

22A Offences relating to nuclear actions

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:
- (a) the corporation or agency takes a nuclear action; and
 - (b) the nuclear action results or will result in a significant impact on the environment.

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

- (2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:
- (a) the corporation or agency takes a nuclear action; and
 - (b) the nuclear action is likely to have a significant impact on the environment and the corporation or agency is reckless as to that fact.

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

- (3) A person commits an offence if:
- (a) the person takes a nuclear action; and
 - (b) the nuclear action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; and
 - (c) the nuclear action results or will result in a significant impact on the environment.

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

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

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 22A

- (b) the nuclear action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; and
- (c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

- (5) A person commits an offence if:
 - (a) the person takes a nuclear action; and
 - (b) the nuclear action is taken in a Territory; and
 - (c) the nuclear action results or will result in a significant impact on the environment.

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

- (6) A person commits an offence if:
 - (a) the person takes a nuclear action; and
 - (b) the nuclear action is taken in a Territory; and
 - (c) the nuclear action is likely to have a significant impact on the environment and the person is reckless as to that fact.

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

- (7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

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

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

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

- (8) Subsections (1), (2), (3), (4), (5) and (6) do not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Subdivision F—Marine environment

23 Requirement for approval of activities involving the marine environment

Actions in Commonwealth marine areas affecting the environment

- (1) A person must not take in a Commonwealth marine area an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

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

Actions outside Commonwealth marine areas affecting those areas

- (2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:

Section 23

- (a) has or will have a significant impact on the environment in a Commonwealth marine area; or
- (b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Civil penalty:

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

Fishing in State or Territory waters managed by Commonwealth

- (3) A person must not take in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory an action:
 - (a) that:
 - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (b) that:
 - (i) has or will have a significant impact on the environment in those coastal waters; or
 - (ii) is likely to have a significant impact on the environment in those coastal waters.

Civil penalty:

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

Exceptions to prohibitions

- (4) Subsection (1), (2) or (3) does not apply to an action if:
 - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

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

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

Exception—fishing in Commonwealth waters managed by State

- (5) Subsection (1) does not apply to an action if the action:
 - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (c) is permitted under a law of the State or Territory.

Exception—fishing outside Commonwealth marine areas

- (6) Subsection (2) does not apply to an action that:
 - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is permitted under a law of a State or self-governing Territory.

Section 24

24 What is a *Commonwealth marine area*?

Each of the following is a *Commonwealth marine area*:

- (a) any waters of the sea inside the seaward boundary of the exclusive economic zone, except:
 - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
 - (ii) waters within the limits of a State or the Northern Territory;
- (b) the seabed under waters covered by paragraph (a);
- (c) airspace over waters covered by paragraph (a);
- (d) any waters over the continental shelf, except:
 - (i) waters, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
 - (ii) waters within the limits of a State or the Northern Territory; and
 - (iii) waters covered by paragraph (a);
- (e) any seabed under waters covered by paragraph (d);
- (f) any airspace over waters covered by paragraph (d);
- (g) any other area of sea or seabed that is included in a Commonwealth reserve.

24A Offences relating to marine areas

Actions in Commonwealth marine areas affecting the environment

- (1) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action is taken in a Commonwealth marine area; and
 - (c) the action results or will result in a significant impact on the environment.

Section 24A

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

(1A) Strict liability applies to paragraph (1)(b).

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

Actions in Commonwealth marine areas likely to affect the environment

(2) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken in a Commonwealth marine area; and
- (c) the action is likely to have a significant impact on the environment.

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

(2A) Strict liability applies to paragraph (2)(b).

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

Actions outside Commonwealth marine areas affecting those areas

(3) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
- (c) the action results or will result in a significant impact on the environment in an area; and
- (d) the area is a Commonwealth marine area.

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

(3A) Strict liability applies to paragraphs (3)(b) and (d).

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

Section 24A

Actions likely to affect environment in Commonwealth marine areas

- (4) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
 - (c) the action is likely to have a significant impact on the environment in an area; and
 - (d) the area is a Commonwealth marine area.

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

- (4A) Strict liability applies to paragraphs (4)(b) and (d).

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

Fishing with impact in State or Territory waters managed by Commonwealth

- (5) A person commits an offence if:
- (a) the person takes an action that:
 - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
 - (c) the action results or will result in a significant impact on the environment in those coastal waters.

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

- (5A) Strict liability applies to paragraph (5)(b).

Section 24A

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

Fishing with likely impact in State or Territory waters managed by Commonwealth

- (6) A person commits an offence if:
- (a) the person takes an action that:
 - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
 - (c) the action is likely to have a significant impact on the environment in those coastal waters.

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

- (6A) Strict liability applies to paragraph (6)(b).

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

Penalties

- (7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

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

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

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

Section 24A

Defences—general

- (8) Subsection (1), (2), (3), (4), (5) or (6) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Defence—fishing in Commonwealth waters managed by State

- (9) Subsections (1) and (2) do not apply to an action if the action:
- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
 - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
 - (c) is permitted under a law of the State or Territory.

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

Defence—fishing outside Commonwealth marine areas

- (10) Subsections (3) and (4) do not apply to an action that:

- (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
- (b) is permitted under a law of a State or self-governing Territory.

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

Subdivision FA—Great Barrier Reef Marine Park

24B Requirement for approval of activities in the Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

- (1) A person must not take in the Great Barrier Reef Marine Park an action that has, will have or is likely to have, a significant impact on the environment.

