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- (f) provide for the removal of trespassers from Commonwealth reserves; and
- (g) regulate or prohibit camping in Commonwealth reserves; and
- (h) provide for the safety of persons in Commonwealth reserves; and
- (i) regulate or prohibit the use of fire in Commonwealth reserves; and
- (j) regulate the conduct, or prohibit certain kinds of conduct, of persons in Commonwealth reserves; and
- (k) regulate or prohibit the carrying on of any trade or commerce in a Commonwealth reserve; and
- (l) regulate or prohibit the use of vehicles in Commonwealth reserves and provide for signs and road markings for those purposes; and
- (m) provide for:
 - (i) the removal of vehicles, aircraft or vessels from places in Commonwealth reserves where they have been left in contravention of the regulations or have been abandoned; and
 - (ii) the impounding of such vehicles, aircraft or vessels; and
- (n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a Commonwealth reserve is, except as provided otherwise, taken to commit an offence against the provision; and
- (o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and
- (p) regulate or prohibit the use of vessels in, and the passage of vessels through, Commonwealth reserves; and
- (q) regulate or prohibit the landing and use of aircraft in, and the flying of aircraft over, Commonwealth reserves; and

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- (r) provide for the giving of effect to management plans for Commonwealth reserves; and
 - (s) regulate or prohibit the taking of animals or plants into or out of Commonwealth reserves; and
 - (t) provide for the impounding, removal, destruction or disposal of animals found straying in Commonwealth reserves; and
 - (u) regulate or prohibit the taking into Commonwealth reserves, and the use in Commonwealth reserves, of weapons, traps, nets, snares, fishing apparatus and other devices; and
 - (v) regulate or prohibit the laying of baits and the use of explosives and poisons in Commonwealth reserves; and
 - (w) provide for the collection of specimens and the pursuit of research in Commonwealth reserves for scientific purposes; and
 - (x) provide for the issue of licences, permits and authorities relating to activities in Commonwealth reserves, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and
 - (y) provide for any matter incidental to or connected with a matter described in another paragraph.
- (2) A provision of the regulations regulating or prohibiting the flying of aircraft over a Commonwealth reserve does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a provision is not inconsistent with such a law if it can be complied with without contravention of the law.
- (3) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

356A Charges for activities in Commonwealth reserves

Subject to the approval of the Minister, the Director may determine and impose charges for:

- (a) entering or using a Commonwealth reserve or part of a Commonwealth reserve; and
- (b) using services or facilities provided by the Director in or in connection with a Commonwealth reserve; and
- (c) the parking or stopping of vehicles in a Commonwealth reserve; and
- (d) the mooring or landing of vessels in a Commonwealth reserve; and
- (e) the landing of aircraft in a Commonwealth reserve; and
- (f) the use of vehicles and vessels in a Commonwealth reserve.

357 Managing Commonwealth reserves while a management plan is not in operation

- (1) While a management plan is not in operation for a Commonwealth reserve, the Director must exercise the Director's powers and perform the Director's functions in relation to the reserve or to a zone of the reserve so as to manage the reserve in accordance with:
 - (a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
 - (i) a Proclamation made under Subdivision B; or
 - (ii) a management plan that was in operation for the reserve (but is no longer); and
 - (b) if the Director holds land or seabed included in the reserve under lease—the Director's obligations under the lease.
- (2) While a management plan is not in operation for a Commonwealth reserve, the Commonwealth or a Commonwealth agency must not exercise its powers or perform its functions in relation to the reserve or a zone of the reserve inconsistently with either or both of the following:
 - (a) the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone has most recently been assigned by:
 - (i) a Proclamation made under Subdivision B; or

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- (ii) a management plan that was in operation for the reserve (but is no longer);
 - (b) if the Director holds land or seabed included in the reserve under lease—the Director’s obligations under the lease.
- (3) If:
 - (a) a zone of a Commonwealth reserve is assigned to an IUCN category at or after the time the reserve was most recently assigned to an IUCN category; and
 - (b) the IUCN category for the zone is different from the IUCN category for the reserve;disregard the IUCN category to which the reserve has been assigned for the purposes of the application of this section in relation to the zone.

358 Restriction on disposal of Director’s interests in Commonwealth reserves

- (1) The Director must not sell or otherwise dispose of a usage right the Director holds in relation to land, sea or seabed in a Commonwealth reserve.
- (2) However, the Director may grant a lease or sub-lease of, or a licence relating to, land or seabed in a Commonwealth reserve, but only in accordance with a management plan in operation for the reserve.
- (3) Despite subsection (1), the Director may surrender a lease of land or seabed within a Commonwealth reserve in consideration of the grant to the Director of a new lease of land or seabed that includes that land or seabed.
- (4) The *Lands Acquisition Act 1989* does not apply to the grant or surrender of a lease or sub-lease under this section.
- (5) This section has effect despite any law of the Commonwealth or of a State or Territory.

359 Prior usage rights relating to Commonwealth reserves continue to have effect

- (1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth or the Director) in relation to land or seabed immediately before the land or seabed was included in a Commonwealth reserve:
 - (a) provisions of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);
 - (b) provisions of the regulations made for the purposes of this Division that relate to the reserve (whether or not they also relate to another Commonwealth reserve);
 - (c) provisions of a management plan for the reserve.
- (2) None of the provisions described in subsection (1) affect the application of a law of a State or Territory in relation to the usage right.
- (3) The usage right may be renewed or have its term extended only:
 - (a) with the Minister's written consent; and
 - (b) subject to any conditions determined by the Minister.This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.
- (4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a Commonwealth reserve as if the usage right were a usage right relating to the land or seabed.
- (5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.
- (6) This section does not apply in relation to:
 - (a) a usage right relating to minerals in Kakadu National Park; or
 - (b) a usage right so far as it relates to mining operations for those minerals.

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359A Traditional use of Commonwealth reserves by indigenous persons

- (1) This Division and regulations made for the purposes of this Division do not prevent an indigenous person from continuing in accordance with law the traditional use of an area in a Commonwealth reserve for:
 - (a) hunting or food-gathering (except for purposes of sale); or
 - (b) ceremonial and religious purposes.
- (2) However, regulations made for the purposes of this Division do affect an indigenous person's traditional use of an area in a Commonwealth reserve if they:
 - (a) are made for the purpose of conserving biodiversity in the area; and
 - (b) expressly affect the traditional use of the area by indigenous persons.

359B Director's approval of actions and mining operations when a management plan is not in operation

Approval of actions (other than mining operations)

- (1) The Director may, in writing, approve the taking of a specified action or a specified class of actions, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
 - (a) the Director is satisfied that:
 - (i) no management plan has yet come into operation for the reserve; and
 - (ii) immediately before the area became included in the reserve, the person, or the persons in the class of persons, held a usage right, or a right arising out of a usage right, that entitled the person or persons to take the action, or the actions in the class of actions, in the area; and

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- (iii) the usage right is not a right in relation to land or seabed to which section 359 applies; or
- (b) the Director is satisfied that:
 - (i) a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation; and
 - (ii) immediately before the management plan ceased to be in operation, the person, or the persons in the class of persons, were taking the action, or the actions in the class of actions, in the area without contravening section 354 or 354A; and
 - (iii) the action or class of actions is not mining operations.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 354 or 354A, the action does not need approval under this subsection.

Approval of mining operations

- (2) The Director may, in writing, approve the carrying on of specified mining operations, or a specified class of mining operations, by a specified person or a specified class of persons, in a specified area that is or is part of a Commonwealth reserve, if:
 - (a) the Director is satisfied that no management plan has yet come into operation for the reserve; or
 - (b) the Director is satisfied that a management plan for the reserve has ceased to be in operation, and no further management plan for the reserve has yet come into operation.

Note 1: In exercising the power to give approvals, the Director must comply with section 357.

Note 2: If an action taken without approval would not contravene section 355 or 355A, the action does not need approval under this subsection.

