of a listed marine species; and
- (c) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

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**254C Strict liability for taking etc. member of listed marine species**

- (1) A person commits an offence if:
- (a) the person takes, trades, keeps or moves a member of a marine species; and
  - (b) the member is a member of a listed marine species; and
  - (c) the member is in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

**254D Trading etc. member of listed marine species taken in Commonwealth area**

- (1) A person commits an offence if:
- (a) the person trades, keeps or moves a member of a species; and
  - (b) the member is a member of a listed marine species; and
  - (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—imprisonment for 2 years or 3,000 penalty units, or both;
- (b) in any other case—imprisonment for 2 years or 1,000 penalty units, or both.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

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- (2) Strict liability applies to paragraphs (1)(b) and (c).

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

**254E Strict liability for trading etc. member of listed marine species taken in Commonwealth area**

- (1) A person commits an offence if:
- (a) the person trades, keeps or moves a member of a marine species; and
  - (b) the member is a member of a listed marine species; and
  - (c) the member has been taken in or on a Commonwealth area.

Penalty:

- (a) in the case of an aggravated offence—1,500 penalty units;
- (b) in any other case—500 penalty units.

Note 1: For the extra element of an aggravated offence, see section 254F.

Note 2: This section does not apply in the circumstances described in section 255. A defendant bears an evidential burden in relation to those circumstances. See subsection 13.3(3) of the *Criminal Code*.

- (2) Strict liability applies to paragraphs (1)(a), (b) and (c).

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

**254F Aggravated offence—member of listed marine species that is a dugong or turtle**

- (1) For the purposes of this Subdivision, an offence against section 254, 254A, 254B, 254C, 254D or 254E (the *underlying offence*) is an *aggravated offence* if the member to which the underlying offence relates is a member of a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

Note: Dugong, marine turtles and leatherback turtles are the listed marine species mentioned in paragraphs 248(2)(f), (g) and (h).

- (2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.



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- (3) Strict liability applies to the physical element of circumstance, that the member is a listed marine species mentioned in paragraph 248(2)(f), (g) or (h).

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

**255 Certain actions are not offences**

Sections 254, 254A, 254B, 254C, 254D and 254E do not apply to:

- (a) an action authorised by a permit that was issued under section 258 and is in force; or
- (b) an action provided for by, and taken in accordance with, a wildlife conservation plan made under Division 5 and in force; or
- (c) an action that is covered by an approval in operation 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); or
- (d) an action that:
  - (i) is one of a class of actions declared by the Minister under section 33 not to require 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); and
  - (ii) is taken in accordance with a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration; or
- (da) an action that:
  - (i) is an action, or one of a class of actions, declared by the Minister under section 37A not to require 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); and
  - (ii) is taken in accordance with the bioregional plan to which the declaration relates; or

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- (db) in the case of sections 254B, 254C, 254D and 254E—an action that is trading, keeping or moving a member of a listed marine species, if:
- (i) when the member of the species was taken, the species was not a listed marine species; and
  - (ii) the trading, keeping or moving of the member of the species occurs during the period of 6 months that started when the species became a listed marine species; or
- (e) an action that is taken in a humane manner and is reasonably necessary to relieve or prevent suffering by an animal; or
- (f) an action that is reasonably necessary to prevent a risk to human health; or
- (g) an action by a Commonwealth agency, or an agency of a State or of a self-governing Territory, that is reasonably necessary for the purposes of law enforcement; or
- (h) an action that is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
- (i) an action that occurs as a result of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
- (j) an action taken in accordance with a permit issued under regulations made under the *Great Barrier Reef Marine Park Act 1975* and in force; or
- (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 265; or
- (l) an action, to the extent that it is covered by subsection 517A(7); or
- (m) an action provided for by, and done in accordance with, a conservation agreement in force under Part 14; or
- (n) an action taken in a Commonwealth reserve in accordance with a management plan made under Part 15 and in operation for the reserve; or
- (o) an action provided for by, and taken in accordance with, a traditional use of marine resources agreement that:

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- (i) was made and accredited in accordance with regulations made under the *Great Barrier Reef Marine Park Act 1975*; and
- (ii) is in force; or
- (p) an action that is taken in accordance with a permit that:
  - (i) was issued under the *Antarctic Treaty (Environment Protection) Act 1980* or under regulations made under that Act; and
  - (ii) is in force; or
- (q) an action that consists of the transit of a member through a Commonwealth area in circumstances where the member was:
  - (i) obtained from an area that is not a Commonwealth area; or
  - (ii) taken from a Commonwealth area in circumstances covered by paragraph (a), (c), (d), (da), (db), (j), (k), (l), (m), (n), (o) or (p).