Civil penalty:

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

Actions outside Great Barrier Reef Marine Park affecting the environment in the Marine Park

- (2) A person must not take outside the Great Barrier Reef Marine Park but in the Australian jurisdiction an action that:
 - (a) has or will have a significant impact on the environment in the Great Barrier Reef Marine Park; or
 - (b) is likely to have a significant impact on the environment in the Great Barrier Reef Marine Park.

Civil penalty:

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

Section 24C

Exceptions to prohibition

- (3) Subsection (1) or (2) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the person taking the action is the Commonwealth or a Commonwealth agency; or
 - (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

24C Offences relating to Great Barrier Reef Marine Park

Actions in Great Barrier Reef Marine Park affecting the environment

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken in the Great Barrier Reef Marine Park; and
 - (c) the action results or will result in a significant impact on the environment.

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

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

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

Actions in Great Barrier Reef Marine Park likely to affect the environment

- (3) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken in the Great Barrier Reef Marine Park; and
 - (c) the action is likely to have a significant impact on the environment.

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

- (4) Strict liability applies to paragraph (3)(b).

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

Actions outside Great Barrier Reef Marine Park affecting environment in the Marine Park

- (5) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside the Great Barrier Reef Marine Park but in the Australian jurisdiction; and
 - (c) the action results in or will result in a significant impact on the environment in an area; and
 - (d) the area is the Great Barrier Reef Marine Park.

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

- (6) Strict liability applies to paragraphs (5)(b) and (d).

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

Actions outside Great Barrier Reef Marine Park likely to affect environment in the Marine Park

- (7) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside the Great Barrier Reef Marine Park but in the Australian jurisdiction; and

Section 24D

(c) the action is likely to have a significant impact on the environment in an area; and

(d) the area is the Great Barrier Reef Marine Park.

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

(8) Strict liability applies to paragraphs (7)(b) and (d).

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

Defences

(9) Subsection (1), (3), (5) or (7) does not apply to an action if:

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

(b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the person taking the action is the Commonwealth or a Commonwealth agency; or

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

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

Subdivision FB—Protection of water resources from coal seam gas development and large coal mining development

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

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

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) A person must not take an action if:
 - (a) the action involves:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; and
 - (c) the action:
 - (i) has or will have a significant impact on a water resource; or
 - (ii) is likely to have a significant impact on a water resource.

Section 24D

Civil penalty:

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

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

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

Civil penalty:

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

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

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

Section 24E

- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (5) A person who wishes to rely on subsection (4) in proceedings for a contravention of a civil penalty provision bears an evidential burden in relation to the matters in that subsection.

24E Offences relating to water resources

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:
 - (a) the corporation or agency takes an action involving:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action:
 - (i) results or will result in a significant impact on a water resource; or
 - (ii) is likely to have a significant impact on a water resource.

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

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

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

- (2) A person commits an offence if:
 - (a) the person takes an action involving:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or

Section 24E

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

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

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

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

- (3) A person commits an offence if:
 - (a) the person takes an action involving:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
 - (b) the action is taken in:
 - (i) a Commonwealth area; or
 - (ii) a Territory; and
 - (c) the action:
 - (i) has or will have a significant impact on a water resource; or
 - (ii) is likely to have a significant impact on a water resource.

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

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

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

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

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

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

Subdivision G—Additional matters of national environmental significance

25 Requirement for approval of prescribed actions

- (1) A person must not take an action that is prescribed by the regulations for the purposes of this subsection.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
 - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the

Section 25

action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (3) Before the Governor-General makes regulations prescribing an action for the purposes of subsection (1), the Minister (the ***Environment Minister***) must:
- (a) inform the appropriate Minister of each State and self-governing Territory of the proposal to prescribe:
 - (i) the action; and
 - (ii) a thing as matter protected by this section in relation to the action; and
 - (b) invite the appropriate Minister of each State and self-governing Territory to give the Environment Minister comments on the proposal within a specified period of at least 28 days; and
 - (c) consider the comments (if any); and
 - (d) if comments have been given as described in paragraph (b)—take all reasonable steps to consult the appropriate Minister of each State and self-governing Territory with a view to agreeing on:
 - (i) the action to be prescribed; and
 - (ii) the thing to be prescribed as matter protected by this section in relation to the action.

Note: Section 34 provides that the matter protected by this section is a thing prescribed by the regulations in relation to the action.

- (3A) To avoid doubt, regulations may be made for the purposes of this section even if no agreement is reached on the matters described in paragraph (3)(d).

- (4) The regulations may prescribe different things as matter protected by this section in relation to different actions prescribed for the purposes of subsection (1).
- (5) This section applies only to actions:
 - (a) taken in a Territory or a place acquired by the Commonwealth for public purposes (within the meaning of section 52 of the Constitution); or
 - (b) taken in a Commonwealth marine area; or
 - (c) taken for the purpose of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (d) taken by a constitutional corporation; or
 - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (6) Regulations prescribing an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.

Subdivision H—Actions that are taken to be covered by this Division

25A Actions that are taken to be covered by this Division

- (1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.

Section 25AA

- (3) Regulations made for the purposes of subsection (1) may only specify actions:
- (a) taken in a Territory; or
 - (b) taken in a Commonwealth marine area; or
 - (c) taken for the purpose of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and a Territory; or
 - (iv) between 2 Territories; or
 - (d) taken by a constitutional corporation; or
 - (e) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (4) Regulations specifying an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more countries must specify the agreement.
- (5) In this section:
- regulatory provision* means:
- (a) a civil penalty provision set out in this Division; or
 - (b) a provision of this Division that creates an offence.