Limits on approvals in relation to the Kakadu National Park and the Antarctic

- (3) The Director must not approve:
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- (a) an action in the Antarctic that would be an element of an offence under the *Antarctic Treaty (Environment Protection) Act 1980* (whether or not a defence would be available under that Act); or
- (b) mining operations in the Kakadu National Park or the Antarctic.

Approvals may be subject to conditions

- (4) An approval given under subsection (1) or (2) may be expressed to be subject to specified conditions.

When approvals come into force

- (5) An approval given under subsection (1) or (2) comes into force on the day the Director gives the approval, or on a later day specified in the approval.

Variation and revocation of approvals

- (6) The Director may, in writing, vary or revoke an approval:
 - (a) under subsection (1)—if the Director considers that the action, or an action in the class of actions, to which the approval relates is not being taken in accordance with the approval; or
 - (b) under subsection (2)—if the Director considers that the mining operations, or mining operations in the class of mining operations, to which the approval relates are not being carried on in accordance with the approval.
- (7) An approval given under subsection (1) or (2), or a variation or revocation of an approval, is not a legislative instrument.

Subdivision D—Complying with management plans for Commonwealth reserves

361 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

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The Director must manage a Commonwealth reserve to give effect to a management plan for the reserve. If indigenous people think the Director is not doing this for a reserve including their land, they can take the matter up with the Minister.

Commonwealth agencies must act so as not to contravene a management plan.

362 Commonwealth and Commonwealth agencies to comply with management plan for Commonwealth reserve

- (1) The Director must exercise the Director's powers and perform the Director's functions to give effect to a management plan that is in operation for a Commonwealth reserve.
- (2) The Commonwealth or a Commonwealth agency must not perform its functions or exercise its powers in relation to a Commonwealth reserve inconsistently with a management plan that is in operation for the reserve.
- (3) To avoid doubt, if a management plan for a Commonwealth reserve prohibits the exercise of a specified power, or the performance of a specified function, under an Act (including a power or function under an instrument made under an Act), the power or function must not be exercised in or in relation to the reserve while the plan is in operation.

363 Resolving disagreement between land council and Director over implementation of plan*Minister to resolve disagreement*

- (1) If the Chair or Chairperson of a land council for indigenous people's land in a jointly managed reserve and the Director disagree about whether the Director is exercising the Director's powers and performing the Director's functions consistently with a management plan in operation for the reserve:
 - (a) the Director must inform the Minister; and

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- (b) the Minister must appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
- (c) the person appointed must inquire into the matter and give the Minister a report and recommendations; and
- (d) the Minister must give the Director any directions the Minister thinks fit; and
- (e) the Director must comply with any direction.

*What is a **land council**?*

- (2) The **land council** for indigenous people's land in a Commonwealth reserve is:
 - (a) if the land is in the area of an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*—that Aboriginal Land Council; and
 - (b) if the land is in Jervis Bay Territory—the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; and
 - (c) if the land is elsewhere—a body corporate that:
 - (i) is established by or under an Act; and
 - (ii) has functions relating to the indigenous people's land in the reserve; and
 - (iii) consists of indigenous persons who either live in an area to which one or more of the body's functions relate or are registered as traditional owners of indigenous people's land in an area to which one or more of the body's functions relate.

*What is **indigenous people's land**?*

- (3) Land is **indigenous people's land** if:
 - (a) a body corporate holds an estate that allows the body to lease the land to the Commonwealth or the Director; and
 - (b) the body corporate was established by or under an Act for the purpose of holding for the benefit of indigenous persons title to land vested in it by or under that Act.

Who is an indigenous person?

- (4) A person is an **indigenous person** if he or she is:
- (a) a member of the Aboriginal race of Australia; or
 - (b) a descendant of an indigenous inhabitant of the Torres Strait Islands.

What is a jointly managed reserve?

- (5) A Commonwealth reserve is a **jointly managed reserve** if:
- (a) it includes indigenous people's land held under lease by the Director; and
 - (b) a Board is established for the reserve under Subdivision F.

364 Resolving disagreement between Director and Board over implementation of plan

- (1) The Director must inform the Minister if the Director believes that:
- (a) a decision of a Board for a Commonwealth reserve is likely to be substantially detrimental to the good management of the reserve; or
 - (b) a decision of a Board for a Commonwealth reserve is contrary to a management plan in operation for the reserve.
- (2) The Minister must take the steps he or she thinks fit to resolve the matter.
- (3) If the Minister cannot resolve the matter, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.
- (4) The person appointed must inquire into the matter and give the Minister a report and recommendations.
- (5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:
- (a) the directions the Minister thinks appropriate; and
 - (b) a statement of reasons for giving the directions; and

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- (c) a copy of the report and recommendations.
- (6) The Director and the Board must comply with any directions given by the Minister.

**Subdivision E—Approving management plans for
Commonwealth reserves**

365 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Minister may approve a management plan for a Commonwealth reserve prepared by the Director and any Board for the reserve. Before the Minister approves a plan, he or she may modify it.

Before the Director gives a plan to the Minister for approval, there are 2 opportunities for the public and others with an interest in the reserve to comment.

The Minister can resolve any disagreements between the Director and a Board for a reserve over preparation of a plan for the reserve.

366 Obligation to prepare management plans for Commonwealth reserves

Plans required for Commonwealth reserves without Boards

- (1) The Director must prepare management plans for each Commonwealth reserve for which there is not a Board to try to ensure that a management plan for the reserve is in operation:
 - (a) as soon as practicable after the reserve is declared; and
 - (b) at all times after the first plan for managing the reserve takes effect.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Section 367*Amending or replacing plans for reserves without Boards*

- (2) The Director may prepare a management plan for a Commonwealth reserve for which there is not a Board:
- (a) to amend a management plan that is in operation for the reserve; or
 - (b) to revoke and replace a management plan that is in operation for the reserve.

Plans required for Commonwealth reserves with Boards

- (3) A Board for a Commonwealth reserve must prepare management plans for the reserve in conjunction with the Director, to try to ensure that a management plan for the reserve is in operation:
- (a) as soon as practicable after the Board is established; and
 - (b) at all times after a plan for managing the reserve first takes effect after the establishment of the Board.

Note: Section 368 specifies steps to be taken in preparing a management plan for a Commonwealth reserve.

Amending or replacing plans for reserves with Boards

- (4) The Board for a Commonwealth reserve may prepare a management plan for the reserve in conjunction with the Director:
- (a) to amend a management plan that is in operation for the reserve; or
 - (b) to revoke and replace a management plan that is in operation for the reserve.

367 Content of a management plan for a Commonwealth reserve*Mandatory content*

- (1) A management plan for a Commonwealth reserve must provide for the protection and conservation of the reserve. In particular, the plan must:

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- (a) assign the reserve to an IUCN category (whether or not a Proclamation has assigned the reserve or a zone of the reserve to that IUCN category); and
- (b) state how the reserve, or each zone of the reserve, is to be managed; and
- (c) state how the natural features of the reserve, or of each zone of the reserve, are to be protected and conserved; and
- (d) if the Director holds land or seabed included in the reserve under lease—be consistent with the Director’s obligations under the lease; and
- (e) specify any limitation or prohibition on the exercise of a power, or performance of a function, under an Act in or in relation to the reserve; and
- (f) specify any mining operation, major excavation or other work that may be carried on in the reserve, and the conditions under which it may be carried on; and
- (g) specify any other operation or activity that may be carried on in the reserve; and
- (h) indicate generally the activities that are to be prohibited or regulated in the reserve, and the means of prohibiting or regulating them; and
- (i) indicate how the plan takes account of Australia’s obligations under each agreement with one or more other countries that is relevant to the reserve (including the World Heritage Convention and the Ramsar Convention, if appropriate); and
- (j) if the reserve includes a National Heritage place:
 - (i) not be inconsistent with the National Heritage management principles; and
 - (ii) address the matters prescribed by regulations made for the purposes of paragraph 324S(4)(a); and
- (k) if the reserve includes a Commonwealth Heritage place:
 - (i) not be inconsistent with the Commonwealth Heritage management principles; and
 - (ii) address the matters prescribed by regulations made for the purposes of paragraph 341S(4)(a).