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

**256 Failing to notify taking etc. of listed marine wildlife**

- (1) This section applies to an action taken by a person if all of the following conditions are met:
  - (a) the person's action either:
    - (i) results in the death or injury of a member of a listed marine species that is in or on a Commonwealth area; or
    - (ii) consists of, or involves, trading, taking, keeping or moving a member of a listed marine species that is in or on a Commonwealth area;
  - (b) the person's action does not constitute an offence against section 254, 254A, 254B, 254C, 254D or 254E, otherwise than because of paragraph 255(db);
  - (c) the person's action is not an action that the person was authorised by a permit to take.

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Note 1: Section 255 sets out most of the circumstances in which an action described in paragraph (1)(a) will not be an offence against section 254, 254A, 254B, 254C, 254D or 254E.

Note 2: A person is authorised by a permit to take an action if the person is the holder of the permit or the person is given an authority under section 261 by the holder of the permit to take the action.

Note 3: The conditions of a permit may require the holder of the permit to give certain notices.

(2) Within 7 days of becoming aware of the action, the person must notify the Secretary in writing, by telephone or by use of any other electronic equipment:

- (a) that the action was taken; and
- (b) of other particulars (if any) about the action that are prescribed by the regulations.

(3) An example of the particulars about the action that the regulations may prescribe is the time and place of taking the action. This does not limit the particulars the regulations may prescribe.

(4) Subsection (2) does not apply if:

- (a) the person, or any other person or body, is required by or under a law of the Commonwealth to notify the Secretary of the action; or
- (b) the action is in a class of actions:
  - (i) that is specified in an agreement or arrangement between the Secretary and a Commonwealth agency, or an agency of a State or self-governing Territory; and
  - (ii) that the agreement or arrangement provides is to be notified to the Secretary by the agency.

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

(5) A person commits an offence punishable on conviction by a fine not exceeding 100 penalty units if a person:

- (a) fails to do an act; and
- (b) the failing to do the act results in a contravention of subsection (2).

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

### **257 Application for permits**

- (1) A person may, in accordance with the regulations, apply to the Minister for a permit to be issued under section 258.
- (2) The application must be accompanied by the fee prescribed by the regulations (if any).
- (3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:
  - (a) details of the application; and
  - (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.

Note: If the action is also the subject of a referral under Division 1 of Part 7 and the referral is made at the same time as the application, the application and invitation for comments that must be published under this subsection may be published together with the referral and invitation for comments that must be published under subsection 74(3).

### **258 Minister may issue permits**

- (1) Subject to subsection (3), the Minister may, on application by a person under section 257, issue a permit to the person.
- (2) A permit authorises its holder to take the actions specified in the permit without breaching section 254, 254A, 254B, 254C, 254D or 254E.
- (3) The Minister must not issue the permit unless satisfied that:
  - (a) the specified action will significantly contribute to the conservation of the listed marine species concerned or other listed marine species; or
  - (b) the impact of the specified action on a member of the listed marine species concerned is incidental to, and not the purpose of, the taking of the action and:

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- (i) the taking of the action will not adversely affect the conservation status of that species or a population of that species; and
  - (ii) the taking of the action is not inconsistent with a wildlife conservation plan for that species that is in force; and
  - (iii) the holder of the permit will take all reasonable steps to minimise the impact of the action on that species; or
  - (c) the specified action is of particular significance to indigenous tradition and will not adversely affect the conservation status of the listed marine species concerned; or
  - (d) the specified action is necessary in order to control pathogens and is conducted in a way that will, so far as is practicable, keep to a minimum any impact on the listed marine species concerned.
- (4) In making a decision on the application, the Minister must consider the comments (if any) received:
- (a) in response to the invitation under subsection 257(3) for anyone to give the Minister comments on whether the permit should be issued; and
  - (b) within the period specified in the invitation.