Subdivision HA—Limitation on liability for actions of third parties

25AA Limitation on liability for actions of third parties

- (1) A provision mentioned in subsection (2) or (3) does not apply to an action (the *primary action*) if:
- (a) a person (the *primary person*) takes the action; and
 - (b) as a consequence of the primary action, another person (the *secondary person*) takes another action (the *secondary action*); and
 - (c) the secondary action is not taken at the direction or request of the primary person; and

- (d) the significant impact referred to in the provision is a consequence of the secondary action.

Defence to offences

- (2) For the purposes of subsection (1), the following provisions do not apply to the primary action:
 - (a) subsections 15A(1) and (2);
 - (b) subsections 15C(1) to (10);
 - (c) subsections 17B(1) and (2);
 - (d) subsections 18A(1) and (2);
 - (e) subsections 20A(1) and (2);
 - (f) subsections 22A(1) to (6);
 - (g) subsections 24A(1) to (6);
 - (h) subsections 24C(1), (3), (5) and (7);
 - (i) subsections 24E(1) to (3).

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

Exception to civil penalties

- (3) For the purposes of subsection (1), the following provisions do not apply to the primary action:
 - (a) subsection 12(1);
 - (b) subsections 15B(1) to (5) and (7);
 - (c) subsection 16(1);
 - (d) subsections 18(1) to (6);
 - (e) subsection 20(1);
 - (f) subsections 21(1) to (3);
 - (g) subsections 23(1) to (3);
 - (ga) subsections 24B(1) and (2);
 - (gb) subsections 24D(1) to (3);
 - (h) subsection 25(1).

Section 25B

Subdivision I—Evidentiary certificates

25B Evidentiary certificates

Contravention

- (1) The Minister may issue a written certificate:
 - (a) stating that a specified person has contravened, or is contravening, a specified civil penalty provision set out in this Division; and
 - (b) setting out particulars of that contravention.
- (2) The Minister may issue a certificate under subsection (1) relating to a particular contravention if the Minister has reason to believe that the person concerned has committed, or is committing, the contravention.
- (3) To avoid doubt, a certificate under subsection (1) may be issued even if any relevant proceedings under section 475, 480A, 480K or 481 have been instituted.

Proposal

- (4) The Minister may issue a written certificate stating that, if a specified person were to carry out a proposal to engage in specified conduct, that conduct would contravene a specified civil penalty provision set out in this Division.
- (5) The Minister may issue a certificate under subsection (4) if the Minister has reason to believe that:
 - (a) the person proposes to engage in the conduct concerned; and
 - (b) the conduct would contravene the civil penalty provision concerned.
- (6) To avoid doubt, a certificate under subsection (4) may be issued even if any relevant proceedings under section 475 have been instituted.

25C Certificate to be given to person

As soon as practicable after issuing a certificate under subsection 25B(1) or (4), the Minister must give a copy of the certificate to the person concerned.

25D Evidentiary effect of certificate

- (1) In any proceedings under section 475, 480A, 480K or 481, a certificate under subsection 25B(1) is prima facie evidence of the matters in the certificate.
- (2) In any proceedings under section 475, a certificate under subsection 25B(4) is prima facie evidence of the matters in the certificate.
- (3) A document purporting to be a certificate under subsection 25B(1) or (4) must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.
- (4) The Minister may certify that a document is a copy of a certificate under subsection 25B(1) or (4).
- (5) This section applies to the certified copy as if it were the original.

25E Variation of certificate

- (1) The Minister may vary a certificate under subsection 25B(1) or (4) so long as the variation is of a minor nature.
- (2) If a certificate is varied, the Minister must give the person concerned a written notice setting out the terms of the variation.

25F Revocation of certificate

- (1) The Minister may revoke a certificate under subsection 25B(1) or (4).

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 25F

- (2) If a certificate is revoked, the Minister must give the person concerned a written notice stating that the certificate has been revoked.

Division 2—Protection of the environment from proposals involving the Commonwealth

Subdivision A—Protection of environment from actions involving Commonwealth land

26 Requirement for approval of activities involving Commonwealth land

Actions on Commonwealth land

- (1) A person must not take on Commonwealth land an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

- (a) for an individual—1,000 penalty units;
- (b) for a body corporate—10,000 penalty units.

Actions outside Commonwealth land affecting that land

- (2) A person must not take outside Commonwealth land an action that:
- (a) has or will have a significant impact on the environment on Commonwealth land; or
 - (b) is likely to have a significant impact on the environment on Commonwealth land.

Civil penalty:

- (a) for an individual—1,000 penalty units;
- (b) for a body corporate—10,000 penalty units.

Exceptions to prohibitions

- (3) Subsection (1) or (2) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or

Section 27

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

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of *environment* in section 528.

Note 2: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

27 What is *Commonwealth land*?

Commonwealth land is so much of a Commonwealth area as is not a Commonwealth marine area.

27A Offences relating to Commonwealth land

- (1) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action is taken on Commonwealth land; and
 - (c) the action results or will result in a significant impact on the environment.

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

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

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

- (2) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken on Commonwealth land; and
 - (c) the action is likely to have a significant impact on the environment.

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

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

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

- (3) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
 - (c) the action results or will result in a significant impact on the environment in an area; and
 - (d) the area is Commonwealth land.