Plan may assign different zones to different IUCN categories

- (2) A management plan for a Commonwealth reserve may divide the reserve into zones and assign each zone to an IUCN category (whether or not a Proclamation has assigned the reserve or each zone of the reserve to that IUCN category). The category to which a zone is assigned may differ from the category to which the reserve is assigned.

Consistency with Australian IUCN reserve management principles

- (3) The provisions of a management plan for a Commonwealth reserve that relate to the reserve or a particular zone of the reserve must not be inconsistent with the Australian IUCN reserve management principles for the IUCN category to which the reserve or zone is assigned by the plan.

If zone is in different category from reserve

- (4) If the management plan for a Commonwealth reserve assigns the reserve to one IUCN category and assigns a zone of the reserve to a different IUCN category, disregard the IUCN category to which the reserve is assigned for the purposes of the application of subsection (3) in relation to the zone.
- (5) A single management plan may be the management plan for more than one Commonwealth reserve.

Plans for proposed extension of reserve

- (6) A management plan for a Commonwealth reserve may include provisions relating to an area that is proposed to be included in the reserve, but they do not have effect until the area is included in the reserve.

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368 Steps in preparing management plans for Commonwealth reserves

Overview of process

- (1) Before the Director gives the Minister a management plan for a Commonwealth reserve for approval:
 - (a) the Director must publish under subsection (2) an invitation to comment on the proposal to prepare a draft of the plan; and
 - (b) the Director and the Board (if any) for the reserve must prepare a draft of the plan, taking into account any comments received in response to the invitation; and
 - (c) the Director must publish under subsection (5) an invitation to comment on the draft; and
 - (d) the Director must make publicly available copies of the draft free or for a reasonable fee determined by the Director; and
 - (e) the Director and the Board (if any) must consider any comments received in response to the invitation to comment on the draft and may alter the draft.

Notice inviting comments on proposal to prepare draft

- (2) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):
 - (a) stating that the Director proposes to prepare a draft of a management plan for the Commonwealth reserve; and
 - (b) inviting comments on the proposal from:
 - (i) members of the public; and
 - (ii) the Chair or Chairperson of any land council for indigenous people's land in the reserve; and
 - (iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and

- (iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and
- (v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and
- (c) specifying the address to which comments may be sent; and
- (d) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

Considerations in preparing a management plan

- (3) In preparing a management plan for a Commonwealth reserve, the Director and the Board (if any) for the reserve must take account of:
 - (a) any report considered by the Minister under section 351 before a Proclamation declaring the reserve was made; and
 - (b) the regulation of the use of the reserve for the purpose for which it was declared; and
 - (c) the interests of:
 - (i) any owner of any land or seabed in the reserve; and
 - (ii) the traditional owners of any indigenous people's land in the reserve; and
 - (iii) any other indigenous persons interested in the reserve; and
 - (iv) any person who has a usage right relating to land, sea or seabed in the reserve that existed (or is derived from a usage right that existed) immediately before the reserve was declared; and
 - (d) the protection of the special features of the reserve, including objects and sites of biological, historical, palaeontological, archaeological, geological and geographical interest; and
 - (e) the protection, conservation and management of biodiversity and heritage within the reserve; and

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- (f) the protection of the reserve against damage; and
- (g) Australia's obligations under agreements between Australia and one or more other countries relevant to the protection and conservation of biodiversity and heritage.

*Who are the **traditional owners** of indigenous people's land?*

- (4) The **traditional owners** of indigenous people's land are:
 - (a) a local descent group of indigenous persons who:
 - (i) have common spiritual affiliations to a site on the land under a primary spiritual responsibility for that site and for the land; and
 - (ii) are entitled by indigenous tradition to forage as of right over the land; or
 - (b) if the land is in the Jervis Bay Territory—the members of the Wreck Bay Aboriginal Community Council.

Notice inviting comment on draft

- (5) The Director must publish a notice in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any):
 - (a) stating that the Director has prepared a draft of a management plan for the Commonwealth reserve; and
 - (b) stating how the draft can be obtained; and
 - (c) inviting comments on the draft from:
 - (i) members of the public; and
 - (ii) the Chair or Chairperson of any land council for any indigenous people's land in the reserve; and
 - (iii) if the reserve is in a State or self-governing Territory—the agency (if any) of the State or Territory that is responsible for managing national parks established in the State or Territory under a law of the State or Territory; and
 - (iv) if the Minister has established under Division 4 of Part 19 an advisory committee with functions relating to the reserve—the committee; and

- (v) if the Director holds any land or seabed in the reserve under lease—anyone the Director is obliged under the lease to consult about management of the land or seabed; and
- (d) specifying the address to which comments may be sent; and
- (e) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.

369 Resolving disagreements between Director and Board in planning process

- (1) The Director and the Board for a Commonwealth reserve must inform the Minister if they cannot agree on:
 - (a) the content of a management plan they are preparing for the reserve; or
 - (b) any changes to be made following comment made in response to an invitation to comment on a draft management plan for the reserve; or
 - (c) whether the Director should give a management plan for the reserve to the Minister for approval (either initially or after the Minister has given the plan back to the Director with suggestions under paragraph 370(3)(b)).
- (2) If the Minister is advised by the Director and a Board of a disagreement, the Minister must take the steps the Minister thinks fit to resolve the disagreement.
- (3) If the Minister cannot resolve the disagreement, the Minister must appoint as an arbitrator to inquire into the matter a person whom the Minister thinks is suitably qualified and in a position to deal with the matter impartially.
- (4) The appointed arbitrator must inquire into the matter and give the Minister a report and recommendations.
- (5) After the Minister receives the report and recommendations, he or she must give the Director and the Board:

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- (a) the directions the Minister thinks appropriate; and
 - (b) a statement of reasons for giving the directions; and
 - (c) a copy of the report and recommendations.
- (6) The Director and the Board must comply with any directions given by the Minister.

370 Approval of management plans for Commonwealth reserves

Giving management plan to Minister for approval

- (1) The Director must give the Minister a management plan for a Commonwealth reserve for approval, but only if the Board (if any) for the reserve agrees. The Director must do so as soon as practicable after considering under paragraph 368(1)(e) the comments (if any) on a draft of the management plan.

Things to be given to Minister with management plan

- (2) When the Director gives the plan to the Minister, the Director must also give the Minister:
 - (a) any comments received in response to the invitation to comment on a draft of the plan; and
 - (b) the views of the Director and any Board for the reserve on the comments.

Minister's decision

- (3) Within 60 days of the Director giving the plan, the Minister:
 - (a) must consider the plan and any comments and views given to the Minister under subsection (2); and
 - (b) must either:
 - (i) approve the plan; or
 - (ii) give the plan back to the Director with suggestions for consideration by the Director and any Board for the reserve.

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Note: There are some extra rules about giving back to the Director a management plan for a Commonwealth reserve in the Kakadu region, the Uluru region or Jervis Bay Territory. See section 390.

Procedure if Minister gives plan back

- (4) If the Minister gives the plan back to the Director with suggestions:
- (a) the Director and any Board for the Commonwealth reserve to which the plan relates must consider the suggestions; and
 - (b) the Director must give the Minister an identical or altered version of the plan, but only if any Board for the reserve agrees; and
 - (c) the Director must give the Minister, with the plan, the Director's views on the Minister's suggestions.

Minister's decision on re-submitted plan

- (5) As soon as practicable after the Director has given the Minister a version of the plan under subsection (4), the Minister:
- (a) must consider it and the views given to the Minister under subsection (4); and
 - (b) must approve the plan with any modifications the Minister considers appropriate.

Considerations for Minister assigning reserve to IUCN category

- (6) When approving a management plan for a Commonwealth reserve to assign the reserve, or a zone of a reserve, to a particular IUCN category, the Minister must be satisfied of the matters specified in section 347 that he or she would have to be satisfied of before the Governor-General could make a Proclamation to assign the reserve or zone to that IUCN category.