**259 Conditions of permits**

- (1) A permit is subject to such conditions as are specified in the permit or as are imposed under subsection (2).
- (2) The Minister may, in accordance with the regulations:
  - (a) vary or revoke a condition of a permit; or
  - (b) impose further conditions of a permit.

**260 Contravening conditions of a permit**

The holder of a permit commits an offence punishable upon conviction by a fine not exceeding 300 penalty units if:

- (a) he or she does, or fails to do, an act or thing; and

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- (b) doing, or failing to do, the act or thing results in a contravention of a condition of the permit.

**261 Authorities under permits**

- (1) Subject to subsection (2), the holder of a permit may give to a person written authority to take for or on behalf of the holder any action authorised by the permit. The authority may be given generally or as otherwise provided by the instrument of authority.
- (2) The holder of a permit must not give an authority unless:
  - (a) the permit contains a condition permitting the holder to do so; and
  - (b) the authority is given in accordance with any requirements set out in the condition.
- (3) A permit is, for the purposes of this Act, taken to authorise the taking of a particular action by a person if the taking of that action by the person is authorised by an authority given by the holder of the permit.
- (4) The giving of an authority does not prevent the taking of any action by the holder of the permit.
- (5) Except as provided in this section, a permit does not authorise the taking of any action by a person for or on behalf of the holder of the permit.
- (6) A person who gives an authority must give to the Minister written notice of it within 14 days after giving the authority.

**262 Transfer of permits**

On the application, in accordance with the regulations, of the holder of a permit, the Minister may, in accordance with the regulations, transfer the permit to another person.

**263 Suspension or cancellation of permits**

The Minister may, in accordance with the regulations:

- (a) suspend a permit for a specified period; or
- (b) cancel a permit.

**263A Review of decisions about permits**

- (1) Subject to subsection (2), an application may be made to the Administrative Appeals Tribunal for review of a decision:
  - (a) to issue or refuse a permit; or
  - (b) to specify, vary or revoke a condition of a permit; or
  - (c) to impose a further condition of a permit; or
  - (d) to transfer or refuse to transfer a permit; or
  - (e) to suspend or cancel a permit.
- (2) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).

**264 Fees**

Such fees as are prescribed (if any) are payable in respect of the following:

- (a) the grant or the transfer of a permit;
- (b) the variation or revocation of a condition of a permit;
- (c) the imposition of a further condition of a permit.

**Subdivision C—Miscellaneous****265 Minister may accredit plans, regimes or policies**

- (1) The Minister may, by instrument in writing, accredit for the purposes of this Division:
  - (a) a plan of management within the meaning of section 17 of the *Fisheries Management Act 1991*; or



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- (b) a plan of management within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*; or
- (c) a plan of management, or a policy, regime or any other arrangement, for a fishery, that is:
  - (i) made by a State or self-governing Territory; and
  - (ii) in force under a law of the State or self-governing Territory; or
- (d) a regime determined in writing by the Australian Fisheries Management Authority under the *Fisheries Administration Act 1991* for managing a fishery for which a plan of management (within the meaning of section 17 of the *Fisheries Management Act 1991*) is not in force; or
- (e) a policy formulated by the Protected Zone Joint Authority under paragraph 34(b) of the *Torres Strait Fisheries Act 1984* for managing a fishery for which a plan of management (within the meaning of section 15A of the *Torres Strait Fisheries Act 1984*) is not in force;

if the Minister is satisfied that:

- (f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and
- (g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.

Note 1: The Minister may accredit a plan, regime or policy subject to conditions (see section 303AA).

Note 2: If a plan, regime or policy that is accredited under this section is, or is proposed to be, amended, the Minister may determine under section 303AB that the plan, regime or policy as amended is, for the purposes of this Act, taken to be accredited under subsection (1) of this section.

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

## **266 Regulations**

The regulations may:

- (a) provide for the transportation, treatment and disposal of members of listed marine species killed, injured or taken in contravention of this Division; and
- (b) provide for the methods or equipment by which members of listed marine species may be killed or taken otherwise than in contravention of this Division; and
- (c) provide for the gathering and dissemination of information relating to listed marine species; and
- (d) provide for the protection and conservation of listed marine species; and
- (e) provide for any matter incidental to or connected with any of the above paragraphs.