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

- (3A) Strict liability applies to paragraphs (3)(b) and (d).

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

- (4) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
 - (c) the action is likely to have a significant impact on the environment in an area; and
 - (d) the area is Commonwealth land.

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

- (4A) Strict liability applies to paragraphs (4)(b) and (d).

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

Section 27A

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

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

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

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

- (6) Subsection (1), (2), (3) or (4) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or
 - (e) the person taking the action is a Commonwealth agency.

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

Note 2: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of *environment* in section 528.

Note 3: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

Subdivision AA—Protection of Commonwealth Heritage places outside the Australian jurisdiction

27B Requirement for approval of actions with significant impact on Commonwealth Heritage places overseas

- (1) A person must not take outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment in a Commonwealth Heritage place outside the Australian jurisdiction.

Civil Penalty:

- (a) for an individual—1,000 penalty units;
 - (b) for a body corporate—10,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Subdivision F of Division 1 and Subdivision A of this Division protect the environment in Commonwealth Heritage places inside the Australian jurisdiction because those places are in Commonwealth marine areas or on Commonwealth land.

27C Offences relating to Commonwealth Heritage places overseas

- (1) A person commits an offence if:

Section 27C

- (a) the person takes an action; and
- (b) the action is taken outside the Australian jurisdiction; and
- (c) the action results or will result in a significant impact on the environment in a place; and
- (ca) the place is a Commonwealth Heritage place; and
- (d) the place is outside the Australian jurisdiction.

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

(1A) Strict liability applies to paragraph (1)(ca).

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

(2) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken outside the Australian jurisdiction; and
- (c) the action is likely to have a significant impact on the environment in a place; and
- (d) the place is a Commonwealth Heritage place; and
- (e) the place is outside the Australian jurisdiction.

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

(2A) Strict liability applies to paragraph (2)(d).

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

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

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

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

(4) Section 14.1 (standard geographical jurisdiction) of the *Criminal Code* does not apply to an offence created by this section.

Note: Section 5 affects the extra-territorial operation of this section.

- (5) Subsections (1) and (2) do not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Subdivision B—Protection of the environment from Commonwealth actions

28 Requirement for approval of activities of Commonwealth agencies significantly affecting the environment

- (1) The Commonwealth or a Commonwealth agency must not take inside or outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment inside or outside the Australian jurisdiction.

Civil penalty:

- (a) for a Commonwealth agency that is an individual—1,000 penalty units;
- (b) for a Commonwealth agency that is a body corporate—10,000 penalty units.

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place from an action taken by the Commonwealth or a Commonwealth agency, because the

Section 28

heritage values of a place are part of the environment. See the definition of *environment* in section 528.

Note 2: This section does not apply to decisions to authorise activities. See Subdivision A of Division 1 of Part 23.

- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the Commonwealth or Commonwealth agency is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the Commonwealth or Commonwealth agency take the action without an approval under Part 9 for the purposes of this section; or
 - (c) the action is one declared by the Minister in writing to be an action to which this section does not apply; or
 - (d) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (3) The Minister may make a written declaration that actions are actions to which this section does not apply, but only if he or she is satisfied that it is necessary in the interests of:
- (a) Australia's defence or security; or
 - (b) preventing, mitigating or dealing with a national emergency.
- (4) The Minister may make a written declaration that all actions, or a specified class of actions, taken by a specified Commonwealth agency are actions to which this section does not apply.
- (5) The Minister may make a declaration under subsection (4) relating to a Commonwealth agency's actions only if he or she is satisfied that:

Section 28AA

- (a) in taking the actions to which the declaration relates, the agency must comply with the law of a State or Territory (including a law of a State that is applied to a Commonwealth place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*), that has either or both of the following objects (whether express or implied):
 - (i) to protect the environment;
 - (ii) to promote the conservation and ecologically sustainable use of natural resources; and
- (b) the impacts that the actions have, will have or are likely to have on the environment, are adequately addressed under the State or Territory law.

Subdivision C—Actions that are taken to be covered by this Division

28AA Actions that are taken to be covered by this Division

- (1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.
- (3) In this section:

regulatory provision means:

- (a) a civil penalty provision set out in this Division; or
- (b) a provision of this Division that creates an offence.

Section 28AB

Subdivision D—Limitation on liability for actions of third parties

28AB Limitation on liability for actions of third parties

- (1) A provision mentioned in subsection (2) or (3) does not apply to an action (the *primary action*) if:
- (a) a person (the *primary person*) takes the action; and
 - (b) as a consequence of the primary action, another person (the *secondary person*) takes another action (the *secondary action*); and
 - (c) the secondary action is not taken at the direction or request of the primary person; and
 - (d) the significant impact referred to in the provision is a consequence of the secondary action.

Defence to offences

- (2) For the purposes of subsection (1), the following provisions do not apply to the primary action:
- (a) subsections 27A(1) to (4);
 - (b) subsections 27C(1) and (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*.

Exception to civil penalties

- (3) For the purposes of subsection (1), the following provisions do not apply to the primary action:
- (a) subsections 26(1) and (2);
 - (b) subsection 27B(1);
 - (c) subsection 28(1).

Part 4—Cases in which environmental approvals are not needed

Division 1—Actions covered by bilateral agreements

29 Actions declared by agreement not to need approval

- (1) A person may take an action described in a provision of Part 3, other than section 24D or 24E, without an approval under Part 9 for the purposes of the provision if:
- (a) the action is taken in a State or self-governing Territory; and
 - (b) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or Territory not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with a management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the bilateral agreement); and
 - (c) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and
 - (d) either of the following applies:
 - (i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or Territory identified in or under the bilateral agreement;
 - (ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and
 - (e) the action is taken in accordance with the bilaterally accredited management arrangement or bilaterally accredited authorisation process.