371 Approved management plans are legislative instruments

- (1) A management plan for a Commonwealth reserve prepared by the Director, and the Board (if any) for the reserve, and approved by the Minister, is a legislative instrument made by the Minister on the day the plan is approved.

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- (3) When the management plan is laid before each House of the Parliament, there must also be laid before the House copies of any comments, views, report or recommendations given to the Minister under this Division in relation to the plan that have not been given effect to in the plan.

372 Amendment and revocation of management plans for Commonwealth reserves

A management plan for a Commonwealth reserve may amend or revoke and replace an earlier management plan for the reserve.

373 Expiry of management plans for Commonwealth reserves

A management plan for a Commonwealth reserve ceases to have effect 10 years after it took effect (unless it has already been revoked).

Subdivision F—Boards for Commonwealth reserves on indigenous people’s land

374 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

The Minister must establish a Board for a Commonwealth reserve that is wholly or partly on indigenous people’s land, if the land council for that land (or traditional owners) and the Minister agree that there should be a Board for the reserve.

The Board’s role is to make decisions and plans for management of the reserve, in conjunction with the Director.

A majority of Board members must be indigenous people nominated by traditional owners if the reserve is wholly or mostly on indigenous people’s land.

375 Application

This Subdivision provides for Boards for Commonwealth reserves that consist of, or include, indigenous people's land held under lease by the Director.

376 Functions of a Board for a Commonwealth reserve

- (1) The functions of a Board established for a Commonwealth reserve are:
 - (a) to make decisions relating to the management of the reserve that are consistent with the management plan in operation for the reserve; and
 - (b) in conjunction with the Director, to:
 - (i) prepare management plans for the reserve; and
 - (ii) monitor the management of the reserve; and
 - (iii) advise the Minister on all aspects of the future development of the reserve.
- (2) When performing its functions, a Board must comply with a direction given by the Minister to the Board under:
 - (a) section 364 (Resolving disagreement between Director and Board over implementation of plan); or
 - (b) section 369 (Resolving disagreements between Director and Board in planning process).

377 Minister must establish Board if land council or traditional owners agree

- (1) The Minister must establish a Board for a specified Commonwealth reserve by notice published in the *Gazette* and in the way (if any) prescribed by the regulations if he or she agrees on the matters set out in subsection (2) with:
 - (a) the land council for the indigenous people's land in the reserve that the Director holds under lease; or

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- (b) if there is not such a land council—the traditional owners of the indigenous people’s land in the reserve that the Director holds under lease.
- (2) The matters to be agreed on are:
 - (a) that a Board should be established for the reserve; and
 - (b) the name of the Board; and
 - (c) the number of positions of member of the Board; and
 - (d) the qualifications for appointment to each position of member of the Board.
- (3) The notice must specify each of the matters described in paragraphs (2)(b), (c) and (d).

Note: The notice may specify different qualifications for different positions. See subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) If the reserve consists wholly or mostly of indigenous people’s land held by the Director under lease, a majority of the members of the Board must be indigenous persons nominated by the traditional owners of the indigenous people’s land.
- (5) If the reserve is in a State or self-governing Territory, at least one member of the Board must be a person nominated by the State or Territory.

Note: By agreement between the Minister and the land council or traditional owners, more than one member of a Board may be a person nominated by the State or Territory.

378 Altering the constitution of a Board or abolishing a Board

Revoking and amending notice establishing Board

- (1) The Minister may, by notice in the *Gazette*:
 - (a) revoke a notice under section 377 relating to the Board for the reserve; or
 - (b) amend a notice under section 377 relating to the Board for the reserve so as to:

- (i) change the specification of the name by which the Board is to be known; or
- (ii) increase the number of members of the Board and specify the qualifications for appointment to each of the extra positions of member; or
- (iii) decrease the number of positions of member of the Board and specify which positions are abolished; or
- (iv) change the qualifications for appointment to a position of member of the Board.

Note: The Minister may exercise the power of amendment from time to time. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Limits on changing composition of Board

- (2) Paragraph (1)(b) has effect subject to subsections 377(4) and (5).

Note 1: Subsection 377(4) requires a majority of the members of the Board of a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease to be indigenous persons nominated by the traditional owners of the land.

Note 2: Subsection 377(5) requires at least one member of a Board for a reserve in a State or self-governing Territory to be a nominee of the State or Territory.

Prerequisite to revoking or amending notice

- (3) The Minister may revoke or amend a notice under section 377 relating to a Commonwealth reserve only if the Minister agrees on the revocation or amendment with:
- (a) the land council for indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the land council; or
 - (b) the traditional owners of indigenous people's land in the reserve, if the Board for the reserve was established with the agreement of the traditional owners.

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Board's identity not affected by name change

- (4) If the Minister amends a notice published under section 377 so as to alter a Board's name or constitution, section 25B of the *Acts Interpretation Act 1901* applies in relation to the alteration as if it had been made by an Act.

Note: This ensures that the Board's identity and functions are not affected by the alteration, and that certain references to the Board under its old name are treated as references to the Board under its new name.

379 Appointment of Board members

Appointment of persons

- (1) The Minister may, in writing, appoint a person on a part-time basis to a position of member of a Board if:
- (a) the person is qualified for appointment to the position; and
 - (b) the Minister is satisfied that the person is a fit and proper person to be a member of the Board (see section 379A).

Note: Subsection (1) is subject to section 390A, which deals with the appointment of a Northern Territory nominee as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.

Replacement appointments

- (2) As soon as practicable after a position of member of a Board becomes vacant, the Minister must appoint a person to the position under subsection (1).

Validity of appointments

- (3) A deficiency or irregularity relating to the nomination, selection or appointment of a member of a Board does not invalidate the member's appointment.

Section 379A

379A Fit and proper person

In determining for the purposes of this Subdivision whether a person is a fit and proper person to be a member of a Board, the Minister may have regard to the matters specified in regulations made for the purposes of this section. The Minister may also have regard to any other matter the Minister considers appropriate.

Note: The question whether a person is a fit and proper person is relevant to subsection 379(1) (which is about appointments to Boards), and subsection 382(1A) (which is about termination of appointments).

380 Terms and conditions*Term of office*

- (1) A member of a Board holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Section 382 sets out the circumstances in which a member's appointment may be (or must be) terminated.

Avoiding doubt—future terms of office

- (1A) To avoid doubt, subsection (1) does not prevent a person from being appointed as a member of a Board again. This subsection does not affect the operation of section 33AA of the *Acts Interpretation Act 1901* in relation to this Act.

Resignation

- (2) A member of a Board may resign his or her appointment by giving the Minister a written resignation.

Other terms and conditions

- (3) A member of a Board holds office on the terms and conditions (if any) that are determined by the Minister in relation to matters not covered by this Act or the regulations.

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381 Remuneration

- (1) A member of a Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member of a Board is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

382 Termination of appointments of Board members

Termination when person stops being qualified for appointment

- (1) The appointment of a person to a position of member of a Board is terminated when the person ceases to be qualified for appointment to the position.

Termination if person is not fit and proper

- (1A) The Minister must terminate the appointment of a member of a Board if the Minister is satisfied that the member is not a fit and proper person to be a member of the Board. For this purpose, in having regard to matters as mentioned in section 379A, the Minister may consider things that happened either before or after the member's appointment.

Termination for misbehaviour or incapacity

- (2) The Minister may terminate the appointment of a member of a Board for misbehaviour or physical or mental incapacity.

Termination for failure to attend Board meetings

- (3) The Minister may terminate the appointment of a member of a Board if the member is absent, except on leave of absence, from 3

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consecutive meetings of the Board of which the member has had notice.

Termination for engaging in conflicting work

- (4) The Minister may terminate the appointment of a member of a Board if the member engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of the member.

Termination for conduct inimical to Board

- (4A) The Minister may terminate the appointment of a member of a Board for a reserve if the Minister is satisfied that the person has acted in a way that is not in the interest of the Board as a whole. However, the Minister may not terminate under this subsection the appointment of a member nominated by traditional owners of indigenous people's land in the reserve.

Termination for failure to disclose interests

- (5) The Minister must terminate the appointment of a member of a Board if:
- (a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the member has in a matter being considered or about to be considered by the Board; and
 - (b) the member does not have a reasonable excuse for not complying.

Termination on request by nominator

- (6) The Minister must terminate the appointment of a member of a Board if:
- (a) the member was appointed on the nomination of a particular person, body or group of persons; and
 - (b) the person, body or group gives the Minister a written request to terminate the appointment.

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Termination for bankruptcy or insolvency

- (7) The Minister may terminate the appointment of a member of the Board if the member:
- (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

383 Procedure of a Board

- (1) The regulations may provide for:
- (a) matters relating to the operation of a Board, including:
 - (i) procedures for convening meetings of the Board; and
 - (ii) procedures for determining who is to preside at a meeting of the Board; and
 - (iii) determining who may attend a meeting of the Board; and
 - (iv) the constitution of a quorum for a meeting of the Board; and
 - (v) procedures relating to a member's interest in matters being dealt with by the Board; and
 - (vi) the way in which matters are to be resolved by the Board; and
 - (b) the appointment and rights of a deputy of a member of a Board.
- (2) The regulations may allow a Board to determine a matter relating to the operation of the Board for which the regulations may provide.
- (3) If there are no regulations in force, a Board may operate in the way it determines.

- (4) A meeting of a Board for a Commonwealth reserve consisting wholly of indigenous people's land:
- (a) must not start; and
 - (b) must not continue;
- unless the majority of the members of the Board present are persons nominated by the traditional owners of the indigenous people's land for appointment as members.
- (5) Subsection (4) has effect despite subsections (1), (2) and (3).

Subdivision G—Special rules for some Commonwealth reserves in the Northern Territory or Jervis Bay Territory

384 Simplified outline of this Subdivision

The following is a simplified outline of this Subdivision:

Special rules apply to Commonwealth reserves in the Kakadu region, Uluru region and Jervis Bay Territory, affecting the activities that can be carried on in those reserves.

Special procedures apply to planning for management of reserves in the Kakadu region, Uluru region and Jervis Bay Territory. These provide for extra involvement of indigenous people in the planning process.

385 Activities in Commonwealth reserve without management plan

When a management plan is not in operation for a particular Commonwealth reserve wholly or partly in the Kakadu region, Uluru region or Jervis Bay Territory, the Director may perform the Director's functions and exercise the Director's powers in and in relation to a part of the reserve in the region, subject to any directions of the Minister.

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386 What are the *Kakadu region* and the *Uluru region*?

- (1) The ***Kakadu region*** is the part of the Alligator Rivers Region (as defined in the *Environment Protection (Alligator Rivers Region) Act 1978*) that excludes:
 - (a) the area shown as the Arnhem Land Aboriginal Reserve on the map mentioned in that definition; and
 - (b) the areas that are pastoral leases and are described on that map as Mount Bunday and Eva Valley.
- (2) The ***Uluru region*** is the area of land described under the heading “Uluru” in Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Act 1976*.

387 No mining operations in Kakadu National Park

- (1) A person must not carry out mining operations in Kakadu National Park.
- (2) Subsection (1) does not prevent:
 - (a) the use, development or reconstruction of the township known as Jabiru; or
 - (b) the transportation of anything in Kakadu National Park along routes (including air routes) prescribed by the regulations for the purposes of this paragraph; or
 - (c) the construction and use of pipelines and power lines in Kakadu National Park along routes prescribed by the regulations for the purposes of this paragraph; or
 - (d) the doing of anything for the purposes of building or construction, or the supply of water, in Kakadu National Park as long as the purposes are not connected with, or incidental to, mining operations; and
 - (e) prescribed activities carried on in Kakadu National Park in connection with, or incidental to, mining operations carried on outside Kakadu National Park.
- (3) ***Kakadu National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Kakadu National Park was

given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

388 Establishment and development of townships in the Kakadu region and Uluru region

- (1) A person may use or develop a township in a part of a Commonwealth reserve, but only if:
 - (a) the part is in the Kakadu region or the Uluru region; and
 - (b) the person does so in accordance with:
 - (i) subsection (2); and
 - (ii) the management plan for the reserve; and
 - (iii) a town plan prepared and approved in accordance with the regulations.
- (2) A person (other than the Director) may use or develop a township only on land that the person holds under lease or sub-lease from:
 - (a) the Commonwealth; or
 - (b) the Director; or
 - (c) the Kakadu Aboriginal Land Trust (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
 - (d) the Northern Territory; or
 - (e) the Aboriginal and Torres Strait Islander corporation referred to in subsection 19(3F) of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

389 Planning for townships

Management plan provisions

- (1) The provisions of a management plan for a Commonwealth reserve that relate to a township must include provisions for and in relation to the use and development of the township.

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Town plan provisions

- (2) A town plan must make detailed provision in relation to the use and development of the township, including, in particular, the provision (if any) to be made for any matters that are specified for the purposes of this subsection by:
- (a) the management plan for the Commonwealth reserve containing the township; or
 - (b) the regulations.

Town plans may adopt, apply or incorporate other instruments

- (3) For the purposes of subsection (2), a town plan may apply, adopt or incorporate, with or without modification:
- (a) the provisions of any law of the Northern Territory (or a part of the Territory), as in force at a specified time or as in force from time to time; or
 - (b) any matter contained in any instrument or writing as in force or existing at a specified time.

Revocation and variation of town plans

- (5) A town plan may be revoked or amended in the manner provided by the regulations.

Note: Town plans are to be prepared and approved in accordance with the regulations. See subparagraph 388(1)(b)(iii).

390 Special rules to protect Aboriginal interests in planning process

- (1) This section sets out some extra rules about the process of preparing management plans for a Commonwealth reserve wholly or partly within the Kakadu region, the Uluru region or Jervis Bay Territory.
- (2) The Minister must give a management plan for a Commonwealth reserve back to the Director with suggestions under paragraph 370(3)(b) if the Minister is satisfied that there is a substantial difference of opinion between:

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- (a) the Chair or Chairperson of a land council for indigenous people's land in the reserve, on the one hand; and
 - (b) the Director, or the Director and the Board for the reserve (if it is a jointly managed reserve), on the other hand.
- (3) If the Minister gives the plan back to the Director with suggestions under paragraph 370(3)(b) (whether because of subsection (2) or not), the Minister must:
 - (a) give a copy of the suggestions to:
 - (i) the Chair or Chairperson of each land council for indigenous people's land in the reserve; and
 - (ii) the Parks and Wildlife Commission of the Northern Territory, if the plan is for a Commonwealth reserve wholly or partly in the Territory; and
 - (b) invite each person to whom the Minister gave a copy of the suggestions to give the Director comments on the suggestions within 14 days.
- (4) When considering the Minister's suggestions as required by paragraph 370(4)(a), the Director and any Board for the reserve must also consider any comments made in response to the Minister's invitation.
- (5) When the Director gives the Minister an identical or altered version of the plan under paragraph 370(4)(b), the Director must also:
 - (a) give the Minister a copy of the comments (if any) made in response to the Minister's invitation, and the Director's views on those comments; and
 - (b) give the Chair or Chairperson of each land council for indigenous people's land in the reserve a copy of the version of the plan given to the Minister and of the comments and views (if any) being given to the Minister under paragraph (a).
- (6) The Chair or Chairperson of a land council for indigenous people's land in the reserve may make comments to the Minister relating to the version of the plan within 14 days of receiving the copy of it.

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- (7) If the Minister receives comments from the Chair or Chairperson of a land council for indigenous people's land in the reserve and the Minister is satisfied that there is a substantial difference of opinion between the Chair or Chairperson and the Director over the plan:
 - (a) the Minister may appoint a person the Minister considers to be suitably qualified and in a position to deal with the matter impartially to inquire into the matter; and
 - (b) the person appointed must inquire into the matter and give the Minister a report and recommendations.
- (8) The Minister:
 - (a) must also consider:
 - (i) the comments (if any) made to the Minister by the Chair or Chairperson under subsection (6); and
 - (ii) the report and recommendations (if any) given to the Minister under subsection (7);when considering under subsection 370(5) the version of the plan given to the Minister under paragraph 370(4)(b); and
 - (b) must not approve the plan before the end of the period described in subsection (6).

390A Appointment of Northern Territory nominee to Board

- (1) This section makes special provision for the appointment of a person nominated by the Northern Territory as a member of the Board for a Commonwealth reserve consisting wholly or mostly of indigenous people's land held by the Director under lease in the Territory.
- (2) Despite subsection 379(1), the Minister must not appoint the person unless:
 - (a) the members of the Board nominated by the traditional owners of the land consent to the appointment; or
 - (b) the appointment has been recommended under subsection (5).

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- (3) The Northern Territory may inform the Minister if it believes that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment.
- (4) If the Northern Territory informs the Minister, he or she must refer the matter to the person (the ***Ombudsman***) holding the office of Commonwealth Ombudsman under the *Ombudsman Act 1976*.
- (5) If the Ombudsman is satisfied that the members of the Board nominated by the traditional owners of the land are unreasonably withholding consent to the appointment, the Ombudsman must recommend to the Minister that the Minister make the appointment.

Section 390B

Division 5—Conservation zones

390B Simplified outline of this Division

The following is a simplified outline of this Division:

The Governor-General can proclaim a Commonwealth area to be a conservation zone, to protect biodiversity in the area while it is being assessed for inclusion in a Commonwealth reserve.

Regulations can be made to regulate a wide range of activities in a conservation zone.

People who have rights relating to an area that is later included in a conservation zone can continue to exercise those rights in the zone.

A conservation zone can be revoked if the Minister is satisfied the area concerned should not be included in a Commonwealth reserve. It is revoked automatically if it is included in a Commonwealth reserve.

390C Object of this Division

The object of this Division is to provide for the protection of biodiversity, other natural features and heritage in Commonwealth areas while they are being assessed for inclusion in a Commonwealth reserve.

390D Proclamation of conservation zones

- (1) The Governor-General may, by Proclamation, declare a Commonwealth area outside a Commonwealth reserve to be a conservation zone.
- (2) Before the Governor-General makes a Proclamation declaring a Commonwealth area to be a conservation zone, the Minister must be satisfied that the area should be assessed to determine whether

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the biodiversity, other natural features and heritage in the area should be protected by including the area in a Commonwealth reserve.

390E Regulating activities generally

- (1) The regulations may:
- (a) regulate or prohibit the pollution of soil, air or water in a manner that is, or is likely to be, harmful to:
 - (i) people, biodiversity or heritage in conservation zones; or
 - (ii) the natural features of conservation zones; and
 - (b) regulate tourism in conservation zones; and
 - (c) provide for the protection and preservation of conservation zones and property and things in conservation zones; and
 - (d) provide for the protection and conservation of biodiversity in conservation zones; and
 - (e) regulate or prohibit access to all or part of a conservation zone by persons or classes of persons; and
 - (f) provide for the removal of trespassers from conservation zones; and
 - (g) regulate camping in conservation zones; and
 - (h) provide for the safety of persons in conservation zones; and
 - (i) regulate the use of fire in conservation zones; and
 - (j) regulate the conduct of persons in conservation zones; and
 - (k) regulate the carrying on of any trade or commerce in a conservation zone; and
 - (l) regulate the use of vehicles in conservation zones and provide for signs and road markings for those purposes; and
 - (m) provide for:
 - (i) the removal of vehicles, aircraft or vessels from places in conservation zones where they have been left in contravention of the regulations or have been abandoned; and
 - (ii) the impounding of such vehicles, aircraft or vessels; and

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- (n) provide that the person taken for the purposes of the regulations to be the owner of a motor vehicle involved in a contravention of a provision of the regulations relating to the parking or stopping of vehicles in a conservation zone is, except as provided otherwise, taken to commit an offence against the provision; and
- (o) provide for a person to be taken to be the owner of a motor vehicle for the purposes of regulations made under paragraph (n) (including a person in whose name the motor vehicle is registered under the law of a State or Territory); and
- (p) regulate the use of vessels in, and the passage of vessels through, conservation zones; and
- (q) regulate the landing and use of aircraft in, and the flying of aircraft over, conservation zones; and
- (r) regulate or prohibit the taking of animals or plants into or out of conservation zones; and
- (s) provide for the impounding, removal, destruction or disposal of animals found straying in conservation zones; and
- (t) regulate or prohibit the taking into conservation zones, and the use in conservation zones, of weapons, traps, nets, snares, fishing apparatus and other devices; and
- (u) regulate or prohibit the laying of baits and the use of explosives and poisons in conservation zones; and
- (v) provide for the collection of specimens and the pursuit of research in conservation zones for scientific purposes; and
- (w) provide for the issue of licences, permits and authorities relating to activities in conservation zones, the conditions subject to which they are issued and the charging of fees by the Commonwealth in respect of such licences, permits and authorities; and
- (x) provide for any matter incidental to or connected with a matter described in another paragraph.

(2) Regulations relating to conservation zones may also:

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- (a) regulate the carrying on of mining operations, fishing, pastoral or agricultural activities for commercial purposes; and
 - (b) regulate the construction or alteration of buildings and structures; and
 - (c) regulate the construction or establishment of bridges, railways, roads, tracks, port facilities and air-strips and the carrying out of any other works; and
 - (d) regulate the felling or taking of timber; and
 - (e) provide for and in relation to the powers to be exercised, and the functions and duties to be performed, in and in relation to conservation zones by wardens, by rangers and by other persons included in specified classes of persons; and
 - (f) provide for and in relation to the giving of securities for compliance with regulations made for the purposes of this section by persons doing, or proposing to do, anything to which those regulations relate.
- (3) Regulations made for the purposes of this section have no effect to the extent that they are inconsistent with the terms and conditions of a right (however described) to explore for minerals, or to mine for or recover minerals, granted under section 124 of the *Lands Acquisition Act 1989*.

390F Charges for activities in conservation zones

Subject to the approval of the Minister, the Director may determine and impose charges for using services or facilities provided by the Director in or in connection with a conservation zone.

390G Other laws and regulations made for this Division

Regulations regulating aircraft subject to other Commonwealth laws

- (1) A provision of the regulations regulating the flying of aircraft over a conservation zone does not have any effect so far as it is inconsistent with a law of the Commonwealth. For this purpose, a

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provision is not inconsistent with such a law if it can be complied with without contravention of the law.

Territory laws subject to regulations

- (2) A law of a Territory has effect so far as it is not inconsistent with a provision of the regulations made for the purposes of this Division and having effect in that Territory. For this purpose, such a law is not inconsistent with the provision so far as it can operate concurrently with the provision.

390H Prior usage rights relating to conservation zones continue to have effect

- (1) None of the following provisions affect a usage right that was held by a person (other than the Commonwealth) in relation to land or seabed immediately before the land or seabed was included in a conservation zone:
- (a) provisions of this Division that relate to the zone (whether or not they also relate to another conservation zone);
 - (b) provisions of the regulations made for the purposes of this Division that relate to the zone (whether or not they also relate to another conservation zone).
- (2) None of the provisions covered by subsection (1) affect the application of a law of a State or Territory in relation to the usage right.
- (3) The usage right may be renewed or have its term extended only:
- (a) with the Minister's written consent; and
 - (b) subject to any conditions determined by the Minister.
- This subsection has effect despite subsections (1) and (2) and any other law of the Commonwealth, a State or a Territory.
- (4) Subsections (1) and (2) apply in relation to a usage right relating to minerals on, in or under land or seabed included in a conservation zone as if the usage right were a usage right relating to the land or seabed.

- (5) This section applies to a right arising out of a usage right in the same way as it applies to the usage right.

390J Revoking and altering conservation zones

Proclamations to revoke or amend declaring Proclamation

- (1) The Governor-General may, by Proclamation, revoke or amend a Proclamation made under section 390D (declaring a Commonwealth area to be a conservation zone).

Limit on making Proclamations

- (2) Before the Governor-General makes a Proclamation under subsection (1) causing a Commonwealth area to cease to be within a conservation zone, the Minister must be satisfied that the area should not be included in a Commonwealth reserve.

Declaration of Commonwealth reserve revokes conservation zone

- (3) A Commonwealth area ceases to be a conservation zone by force of this subsection if the area becomes or is included in a Commonwealth reserve.

Conservation zone ends if it ceases to be in Commonwealth area

- (4) If land, waters, seabed or airspace in a conservation zone cease to be a Commonwealth area, the land, waters, seabed or airspace cease to be (or be in) a conservation zone by force of this subsection.

Proclamation to reflect cessation of conservation zone

- (5) If land, waters, seabed or airspace cease to be a conservation zone by force of subsection (3) or (4), the Governor-General must make a Proclamation revoking or amending the Proclamation that included the land, waters, seabed or airspace in a conservation zone, to reflect the fact that the land, waters, seabed or airspace are no longer part of the conservation zone.

Section 390K

Chapter 5A—The List of Overseas Places of Historic Significance to Australia

Part 15A—The List of Overseas Places of Historic Significance to Australia

390K The List of Overseas Places of Historic Significance to Australia

- (1) The Minister must keep a written record of places in accordance with this Part. The record is called the *List of Overseas Places of Historic Significance to Australia*.
- (2) The List of Overseas Places of Historic Significance to Australia is not a legislative instrument.

390L Inclusion of places in the List of Overseas Places of Historic Significance to Australia

- (1) The Minister may, by notice published in the *Gazette*, include a place, and a statement of its historic significance to Australia, in the List of Overseas Places of Historic Significance to Australia if, and only if:
 - (a) the place is outside the Australian jurisdiction; and
 - (b) the Minister is satisfied that the place is of outstanding historic significance to Australia.
- (2) The regulations may specify matters the Minister is to have regard to in considering whether he or she is satisfied as mentioned in paragraph (1)(b).

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390M Removal of places from the List of Overseas Places of Historic Significance to Australia or variation of statement of historic significance

- (1) The Minister may, by notice published in the *Gazette*, do either of the following in relation to a place that is included in the List of Overseas Places of Historic Significance to Australia:
 - (a) remove the place, and the statement of its historic significance to Australia, from the List;
 - (b) vary the statement of the place's historic significance to Australia.
- (2) The regulations may specify matters the Minister is to have regard to in considering whether to take action under subsection (1).

390N Inviting comments from other Ministers before taking action

- (1) Before taking action in relation to a place under section 390L or 390M, the Minister (the *Environment Minister*) must:
 - (a) inform the following other Ministers of the action the Environment Minister proposes to take:
 - (i) the Minister for Foreign Affairs;
 - (ii) any other Minister whom the Environment Minister believes should be informed; and
 - (b) invite those other Ministers to give the Environment Minister comments on the proposed action; and
 - (c) take any comments from those other Ministers into account.
- (2) In this section:

Minister for Foreign Affairs means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

390P Minister may ask Australian Heritage Council for advice etc.

- (1) The Minister may ask the Australian Heritage Council for advice relating to action that the Minister is considering taking under section 390L or 390M in relation to a place, and may take that

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advice into account in deciding what action (if any) to take under that section in relation to the place.

- (2) The Minister may also seek, and have regard to, information or advice from any other source.

390Q List of Overseas Places of Historic Significance to Australia to be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the List of Overseas Places of Historic Significance to Australia are available for free to the public on request; and
- (b) an up-to-date copy of the List is available on the internet.

390R Disclosure of Australian Heritage Council's assessments and advice

- (1) A member of the Australian Heritage Council has a duty not to disclose advice under section 390P to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council.
- (2) However, the duty not to disclose the advice does not exist after the Minister has decided whether to take the action to which the advice relates.

Chapter 5B—Declared commercial fishing activities

Part 15B—Declared commercial fishing activities

Division 1—Prohibition

390SA Civil penalty—declared commercial fishing activities

A person must not engage in a declared commercial fishing activity in a Commonwealth marine area.

Civil penalty:

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

Note: If a body corporate is found to have contravened this section, an executive officer of the body may be found to have contravened section 494.

390SB Offence—declared commercial fishing activities

- (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 is a declared commercial fishing activity.

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

Note 1: If a body corporate is found to have committed an offence against this section, an executive officer of the body may be found to have committed an offence against section 495.

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.

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

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

Division 2—Declaring a commercial fishing activity

Subdivision A—What is a declared commercial fishing activity?

390SC What is a *declared commercial fishing activity*?

- (1) A *declared commercial fishing activity* is a commercial fishing activity that is specified in:
 - (a) an interim declaration that is in force under section 390SD;
or
 - (b) a final declaration that is in force under section 390SF.
- (1A) A *commercial fishing activity* is a fishing activity that is engaged in for a commercial purpose, and, to avoid doubt, does not include an activity that constitutes recreational fishing (within the meaning of subsection 212(2)).

Note: Under subsection 212(2), recreational fishing includes fishing from a charter boat and fishing in a fishing competition.
- (2) A *fishing activity* means an activity that constitutes fishing.

Subdivision B—Interim declaration

390SD Interim declaration

Making an interim declaration

- (1) The Minister may, by legislative instrument, make a declaration (an *interim declaration*) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of an interim declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For revocation of an interim declaration, see section 390SG.
- (2) When making an interim declaration, the Minister may identify a commercial fishing activity by reference to all or any of the following:

Section 390SD

- (a) a method of fishing;
- (b) a type of vessel used for fishing;
- (c) a method of processing, carrying or transshipping of fish that have been taken;
- (d) an area of waters or of seabed.

Note: Subsection (2) does not, by implication, limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (2A) When making an interim declaration, the Minister may only specify a commercial fishing activity that had not been engaged in before 11 September 2012 in a Commonwealth marine area.
- (3) The Minister must not make an interim declaration unless the Minister and the Fisheries Minister agree that:
 - (a) there is uncertainty about the environmental impacts of the commercial fishing activity; and
 - (b) it is appropriate that the commercial fishing activity be prohibited in a Commonwealth marine area while consultation occurs under section 390SE about whether to make a final declaration in relation to the commercial fishing activity under section 390SF.

When an interim declaration is in force

- (4) An interim declaration:
 - (a) comes into force at the end of the day on which it is registered in the Federal Register of Legislation; and
 - (b) remains in force until the earlier of the following times:
 - (i) the end of the period specified in the declaration as the period for which the declaration is in force;
 - (ii) if the declaration is revoked—when the revocation comes into force.

Specified period for which interim declaration is in force

- (5) The Minister must specify in an interim declaration the period for which it is to be in force. The period must not be longer than 60 days.

Section 390SE

390SE Consultation

- (1) As soon as is practicable after making an interim declaration under section 390SD declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must publish a notice on the Department's website in accordance with subsection (2).
- (2) The notice must:
 - (a) invite each declaration affected person (see subsection (3)) to make a written submission about the impact on the person's rights or interests in relation to fishing if a final declaration under section 390SF were made in relation to the commercial fishing activity; and
 - (b) specify that written submissions must be lodged during the period specified in the notice; and
 - (c) specify the manner in which written submissions are to be lodged.
- (3) A ***declaration affected person***, in relation to a commercial fishing activity, means a person who:
 - (a) holds a fishing concession or is prescribed by the regulations; and
 - (b) considers that the person would be detrimentally affected by the making of a final declaration under section 390SF in relation to the commercial fishing activity.
- (4) For the purposes of paragraph (2)(b), the period specified in the notice must be at least 11 business days after the day the notice is published.

Subdivision C—Final declaration**390SF Final declaration***Making a final declaration*

- (1) The Minister may, by legislative instrument, make a declaration (a ***final declaration***) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of a final declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: For revocation of a final declaration, see section 390SG.

- (2) The Minister must not make a final declaration unless:
- (a) the commercial fishing activity is the same as a commercial fishing activity that is, or was, specified in an interim declaration under section 390SD; and
 - (b) consultation under section 390SE has occurred in relation to the commercial fishing activity; and
 - (c) the Minister has considered any written submission that:
 - (i) was made under section 390SE by a declaration affected person; and
 - (ii) was lodged during the period referred to in paragraph 390SE(2)(b); and
 - (d) the Minister and the Fisheries Minister agree that there is uncertainty about the environmental impacts of the commercial fishing activity; and
 - (e) the Minister and the Fisheries Minister agree that it is appropriate that:
 - (i) an expert panel be established under section 390SH to conduct an assessment of the commercial fishing activity and report on the matter; and
 - (ii) the commercial fishing activity be prohibited in a Commonwealth marine area while the expert panel conducts the assessment.

Section 390SG

When a final declaration is in force

- (3) A final declaration:
- (a) comes into force at the end of the day on which it is registered in the Federal Register of Legislation; and
 - (b) remains in force until the earliest of the following times:
 - (i) the end of the day on which the report of the expert panel is published on the Department's website under paragraph 390SL(a);
 - (ii) the end of the period specified in the declaration as the period for which the declaration is in force;
 - (iii) if the declaration is revoked—when the revocation comes into force.

Specified period for which final declaration is in force

- (4) The Minister must specify in a final declaration the period for which it is to be in force. The period must not be longer than 24 months.

Subdivision D—Revoking declarations

390SG Revoking an interim or final declaration

- (1) The Minister may, by legislative instrument, revoke:
- (a) an interim declaration under section 390SD; or
 - (b) a final declaration under section 390SF.
- (2) A revocation under subsection (1) comes into force at the end of the day on which it is registered in the Federal Register of Legislation.

Division 3—Expert panel assessment of declared commercial fishing activity

390SH Establishment of expert panel

- (1) As soon as is practicable after making a final declaration under section 390SF declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must:
 - (a) appoint, in writing, one or more persons (the *members*) as an expert panel to conduct an assessment and report to the Minister about the commercial fishing activity; and
 - (b) with the agreement of the Fisheries Minister, specify in writing (the *terms of reference*):
 - (i) the matters relating to the commercial fishing activity that are to be the subject of the assessment and report; and
 - (ii) the date by which the panel must report to the Minister.

Note: The Minister may revoke an appointment: see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Minister may specify in the terms of reference the manner in which the expert panel is to carry out the assessment.
- (3) The Minister may, in writing, vary or revoke the terms of reference with the agreement of the Fisheries Minister.
- (4) The Minister must:
 - (a) publish a copy of the terms of reference on the Department's website as soon as is practicable after the Minister specifies or varies them; and
 - (b) cause a copy of the terms of reference to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister specifies or varies them.

Section 390SI

390SI Terms and conditions

The Minister must determine, in writing, the terms and conditions applicable to members of the expert panel, including terms and conditions relating to:

- (a) term of office; and
- (b) remuneration; and
- (c) allowances; and
- (d) disclosure of interests.

390SJ Procedure for assessment

- (1) The expert panel must comply with the terms of reference in conducting the assessment.
- (2) Subject to subsection (1), the expert panel may determine the procedure to be followed in its assessment.

390SK Timing of the report

The expert panel must give the Minister the report on the assessment on the date specified by the Minister in the terms of reference.

390SL Publication of the report

The Minister must:

- (a) publish a copy of the report on the Department's website within 20 business days after the day the Minister receives the report; and
- (b) cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister receives the report; and
- (c) comply with any other publication requirements prescribed by the regulations.

Division 4—Sunsetting of this Part

390SM Sunsetting of this Part

New declarations under this Part may not be made 12 months after the day the *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012* commences.

Chapter 6—Administration

Part 16—Precautionary principle and other considerations in making decisions

391 Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

- (1) The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

- (2) The ***precautionary principle*** is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Decisions in which precautionary principle must be considered

- (3) The decisions are:

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
1	75	whether an action is a controlled action
2	133	whether or not to approve the taking of an action
3	201	whether or not to grant a permit
4	216	whether or not to grant a permit

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Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
5	238	whether or not to grant a permit
6	258	whether or not to grant a permit
6A	269AA	whether or not to have a recovery plan for a listed threatened species or a listed threatened ecological community
7	269A	about making a recovery plan or adopting a plan as a recovery plan
7A	270A	whether or not to have a threat abatement plan for a key threatening process
7B	270B	about making a threat abatement plan or adopting a plan as a threat abatement plan
8	280	about approving a variation of a plan adopted as a recovery plan or threat abatement plan
9	285	about making a wildlife conservation plan or adopting a plan as a wildlife conservation plan
10	295	about approving a variation of a plan adopted as a wildlife conservation plan
10A	303CG	whether or not to grant a permit
10AA	303DC	whether or not to amend the list of exempt native specimens
10B	303DG	whether or not to grant a permit
10C	303EC	about including an item in the list referred to in section 303EB
10D	303EN	whether or not to grant a permit
10E	303FN	about declaring an operation to be an approved wildlife trade operation
10F	303FO	about declaring a plan to be an approved wildlife trade management plan
10G	303FP	about declaring a plan to be an accredited wildlife trade management plan

Section 391

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
10H	303GB	whether or not to grant an exceptional circumstances permit
11	316	about making a plan for managing a property that is included in the World Heritage List and is entirely within one or more Commonwealth areas
11A	324S	about making a plan for managing a National Heritage place
12	328	about making a plan for managing a wetland that is designated for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas
13	338	about making a plan for managing a Biosphere reserve entirely within one or more Commonwealth areas
13A	341T	about endorsing a plan for managing a Commonwealth Heritage place
14	370	about approving a management plan for a Commonwealth reserve

Part 17—Enforcement

Division 1—Wardens, rangers and inspectors

Subdivision A—Wardens and rangers

392 Appointment of wardens and rangers

The Minister may, in writing, appoint:

- (a) an officer or employee of the Department; or
- (b) a person covered by an arrangement made under section 393;
to be a warden or ranger.

393 Arrangements for certain officers or employees to exercise powers etc. of wardens or rangers

- (1) The Secretary may make arrangements with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the performance or exercise of all or any of the functions or powers of wardens and rangers under this Act or the regulations by officers or employees in that Agency or authority, as the case may be.
- (1A) However, an arrangement under subsection (1) must not provide for the performance or exercise of functions or powers under this Act or the regulations in relation to a Commonwealth reserve or conservation zone.
- (2) The Minister may enter into an arrangement with the appropriate Minister of a State or of the Australian Capital Territory or of the Northern Territory for:
 - (a) officers or employees in the Public Service of the State or Territory, or in an authority of the State or Territory (including a local government body); or
 - (b) members of the police force of the State or Territory;

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to perform or exercise all or any of the functions or powers of wardens or rangers under this Act or the regulations.

- (4) The Director may make arrangements with an Agency Head (within the meaning of the *Public Service Act 1999*), or with an authority of the Commonwealth, for the performance or exercise of all or any of the functions or powers of wardens and rangers under this Act or the regulations by officers or employees in that Agency or authority, as the case may be.

394 Wardens *ex officio*

By force of this section each of the following is a warden:

- (a) each member or special member of the Australian Federal Police;
- (b) each officer of Customs.

395 Identity cards

- (1) The Minister must issue to each warden (except a member of a police force or an officer of Customs) and to each ranger, an identity card, in a form approved by the Minister, containing a photograph of the person to whom it is issued.
- (2) If a person stops being a warden or ranger, the person must immediately return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding one penalty unit.

Subdivision B—Inspectors

396 Appointment of inspectors

- (1) The Minister may, in writing, appoint a person to be an inspector.
- (2) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, does not have such of the powers conferred on an inspector by this Act