Chapter 2 Protecting the environment

Part 4 Cases in which environmental approvals are not needed

Division 1 Actions covered by bilateral agreements

Section 30

Note 1: Section 46 deals with bilateral agreements making declarations described in paragraph (1)(b).

Note 2: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended. Also, under section 49, bilateral agreements do not operate in relation to actions in Commonwealth areas or in the Great Barrier Reef Marine Park, or actions taken by the Commonwealth or a Commonwealth agency, unless they expressly provide that they do.

- (2) If the action is to be taken in 2 or more States or self-governing Territories, this section does not operate unless it operates in relation to each of those States or Territories.

30 Extended operation in State and Northern Territory waters

- (1) Section 29 applies to an action taken on, over or under the seabed vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* in the same way that it applies to an action taken in the State.
- (2) Section 29 applies to an action taken on, over or under the seabed vested in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980* in the same way that it applies to an action taken in the Territory.
- (3) Section 29 applies to an action taken in a Commonwealth marine area to which a law of a State or self-governing Territory is applied by a Commonwealth law or by an agreement or arrangement under a Commonwealth law (other than this Act) in the same way as it applies to an action in the State or Territory, if the provision of the bilateral agreement has effect in relation to the area.

Note: A provision of a bilateral agreement only has effect in relation to a Commonwealth area or the Great Barrier Reef Marine Park if the agreement expressly provides that it does. See section 49.

31 Extended operation in non-self-governing Territories

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

- (a) the action is taken in a Territory (the ***action Territory***) that is not a self-governing Territory; and
- (b) an Act providing for the government of the action Territory provides that some or all of the law of a State or self-governing Territory is in force in the action Territory as a law of the Territory; and
- (c) the action is one of a class of actions declared by a bilateral agreement between the Commonwealth and the State or self-governing Territory not to require approval under Part 9 for the purposes of the provision of Part 3 (because the action is approved or taken in accordance with a bilaterally accredited management arrangement or a bilaterally accredited authorisation process); and
- (d) the bilateral agreement specifies that the provision of the agreement making the declaration has effect in relation to actions in the action Territory; and
- (e) the provision of the bilateral agreement making the declaration is in operation in relation to the action; and
- (f) either of the following applies:
 - (i) in the case of a bilaterally accredited management arrangement—the management arrangement is in force under a law of the State or self-governing Territory identified in or under the bilateral agreement;
 - (ii) in the case of a bilaterally accredited authorisation process—the authorisation process is set out in a law of the State or self-governing Territory, and the law and the authorisation process are identified in or under the bilateral agreement; and
- (g) the action is taken in accordance with the bilaterally accredited management arrangement or bilaterally accredited authorisation process.

Note: Division 3 of Part 5 explains how the operation of a bilateral agreement may be ended or suspended.

Section 32

**Division 2—Actions covered by Ministerial declarations
and accredited management arrangements or
accredited authorisation processes**

Subdivision A—Effect of declarations

32 Actions declared by Minister not to need approval

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

- (a) the action is one of a class of actions declared by the Minister under section 33 not to require approval under Part 9 for the purposes of the provision (because the action is approved in accordance with an accredited management arrangement or an accredited authorisation process for the purposes of the declaration); and
- (b) the declaration is in operation when the action is taken; and
- (c) one of the following applies:
 - (i) in the case of an accredited management arrangement—the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration;
 - (ii) in the case of an accredited authorisation process—the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and
- (d) the action is taken in accordance with the accredited management arrangement or accredited authorisation process.

Subdivision B—Making declarations

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

Declaration of actions not needing approval

- (1) The Minister may declare in writing that actions in a class of actions specified in the declaration wholly or partly by reference to the fact that their taking has been approved by the Commonwealth or a specified Commonwealth agency, 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, do not require approval under Part 9 for the purposes of a specified provision of Part 3.

Note 1: Subdivisions C and D set out rules about prerequisites for making a declaration and limits on making a declaration.

Note 2: Section 35 provides for revocation of a declaration.

*What is an **accredited management arrangement**?*

- (2) A management arrangement is an **accredited management arrangement** for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:
- (a) the management arrangement is in operation under a law of the Commonwealth identified in or under the declaration; and
 - (b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

*What is an **accredited authorisation process**?*

- (2A) An authorisation process is an **accredited authorisation process** for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3 if and only if:

Chapter 2 Protecting the environment

Part 4 Cases in which environmental approvals are not needed

Division 2 Actions covered by Ministerial declarations and accredited management arrangements or accredited authorisation processes

Section 33

- (a) the authorisation process is set out in a law of the Commonwealth, and the law and the authorisation process are identified in or under the declaration; and
- (b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

Accrediting management arrangement or authorisation process

- (3) For the purposes of subsection (2) or (2A), the Minister may accredit by written instrument a management arrangement or authorisation process for the purposes of a declaration. However, the Minister may do so only if the Minister is satisfied that:
 - (a) the management arrangement or authorisation process and the law under which it is in operation, or in which it is set out, meet the criteria prescribed by the regulations; and
 - (b) there has been or will be adequate assessment of the impacts that actions approved in accordance with the management arrangement or authorisation process:
 - (i) have or will have; or
 - (ii) are likely to have;on each matter protected by a provision of Part 3 to which the declaration relates; and
 - (c) actions approved or taken in accordance with the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 to which the declaration relates.

The Minister must publish in accordance with the regulations (if any) the instrument accrediting the management arrangement or authorisation process.

Note: Subdivision C sets out more prerequisites for accrediting a management arrangement or authorisation process.

*Tabling of management arrangement or authorisation process
before accreditation*

- (4) The Minister must cause to be laid before each House of the Parliament:
- (a) a copy of:
 - (i) in the case of a management arrangement—the management arrangement; or
 - (ii) in the case of an authorisation process—the relevant part of the law in which the authorisation process is set out;that the Minister is considering accrediting for the purposes of subsection (2) or (2A); and
 - (b) a notice that the Minister proposes to accredit the management arrangement or authorisation process for the purposes of a declaration under this section.

Limitations on accreditation during period for opposition

- (5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:
- (a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process is laid before each House of the Parliament under this section; or
 - (b) if, within those 15 sitting days of a House, notice of a motion to oppose accreditation of the management arrangement or authorisation process is given in that House—subject to subsection (5A), within 15 sitting days of that House after the notice is given.
- (5A) If:
- (a) notice of a motion to oppose accreditation of the management arrangement or authorisation process is given in a House of the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and

Chapter 2 Protecting the environment

Part 4 Cases in which environmental approvals are not needed

Division 2 Actions covered by Ministerial declarations and accredited management arrangements or accredited authorisation processes

Section 33

(b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;
then, subject to paragraph (5)(a), the Minister may accredit the management arrangement or authorisation process after the motion is withdrawn or otherwise disposed of.

No accreditation after accreditation opposed

- (6) The Minister must not accredit the management arrangement or authorisation process if either House of the Parliament passes a resolution opposing accreditation of the management arrangement or authorisation process following a motion of which notice has been given within 15 sitting days after the management arrangement or relevant part of the law has been laid before the House under this section.

No accreditation if motion not defeated in time

- (7) The Minister must not accredit the management arrangement or authorisation process if, at the end of 15 sitting days after notice of a motion to oppose accreditation of the management arrangement or authorisation process that was given in a House of the Parliament within 15 sitting days after the management arrangement or relevant part of the law was laid before the House under this section:
- (a) the notice has not been withdrawn and the motion has not been called on; or
 - (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of.

Extended time after dissolution or prorogation

- (8) If:
- (a) notice of a motion to oppose the accreditation of the management arrangement or authorisation process is given in a House of the Parliament (the ***opposing House***); and
 - (b) before the end of 15 sitting days of the opposing House after the notice is given:

Section 34

- (i) the House of Representatives is dissolved or expires; or
 - (ii) the Parliament is prorogued; and
 - (c) at the time of the dissolution, expiry or prorogation (as appropriate):
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- the management arrangement or relevant part of the law is taken for the purposes of subsections (5), (5A), (6) and (7) to have been laid before the opposing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

34 What is *matter protected* by a provision of Part 3?

The *matter protected* by a provision of Part 3 specified in column 2 of an item of the following table is the thing specified in column 3 of the item.

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
1	section 12	the world heritage values of a declared World Heritage property
1A	section 15A	the world heritage values of a declared World Heritage property
1B	section 15B	the National Heritage values of a National Heritage place
1C	section 15C	the National Heritage values of a National Heritage place
2	section 16	the ecological character of a declared Ramsar wetland
2A	section 17B	the ecological character of a declared Ramsar wetland
3	subsection 1 8(1)	a listed threatened species in the extinct in the wild category

Chapter 2 Protecting the environment**Part 4** Cases in which environmental approvals are not needed**Division 2** Actions covered by Ministerial declarations and accredited management arrangements or accredited authorisation processes

Section 34

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
4	subsection 1 8(2)	a listed threatened species in the critically endangered category
5	subsection 1 8(3)	a listed threatened species in the endangered category
6	subsection 1 8(4)	a listed threatened species in the vulnerable category
7	subsection 1 8(5)	a listed threatened ecological community in the critically endangered category
8	subsection 1 8(6)	a listed threatened ecological community in the endangered category
8A	subsection 1 8A(1) or (2)	a listed threatened species (except a species included in the extinct category of the list referred to in section 178 or a conservation dependent species) and a listed threatened ecological community (except an ecological community included in the vulnerable category of the list referred to in section 181)
9	section 20	a listed migratory species
9A	section 20A	a listed migratory species
10	section 21	the environment
10A	section 22A	the environment
11	subsection 2 3(1)	the environment
12	subsection 2 3(2)	the environment in a Commonwealth marine area
13	subsection 2 3(3)	the environment in the coastal waters (as defined in the <i>Fisheries Management Act 1991</i>) in which the action is taken of the State or Territory
13A	subsection 2 4A(1) or (2)	the environment
13B	subsection 2 4A(3) or (4)	the environment in a Commonwealth marine area

Section 34

Matter protected by provisions of Part 3		
Item	Provision	Matter protected
13C	subsection 2 4A(5) or (6)	the environment in the coastal waters (as defined in the <i>Fisheries Management Act 1991</i>) in which the action is taken of the State or Territory
13D	subsection 2 4B(1)	the environment
13E	subsection 2 4B(2)	the environment in the Great Barrier Reef Marine Park
13F	subsections 24C(1) and (3)	the environment
13G	subsections 24C(5) and (7)	the environment in the Great Barrier Reef Marine Park
13H	section 24D	a water resource
13J	section 24E	a water resource
14	section 25	a thing prescribed by the regulations for the purposes of this item in relation to an action to which section 25 applies
15	subsection 2 6(1)	the environment
16	subsection 2 6(2)	the environment on Commonwealth land
16A	subsection 2 7A(1) or (2)	the environment
16B	subsection 2 7A(3) or (4)	the environment on Commonwealth land
16C	section 27B	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
16D	subsections 27C(1) and (2)	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
17	section 28	the environment

Section 34A

Subdivision C—Prerequisites for making declarations

34A Minister may only make declaration if prescribed criteria are met

The Minister may make a declaration under section 33 only if the Minister is satisfied that the declaration:

- (a) accords with the objects of this Act; and
- (b) meets the requirements (if any) prescribed by the regulations.

34B Declarations relating to declared World Heritage properties

- (1) The Minister may make a declaration under section 33 relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and
 - (c) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the property in accordance with the Australian World Heritage management principles.

34BA Declarations relating to National Heritage places

- (1) The Minister may make a declaration under section 33 relating to a National Heritage place only if:
 - (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and
 - (b) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of such a declaration only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National Heritage management principles.

34C Declarations relating to declared Ramsar wetlands

- (1) The Minister may make a declaration under section 33 relating to a declared Ramsar wetland only if:
 - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and
 - (b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles; and
 - (c) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a declared Ramsar wetland only if:
 - (a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the Ramsar Convention; and

Section 34D

- (b) the Minister is satisfied that the management arrangement or authorisation process will promote the management of the wetland in accordance with the Australian Ramsar management principles.

34D Declarations relating to listed threatened species and ecological communities

- (1) The Minister may make a declaration under section 33 relating to a listed threatened species or a listed threatened ecological community only if:
 - (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; and
 - (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and
 - (c) the Minister is satisfied that the declaration is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
 - (ca) the Minister has had regard to any approved conservation advice for the species or community; and
 - (d) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a listed threatened species or a listed threatened ecological community only if:
 - (a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or

Section 34E

- (iii) CITES; and
- (b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and
- (c) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
- (d) the Minister has had regard to any approved conservation advice for the species or community.

34E Declarations relating to migratory species

- (1) The Minister may make a declaration under section 33 relating to a listed migratory species only if:
 - (a) the Minister is satisfied that the declaration is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
 - (i) the Bonn Convention;
 - (ii) CAMBA;
 - (iii) JAMBA;
 - (iv) an international agreement approved under subsection 209(4); and
 - (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates; and
 - (c) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of a declaration relating to a listed migratory species only if:
 - (a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with the

Chapter 2 Protecting the environment

Part 4 Cases in which environmental approvals are not needed

Division 2 Actions covered by Ministerial declarations and accredited management arrangements or accredited authorisation processes

Section 34F

Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:

- (i) the Bonn Convention;
- (ii) CAMBA;
- (iii) JAMBA;
- (iv) an international agreement approved under subsection 209(4); and
- (b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

34F Declarations relating to Commonwealth Heritage places

- (1) The Minister may make a declaration under section 33 relating to a Commonwealth Heritage place only if:
 - (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the Commonwealth Heritage management principles; and
 - (b) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or authorisation process under section 33 for the purposes of such a declaration only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the Commonwealth Heritage management principles.

Subdivision D—Other rules about declarations

35 Revoking declarations

Revoking declarations

- (1) The Minister may, by written instrument, revoke a declaration made under section 33.

Revocation does not affect some actions

- (2) If:
- (a) a declaration made under section 33 is revoked; and
 - (b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
 - (c) the action had not been completed before the revocation;
- this Act continues to operate in relation to the action as if the declaration had not been revoked.

36 Other rules about declarations

Minister must not give preference

- (1) In making a declaration or accrediting a management arrangement or authorisation process under section 33, or revoking a declaration under section 35, relating to an action taken:
- (a) by a person for the purposes of trade between Australia and another country or between 2 States; or
 - (b) by a constitutional corporation;
- the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Chapter 2 Protecting the environment

Part 4 Cases in which environmental approvals are not needed

Division 2 Actions covered by Ministerial declarations and accredited management arrangements or accredited authorisation processes

Section 36A

Publishing declarations

- (2) The Minister must publish a declaration made under section 33, an instrument accrediting a management arrangement or authorisation process under section 33, or an instrument under section 35 revoking a declaration, in accordance with the regulations.

36A Minor amendments of accredited management arrangement or accredited authorisation process

- (1) If:
- (a) a management arrangement or an authorisation process is an accredited management arrangement or an accredited authorisation process; and
 - (b) the management arrangement or authorisation process is amended, or is proposed to be amended; and
 - (c) the Minister is satisfied that the amendments are, or will be, minor; and
 - (d) the Minister is satisfied that the management arrangement or authorisation process as amended meets, or will meet, the requirements of:
 - (i) paragraphs 33(3)(a), (b) and (c); and
 - (ii) section 34A; and
 - (iii) subsection 34B(2), 34BA(2), 34C(2), 34D(2), 34E(2) or 34F(2) (as the case requires);
- the Minister may, by instrument in writing, determine that this section applies to the amendments.
- (2) If the Minister makes a determination under subsection (1):
- (a) the management arrangement or authorisation process as amended is, for the purposes of this Act, taken to be an accredited management arrangement or accredited authorisation process; and
 - (b) subsections 33(1) to (8) do not apply in relation to the amendments to the management arrangement or authorisation process, or the management arrangement or authorisation process as amended; and
-

Section 36A

- (c) actions taken after the determination is made in accordance with the accredited management arrangement or accredited authorisation process as amended do not require approval under Part 9 for the purposes of a specified provision of Part 3.
- (3) The Minister must publish a determination under subsection (1) in accordance with the regulations (if any).
- (4) A determination under subsection (1) is not a legislative instrument.

Division 3—Actions covered by Ministerial declarations and bioregional plans

Subdivision A—Effect of declarations

37 Actions declared by Minister not to need approval

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

- (a) the action is an action, or one of a class of actions, declared by the Minister under section 37A not to require approval under Part 9 for the purposes of the provision (because the taking of the action is in accordance with a particular bioregional plan); and
- (b) the declaration is in operation when the action is taken; and
- (c) the action is taken:
 - (i) in the bioregion to which the plan applies; and
 - (ii) in accordance with the plan.

Note: Division 2 of Part 12 deals with bioregional plans.

Subdivision B—Making declarations

37A Making declarations that actions do not need approval under Part 9

Subject to Subdivisions C and D, the Minister may, by legislative instrument, declare that an action or class of actions specified in the declaration, wholly or partly by reference to the fact that the taking of the action or class of actions is in accordance with a bioregional plan, do not require approval under Part 9 for the purposes of a specified provision of Part 3.

Note 1: Subdivisions C and D set out rules about prerequisites for making a declaration and limits on making a declaration.

Note 2: Section 37K provides for revocation of a declaration.

Subdivision C—Prerequisites for making declarations

37B General considerations

- (1) In deciding whether to make a declaration under section 37A, the Minister must consider the following, so far as they are not inconsistent with any other requirements of this Subdivision:
 - (a) matters relevant to any matter protected by a provision of Part 3 that the Minister considers is relevant to the action or class of actions to which the declaration relates;
 - (b) economic and social matters.
- (2) In considering those matters, the Minister must take into account the principles of ecologically sustainable development.
- (3) The Minister must not make a declaration under section 37A in relation to an action or class of actions and a provision of Part 3 if the Minister considers that the action, or an action in the class, if taken, would have unacceptable or unsustainable impacts on a matter protected by the provision.

37C Minister may make declaration only if prescribed criteria are met

The Minister may make a declaration under section 37A only if the Minister is satisfied that the declaration:

- (a) accords with the objects of this Act; and
- (b) meets the requirements (if any) prescribed by the regulations.

37D Declarations relating to declared World Heritage properties

The Minister may make a declaration under section 37A relating to a declared World Heritage property only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the World Heritage Convention; and

Section 37E

- (b) the Minister is satisfied that the declaration will promote the management of the property in accordance with the Australian World Heritage management principles; and
- (c) the Minister is satisfied that the declaration is not inconsistent with a plan that has been prepared for the management of the declared World Heritage property under section 316 or as described in section 321.

37E Declarations relating to National Heritage places

The Minister may make a declaration under section 37A relating to a National Heritage place only if:

- (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and
- (b) the Minister is satisfied that the declaration is not inconsistent with:
 - (i) an agreement to which the Commonwealth is a party in relation to the National Heritage place; or
 - (ii) a plan that has been prepared for the management of the National Heritage place under section 324S or as described in section 324X.

37F Declarations relating to declared Ramsar wetlands

The Minister may make a declaration under section 37A relating to a declared Ramsar wetland only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under the Ramsar Convention; and
- (b) the Minister is satisfied that the declaration will promote the management of the wetland in accordance with the Australian Ramsar management principles.

37G Declarations relating to listed threatened species and ecological communities

The Minister may make a declaration under section 37A relating to a listed threatened species or a listed threatened ecological community only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; and
- (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species or community to which the declaration relates; and
- (c) the Minister is satisfied that the declaration is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
- (d) the Minister has had regard to any approved conservation advice for the species or community.

37H Declarations relating to listed migratory species

The Minister may make a declaration under section 37A relating to a listed migratory species only if:

- (a) the Minister is satisfied that the declaration is not inconsistent with whichever of the following conventions or agreements because of which the species is listed:
 - (i) the Bonn Convention;
 - (ii) CAMBA;
 - (iii) JAMBA;
 - (iv) an international agreement approved under subsection 209(4); and
- (b) the Minister is satisfied that the declaration will promote the survival and/or enhance the conservation status of each species to which the declaration relates.

Section 37J

37J No declarations relating to nuclear actions

The Minister must not make a declaration relating to an action consisting of, or involving the construction or operation of, any of the following nuclear installations:

- (a) a nuclear fuel fabrication plant;
- (b) a nuclear power plant;
- (c) an enrichment plant;
- (d) a reprocessing facility.

Subdivision D—Other rules about declarations

37K Revoking declarations

Revoking declarations

- (1) The Minister may, by legislative instrument, revoke a declaration made under section 37A.

Revocation does not affect some actions

- (2) If:
 - (a) a declaration made under section 37A is revoked; and
 - (b) before the revocation, an action was being taken that could be taken without approval under Part 9 because its taking was covered by the declaration; and
 - (c) the action had not been completed before the revocation;this Act continues to operate in relation to the action as if the declaration had not been revoked.

37L Other rules about declarations

Minister must not give preference

- (1) In making a declaration under section 37A, or revoking a declaration under section 37K, relating to an action taken: