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- (b) the person who had possession, custody or control of the specimen immediately before it was seized;
a written notice:
 - (c) identifying the specimen; and
 - (d) stating that it has been seized under section 444A and giving the reason for the seizure; and
 - (e) setting out the terms of sections 444C and 444D.

The notice must be given as soon as practicable after the seizure.

- (2) An authorised officer is not required to give a notice under subsection (1) about a specimen if, after making such inquiries as the authorised officer thinks appropriate, the authorised officer does not, within 30 days after the seizure, have sufficient information to enable the authorised officer to give the notice. In that event, the authorised officer must keep a written record of the seizure.

444C Applications for return of specimen

- (1) If a specimen is seized under section 444A, the owner of the specimen may apply in writing to the Secretary for the delivery to the owner of the specimen.
- (2) The application must be made:
 - (a) within 30 days after the seizure; or
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) The application must be made on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.
- (4) If the applicant satisfies the Secretary that the ground has been established, the Secretary must grant the application.

Note: Under section 444G, the Secretary may retain the specimen for up to 30 days after making a decision on the application.

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444D Court action for return of specimen

- (1) If a specimen is seized under section 444A, the owner of the specimen may bring an action against the Commonwealth in a court of competent jurisdiction for the delivery of the specimen to the owner on the ground that the specimen was not used or otherwise involved in the commission of an offence against Part 13A.
- (2) An action under subsection (1) must be brought:
 - (a) within 30 days after the seizure; or
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—within 30 days after the giving of the notice.
- (3) If:
 - (a) an action is brought under subsection (1); and
 - (b) the court finds that the specimen was used or otherwise involved in the commission of the offence concerned;the court must order the specimen to be forfeited to the Commonwealth.
- (4) If:
 - (a) an action is brought under subsection (1); and
 - (b) the action is discontinued by the owner otherwise than because of:
 - (i) the delivery of the specimen to the owner; or
 - (ii) the forfeiture of the specimen to the Commonwealth; or
 - (iii) the disposal of the specimen under section 449;the specimen is forfeited to the Commonwealth.

444E Consignment of specimen with consent of owner

- (1) If:
 - (a) a specimen is seized under section 444A; and
 - (b) the specimen was imported from a particular foreign country;and

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- (c) the export of the specimen from the foreign country was not in contravention of a law of the foreign country that corresponds to Part 13A; and
 - (d) if the importer had applied for a permit authorising the import of the specimen, there is no reasonable likelihood that the permit would have been granted; and
 - (e) the importer produces written evidence from the relevant CITES authority of the foreign country that the specimen may be returned to the foreign country without contravening such a law;
- the Secretary may, with the consent of the owner of the specimen, consign the specimen to a place in the foreign country.
- (2) The consignment is to be at the expense of the owner of the specimen.

444G Retention of specimen

- (1) If a specimen is seized under section 444A, the specimen may be retained until the end of 30 days after whichever is the latest of the following events:
- (a) the seizure;
 - (b) if a notice is given under subsection 444B(1) in relation to the specimen—the giving of the notice;
 - (c) if an application is made under subsection 444C(1) in relation to the specimen—the making of a decision on that application;
 - (d) if:
 - (i) proceedings for an offence against Part 13A are instituted during the period within which an application may be made under subsection 444C(1) in relation to the specimen; and
 - (ii) the specimen may have been used or otherwise involved in the commission of the offence or the specimen may afford evidence of the commission of the offence;
- the termination of the proceedings (including any appeal to a court in relation to those proceedings).

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- (2) The rule in subsection (1) does not authorise the retention of the specimen if the owner of the specimen succeeds in an action under subsection 444D(1) for the delivery of the specimen to the owner.
- (3) As soon as practicable after the end of the period during which the specimen may be retained under subsection (1), the Secretary must cause reasonable steps to be taken to return the specimen to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
 - (a) the specimen is forfeited or forfeitable to the Commonwealth; or
 - (b) the specimen has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the specimen; or
 - (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the specimen; or
 - (d) proceedings under subsection 444D(1) relating to the specimen are pending.

444H Forfeiture of specimen after end of retention period

- (1) If:
 - (a) a specimen is seized under section 444A; and
 - (b) none of the following happens before the end of the period for which the specimen may be retained:
 - (i) proceedings are instituted for an offence against Part 13A, where the specimen is alleged to have been used or otherwise involved in the commission of the offence;
 - (ii) the specimen is released unconditionally to a person under section 449BA;

- (ia) the specimen is delivered to a person under section 444C;
 - (iii) the owner of the specimen brings an action under subsection 444D(1) for the delivery of the specimen to the owner;
 - (iv) proceedings are instituted under section 450A in relation to the specimen;
 - (v) the specimen is disposed of under section 449;
- the specimen is forfeited to the Commonwealth at the end of that period.
- (2) Subsection (1) has effect only to the extent (if any) to which it gives effect to paragraph 1(b) of Article VIII of CITES.

Subdivision AB—Seizure of things (other than specimens involved in a contravention of Part 13A)

445 Seizure of things (other than specimens involved in a contravention of Part 13A)

- (1) Subject to subsections (2) and (3), an authorised officer may seize a thing if he or she has reasonable grounds to suspect that it is evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.
- (2) This section does not apply to a specimen that an authorised officer has reasonable grounds to suspect has been used or otherwise involved in the commission of an offence against Part 13A.
- Note: Section 444A deals with the seizure of such specimens.
- (3) If a warrant has been issued under Division 4:
- (a) if the warrant relates to premises—this section does not apply:
 - (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or

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- (ii) to anything found during the course of such a search;
and
- (b) if the warrant relates to a person—this section does not apply:
 - (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or
 - (ii) to anything found during the course of such a search.

Note: Division 4 is about search warrants. The Division contains its own seizure powers (see paragraphs 417(1)(c), (d) and (e) and (2)(b), (c) and (d)).

(3A) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

(4) In this section:

thing includes a vehicle, vessel, aircraft, platform, document, organism and specimen.

446 Retention of things seized under this Subdivision

(1) This section applies to a thing that is seized under section 445.

(1A) The thing may be retained until:

- (a) the reason for the seizure no longer exists; or
- (b) it is decided that the thing is not to be used in evidence; or
- (c) the end of the period of 60 days after the seizure, or, if that period has been extended under subsection (3), the end of the extended period;

whichever happens first.

(1B) As soon as practicable after the end of the period (the **retention period**) during which the thing may be retained under subsection (1A), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

- (1C) Subsection (1B) does not apply if:
- (a) the thing is forfeited or forfeitable to the Commonwealth; or
 - (b) a proceeding in respect of which the thing may afford evidence was commenced before the end of the retention period and has not been completed (including an appeal to a court in relation to that proceeding); or
 - (c) the thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or
 - (d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.
- (2) An authorised officer may, before the end of the retention period, apply to a magistrate for an order permitting the retention of the thing for a further period.
- (3) If, in relation to an application under subsection (2), the magistrate is satisfied, by information on oath or affirmation, that it is necessary for the thing to continue to be retained:
- (a) for the purposes of an investigation as to whether an offence against an environmental law has been committed, or whether an environmental penalty provision has been contravened; or
 - (b) to enable evidence of an offence against an environmental law, or of a contravention of an environmental penalty provision, to be secured for the purposes of a proceeding against the person for such an offence or contravention;
- the magistrate may order that the thing may continue to be retained for a period specified in the order. The maximum period of an individual extension must not be more than 30 days.
- (3A) Before an authorised officer makes an application under subsection (2), he or she must:

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- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, give notice in writing of the proposed application to each person whom the authorised officer believes to have an interest in the proposed application.
- (4) Subsection (3) does not prevent a magistrate from granting 2 or more successive extensions under that subsection of the period during which the thing may be retained.
- (5) A function of making an order conferred on a magistrate by subsection (3) is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (6) Without limiting the generality of subsection (5), an order made by a magistrate under subsection (3) has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (7) A magistrate performing a function of, or connected with, making an order under subsection (3) has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).
- (8) The Governor-General may make arrangements with the Governor of a State, the Chief Minister for the Australian Capital Territory or the Administrator of the Northern Territory for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under subsection (3).

Subdivision AC—Direction to deliver seizable items

447 Direction to deliver seizable items

- (1) An authorised officer may direct a person to deliver to the officer, or to another person specified in the direction, a thing that the

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officer is authorised to seize under a warrant issued under Division 4 or under section 445.

- (2) The direction must:
- (a) be in writing; and
 - (b) be given to the person who is directed to deliver the thing, who must be:
 - (i) if the thing is a vessel—the person in charge of the vessel, or the vessel's owner; or
 - (ii) if the thing is an aircraft—the person in charge of the aircraft; or
 - (iii) otherwise—the person in possession of the thing; and
 - (c) specify the place at which the delivery is to occur; and
 - (d) specify the period within which the delivery is to occur.
- (3) A person must not fail to comply with a direction under this section.
- Penalty: Imprisonment for 12 months or 60 penalty units, or both.
- (4) This Part applies to a thing delivered in compliance with a direction under this section as if the thing had been seized under the warrant or section that authorised the officer to seize the thing.
- (5) A direction made under subsection (1) is not a legislative instrument.

Subdivision B—Disposal of seized items

449 Immediate disposal of seized items

- (1) If:
- (a) a thing is seized under this Part; and
 - (b) the Secretary considers that it is reasonably likely that the retention of the thing would:
 - (i) constitute a serious threat to the environment; or

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- (ii) constitute a serious threat to the continued existence, in the wild, of a particular species of animal or of a particular species of plant; or
- (iii) result in the introduction of an alien species that represents a threat to ecosystems, habitats or other species; or
- (iv) constitute a danger to public health; or
- (v) in the case of a live organism or specimen—constitute a significant threat to the health of the organism or specimen; or
- (vi) in the case of a live animal—result in the animal suffering;

the Secretary may cause the thing to be dealt with in such manner as the Secretary considers appropriate (including the destruction of the thing).

- (1A) If the Secretary causes a live animal to be destroyed under subsection (1), the Secretary must require the destruction to be carried out in a humane manner.
- (2) Subject to subsection (3), if a thing is dealt with in accordance with subsection (1), the Secretary must give to:
 - (a) the owner of the thing; or
 - (b) the person who had possession, custody or control of the thing immediately before it was seized;a written notice:
 - (c) identifying the thing; and
 - (d) stating that the thing has been seized under this Part and giving the reason for the seizure; and
 - (e) stating that the thing has been dealt with under subsection (1) and specifying the manner in which it has been so dealt with and the reason for doing so; and
 - (f) setting out the terms of subsection (4).

The notice must be given as soon as practicable after the thing is so dealt with.

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- (3) The Secretary need not give a notice under subsection (2) about a thing if, after making such inquiries as the Secretary thinks appropriate, the Secretary does not, within 20 days after dealing with the thing, have sufficient information to enable the notice to be given.
- (4) If a thing is dealt with in accordance with subsection (1), the owner of the thing may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the thing at the time it was so dealt with. The action must be brought on the ground that the thing was not used or otherwise involved in the commission of an offence against this Act or the regulations.

449A Disposal of seized items if Secretary cannot locate or identify person entitled etc.

- (1) This section applies to a thing that is seized under this Part if:
 - (a) apart from this section, the thing is required to be returned or delivered to a person (or reasonable steps are required to be taken for the return or delivery to a person of the thing); and
 - (b) one or more of the following applies:
 - (i) the Secretary is satisfied that reasonable steps have been taken to locate or identify the person, but those steps have not succeeded;
 - (ii) the Secretary is satisfied that reasonable steps have been taken to return or deliver the thing to the person, but those steps have not succeeded;
 - (iii) the Secretary is otherwise satisfied that it is not practicable to return or deliver the thing to the person.
- (2) The Secretary may dispose of the thing in such manner as the Secretary considers appropriate.

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Subdivision BA—Release of seized items to owner etc.

449BA Release of seized items to owner etc.

- (1) If a thing is seized under this Part, the Secretary may authorise the thing, or anything in, on or attached to the thing, to be released to its owner, or to the person from whose possession it was seized, either:
 - (a) unconditionally; or
 - (b) on such conditions as the Secretary thinks fit (including conditions about the giving of security for giving payment of its value if it is forfeited).
- (2) A person commits an offence if:
 - (a) a thing is released to the person under subsection (1) subject to a condition; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the condition.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (3) Absolute liability applies to paragraph (2)(a).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

449BB How this Part applies in relation to things released conditionally

- (1) This section applies if a thing, or anything in, on or attached to a thing, seized under this Part is released on conditions to a person under section 449BA. The provision of this Part under which the seizure was made is the ***seizure provision***, and the thing that is released is the ***released thing***.
- (2) Subject to this section, the provisions of this Part that apply in relation to things seized under the seizure provision continue to apply to the released thing as if it had not been released.

- (3) A reference in a provision of this Part to the return or delivery of the released thing to a person is, if the person is the person to whom the thing has been released, taken to be a reference to making the release of the thing to the person unconditional.
- (4) The regulations may specify modifications of provisions of this Part that are to have effect in relation to things to which this section applies. However, regulations must not:
 - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
 - (b) widen, or have the effect of widening, the scope of any offence.

Subdivision C—Forfeiture of seized items

450 Court-ordered forfeiture: order by court dealing with offence proceedings

- (1) If a court convicts a person of an offence against an environmental law, the court may order the forfeiture to the Commonwealth of any thing used or otherwise involved in the commission of the offence.
- (1A) If a court convicts a person of an offence against Part 13A, the court must order the forfeiture to the Commonwealth of any specimen used or otherwise involved in the commission of the offence.

Note: Part 13A deals with the international movement of wildlife specimens.

- (2) A court may make an order under subsection (1) or (1A) even if the thing or specimen has been seized under this Act or taken into possession under section 406AA or Schedule 1.
- (3) If:
 - (a) a specimen is seized under this Part; and
 - (b) either:
 - (i) a court finds a person not guilty of an offence against an environmental law in relation to the specimen; or

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- (ii) a proceeding in a court for such an offence in relation to the specimen is discontinued or dismissed; and
 - (c) the court is satisfied that there are reasonable grounds for suspecting that, if the specimen were released to the person from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of an environmental law;
- the court may order the forfeiture to the Commonwealth of the specimen.
- (4) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

450A Court-ordered forfeiture: other situations

- (1) A court may, on the application of the Secretary, order the forfeiture to the Commonwealth of a thing that is seized under this Part if the court is satisfied that the thing has been used or otherwise involved in the commission of an offence against an environmental law.
- (2) Without limiting subsection (1), a court may, on the application of the Secretary, order the forfeiture to the Commonwealth of a specimen if:
 - (a) the specimen was seized under this Part; and
 - (b) either:
 - (i) a court has found a person not guilty of an offence against an environmental law in relation to the specimen; or
 - (ii) a proceeding in a court for such an offence in relation to the specimen has been discontinued or dismissed; and
 - (c) the court to which the Secretary applies is satisfied that there are reasonable grounds for suspecting that, if the specimen were released to the person from whom it was seized or to its owner, the possession of the specimen by that person would contravene a provision of an environmental law.

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- (3) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

450B Forfeiture of seized items by consent etc.

- (1) If:
- (a) a thing is seized under this Part; and
 - (b) the owner of the thing agrees to transfer ownership of the thing to the Commonwealth, either:
 - (i) unconditionally; or
 - (ii) in the event that a future contingency happens; and
 - (c) if subparagraph (b)(ii) applies—that contingency happens;
- then:
- (d) the thing becomes the property of the Commonwealth; and
 - (e) the provisions of this Part relating to forfeiture apply as if the thing had been forfeited to the Commonwealth under this Act.
- (2) If:
- (a) a thing is seized under this Part; and
 - (b) the owner of the thing agrees to transfer ownership of the thing to the Commonwealth in the event that a future contingency happens;
- the Secretary may retain the thing:
- (c) until the thing becomes the property of the Commonwealth; or
 - (d) if the thing does not become the property of the Commonwealth—until the end of the last day on which that contingency could happen.
- (3) Subsection (2) has effect despite anything in section 438, 444G, 446, 456AB or 456AC.

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451 Dealings in forfeited items

- (1) A thing forfeited to the Commonwealth under this Act becomes the property of the Commonwealth.
- (2) A thing forfeited to the Commonwealth under this Act is to be dealt with in such manner as the Secretary considers appropriate.
- (3) Without limiting subsection (2), the Secretary may sell a thing forfeited to the Commonwealth under this Act.
- (4) The Secretary must not sell a specimen forfeited to the Commonwealth under this Act unless, in the opinion of the Secretary, the buyer will use the specimen for scientific or educational purposes.

452 Delivery of forfeited items to the Commonwealth

- (1) If:
 - (a) a thing is forfeited to the Commonwealth under this Act; and
 - (b) the thing has not been dealt with under section 451; and
 - (c) the thing is in the possession, custody or control of a person other than:
 - (i) the Commonwealth; or
 - (ii) an agency of the Commonwealth; and
 - (d) the Secretary requests the person to deliver the thing to the Secretary;the person must deliver the thing to the Secretary.

- (2) A person must not contravene subsection (1).

Penalty: Imprisonment for 2 years.

Subdivision F—Keeping of organisms or specimens that have been seized

453 Keeping of organisms or specimens retained under this Part

If a person is authorised under this Part to retain an organism or specimen, the person may do so by causing the organism or specimen to be taken to, and kept at, a place approved by the Secretary for the purpose of keeping organisms or specimens seized under this Division.

454 Recovery of costs of storing or keeping organisms or specimens

- (1) If an organism or specimen is seized under this Division, the owner is liable to pay to the Commonwealth an amount equal to the sum of the following costs:
 - (a) reasonable costs incurred by the Commonwealth in relation to the custody of the organism or specimen;
 - (b) reasonable costs incurred by the Commonwealth in transporting the organism or specimen;
 - (c) reasonable costs incurred by the Commonwealth in maintaining the organism or specimen.
- (2) If:
 - (a) an organism or specimen is seized under this Division; and
 - (b) the organism or specimen is disposed of;the owner is liable to pay to the Commonwealth an amount equal to the reasonable costs incurred by the Commonwealth in disposing of the organism or specimen.
- (3) An amount payable by a person under this section is a debt due by the person to the Commonwealth.
- (4) An amount payable by a person to the Commonwealth under this section may be recovered by action in a court of competent jurisdiction.

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- (5) The Secretary may remit an amount payable by a person under this section.
- (6) In addition to its effect apart from this subsection, this section also has the effect it would have if a liability under this section were, by express provision, confined to the case of an organism or specimen that:
 - (a) is forfeited to the Commonwealth under this Act; or
 - (b) would have been forfeited to the Commonwealth under this Act if it had not been disposed of.

Subdivision G—Rescuing things

455 Rescuing things

A person commits an offence punishable upon conviction by imprisonment for a term not exceeding 2 years if:

- (a) the person rescues any thing; and
- (b) the thing has been, or is about to be, seized under this Act.

456 Breaking or destroying things or documents to prevent seizure etc.

A person must not:

- (a) stave, break or destroy any thing in order to prevent the seizure of a thing, the securing of a thing, or the proof of any offence under an environmental law; or
- (b) destroy any documents relating to any thing in order to prevent the seizure of a thing, the securing of a thing, or the proof of any offence under an environmental law.

Penalty: Imprisonment for 2 years.

Subdivision H—Seizure of cages or containers

456AA Power to seize cages or containers containing seizable things

- (1) This section applies if:
 - (a) an authorised officer has power to seize a thing (a *seizable thing*) under another provision of this Part; and
 - (b) the seizable thing is in a cage or container; and
 - (c) the authorised officer considers that it is not reasonably practicable to seize the seizable thing without also seizing the cage or container.
- (2) For the purpose of seizing the seizable thing and despite any other provision of this Part, the authorised officer may seize the cage or container containing the seizable thing (whether or not the cage or container also contains any other thing).
- (3) The seizure of the seizable thing is taken to occur under the provision mentioned in paragraph (1)(a) (not under this section).

Note: The provisions governing the retention and return of the seizable thing are therefore the provisions that usually govern the seizure of a thing under the provision mentioned in paragraph (1)(a).

- (4) If:
 - (a) an authorised officer seizes a cage or container; and
 - (b) the seizure of the cage or container is authorised by this section, and is also authorised by another provision of this Part;then the seizure is taken to be under this section, rather than under that other provision (subject to subsection 456AB(5)).

456AB Retention of seized cage or container

- (1) This section applies to a cage or container that is seized under section 456AA because it contains a seizable thing.

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- (2) The cage or container may be retained for so long as an authorised officer considers that it is reasonably necessary to retain it for the purpose of housing the seizable thing.
- (3) As soon as practicable after the end of the period during which the cage or container may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the cage or container to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
 - (a) the seizure was also authorised by another provision of this Part (the *other seizure provision*), as mentioned in subsection 456AA(4)); or
 - (b) the cage or container is forfeited or forfeitable to the Commonwealth; or
 - (c) the cage or container has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the cage or container; or
 - (d) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the cage or container.
- (5) If, because of paragraph (4)(a), the cage or container does not have to be returned at the end of the period referred to in subsection (3), this Part then applies in relation to the cage or container as if, at the end of that period, it had been seized under the other seizure provision.

456AC Retention of non-seizable things contained in seized cages or containers

- (1) This section applies if:
 - (a) a cage or container is seized under section 456AA because it contains a seizable thing; and

- (b) the cage or container also contains a thing (a ***non-seizable thing***) that is not a seizable thing.
- (2) The non-seizable thing may be retained until it is reasonably practicable to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (3) As soon as practicable after the end of the period during which the non-seizable thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
 - (a) the non-seizable thing is forfeited or forfeitable to the Commonwealth; or
 - (b) the non-seizable thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or
 - (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the non-seizable thing.

Division 12—Environmental audits

458 Directed environmental audits

- (1) The Minister may, by written notice given to the holder of an environmental authority, require the holder to carry out an environmental audit if the Minister believes or suspects on reasonable grounds:
 - (a) that the holder has contravened, or is likely to contravene, a condition of the authority; or
 - (b) the impacts that the action authorised by the authority has, has had or is likely to have on the matter dealt with by the provision for which the authority authorises the action are significantly greater than was indicated in the information available to the Minister when the authority was granted.
- (2) The notice must specify:
 - (a) the matters to be covered by the audit; and
 - (b) the form of the audit report and the kinds of particulars it is to contain; and
 - (c) the date on or before which the report must be given to the Minister.
- (3) Without limiting the matters that may be specified under paragraph (2)(a), those matters may include all or any of the following:
 - (a) an evaluation of the nature of the environment that is or will be affected by the holder's activities; and
 - (b) an assessment of the risks to the environment resulting from the activities; and
 - (c) an assessment of the holder's existing capacity to comply with the authority and the requirements of this Act and the regulations in carrying on the activities; and
 - (d) an assessment of what the holder will need to do, or continue to do, so to comply.

- (4) For the purposes of this Act, an *environmental authority* is:
- (a) an approval under Part 9; or
 - (b) a permit issued under Chapter 5.

459 Appointment of auditor and carrying out of audit

- (1) If the Minister gives the holder of an environmental authority a notice under section 458, the holder must appoint an environmental auditor and arrange for the auditor to carry out an environmental audit in accordance with the notice.
- (2) The holder of an environmental authority must not contravene subsection (1).
- Civil penalty: 500 penalty units.
- (3) The holder must not appoint an officer or employee of the holder to be an environmental auditor.
- (4) The holder must not appoint a person to be an environmental auditor unless the Minister has approved the person for such appointment before the appointment is made.
- (5) An appointment of a person as an environmental auditor made otherwise than in accordance with subsections (3) and (4) has no effect.

460 Nature of directed environmental audit

- (1) If:
- (a) an environmental auditor carries out a directed environmental audit; and
 - (b) in the course of carrying out the audit, the auditor does not deal with a particular matter; and
 - (c) the matter is specified in the Minister's notice under section 458 as a matter that is to be covered by the audit;
- the auditor commits an offence, punishable on conviction by a fine not exceeding 30 penalty units.

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

(2) If:

- (a) an environmental auditor carries out a directed environmental audit; and
- (b) in the course of carrying out the audit, the auditor conceals, or does not take into account, any information or document; and
- (c) the information or document is relevant to the audit; the auditor commits an offence punishable on conviction by imprisonment for not more than 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an individual of an offence impose a fine instead of, or as well as, imprisonment. The maximum fine (in penalty units) the court can impose is 5 times the maximum term of imprisonment (in months).

(3) In carrying out a directed environmental audit, the environmental auditor may, if:

- (a) an environmental audit (including an environmental audit carried out in accordance with a condition of the relevant authority) was completed within the last preceding 2 years; and
- (b) the auditor is satisfied that the previous audit is still relevant; have regard to the results of the previous audit.

(4) For the purposes of this Act, a **directed environmental audit** is an audit required by a notice under section 458.

461 Audit reports

- (1) After completing a directed environmental audit, the environmental auditor must prepare, and give the holder of the relevant environmental authority, a written report setting out the results of the audit.
- (2) The holder must give the report to the Minister:

Section 462

- (a) on or before the date specified by the Minister under paragraph 458(2)(c); or
 - (b) on or before such later date as the Minister, on application by the holder, determines.
- (3) If the holder fails to comply with subsection (2), the holder commits an offence, punishable on conviction by a fine not exceeding 50 penalty units.

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

- (4) If:
- (a) the environmental auditor includes a statement in the report; and
 - (b) the statement is false or misleading in a material particular;
- the auditor commits an offence punishable on conviction by imprisonment for not more than 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* lets a court that convicts an individual of an offence impose a fine instead of, or as well as, imprisonment. The maximum fine (in penalty units) the court can impose is 5 times the maximum term of imprisonment (in months).

462 Directed environmental audits do not affect other audit obligations

This Division does not affect any obligation of a holder of an environmental authority to carry out an environmental audit in accordance with a condition of the authority.

Division 13—Conservation orders

Subdivision A—Simplified outline

463 Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may make conservation orders controlling activities, and requiring specified people to take specified actions, in Commonwealth areas to protect listed threatened species or ecological communities.

A person who contravenes a conservation order commits an offence.

Before the Minister makes a conservation order, he or she must consult various Commonwealth agencies.

The Secretary must publicise conservation orders, and may give assistance to a person to comply with a conservation order.

Subdivision B—Making and reviewing conservation orders

464 Minister may make conservation orders

Making conservation orders

- (1) The Minister may make a written order (a ***conservation order***):
 - (a) prohibiting or restricting specified activities on or in:
 - (i) all Commonwealth areas; or
 - (ii) specified Commonwealth areas; or
 - (b) requiring specified persons to take specified action on or in:
 - (i) all Commonwealth areas; or
 - (ii) specified Commonwealth areas.

Section 465

Note: Section 470 makes contravening a conservation order an offence.

Prerequisite to making conservation order

- (2) The Minister may only make a conservation order if he or she reasonably believes that it is necessary to make the order to protect a listed threatened species or a listed threatened ecological community.

Minister must consider economic and social matters

- (3) In considering whether to make a conservation order, the Minister must be satisfied that making the order is justified, having regard to economic and social considerations that are consistent with the principles of ecologically sustainable development.

Minister must consult before making conservation order

- (4) Before making a conservation order, the Minister:
- (a) must seek the Secretary's advice on whether it should be made; and
 - (b) must consult each Commonwealth agency that may be affected by the order, and any other Commonwealth agency the Minister thinks appropriate, unless delay in making the order would result in significant, irreparable damage to a listed threatened species or listed threatened ecological community.

465 Duration of conservation orders

- (1) A conservation order comes into force:
- (a) if a commencement day is specified in the order—on that day; or
 - (b) otherwise—immediately after it is made.
- (2) The order remains in force:
- (a) for the period (if any) specified in the order; or
 - (b) until it is revoked by the Minister.

Section 466

466 Reviews of conservation orders

- (1) The Minister must:
 - (a) at intervals of not more than 5 years, review the conservation order; and
 - (b) after each review, confirm, vary or revoke the order by instrument in writing.
- (2) Before reviewing the order, the Minister must seek the Secretary's advice on the review.
- (3) The Minister must not revoke the order unless he or she is satisfied that the order is no longer needed to protect the listed threatened species or listed threatened ecological community the order was made to protect.
- (4) The Minister must not vary the order unless he or she is satisfied that the order as varied adequately protects the listed threatened species or listed threatened ecological community the order was first made to protect.
- (5) Immediately after a variation of the order, the order continues in force as so varied.

467 Publication of conservation orders

- (1) As soon as practicable after making or reviewing a conservation order, the Minister must cause the Secretary to be informed of the making of the order, or the decision on the review, as the case requires.
- (2) The Secretary must, as soon as practicable after being so informed:
 - (a) cause to be published in the *Gazette*, in a daily newspaper circulating in each State or self-governing Territory in which are located Commonwealth areas to which the order relates and in any other way required by the regulations, a notice containing:
 - (i) a copy of the order; and

- (ii) a statement to the effect that contravention of the order is an offence against this Act; and
 - (iii) if applicable, a statement of the decision on the review; and
 - (iv) a statement to the effect that a person affected by the order may apply to the Minister, within 28 days of the publication (or within such further period as the Minister allows), for a reconsideration of the order by the Minister; and
- (b) take all reasonable steps to ensure that each person who the Secretary knows would be affected by the order is given a notice containing:
 - (i) a copy of the order; and
 - (ii) if applicable, a statement of the decision on the review; and
 - (iii) unless the person is a Commonwealth agency or an agency of a State or self-governing Territory—a statement to the effect that contravention of the order is an offence against this Act; and
 - (iv) a statement to the effect that the person may apply to the Minister, within 28 days of being given the notice (or within such further period as the Minister allows), for a reconsideration of the order by the Minister.
- (3) Failure to comply with this section does not affect the validity of the order.

468 Application for reconsideration of conservation orders or decisions on review

- (1) A person affected by a conservation order, or by the decision on a review of a conservation order, may apply to the Minister to reconsider the order or the decision, as the case requires.
- (2) The application must be in writing.
- (3) Subject to subsection (4), the application must be made within 28 days, or within such further period as the Minister allows, after the

Section 469

publication under paragraph 467(2)(a) of the notice relating to the making of the order or conduct of the review.

- (4) If the person is given a copy of the order after that publication, the period of 28 days within which that person must make the application is taken to commence on the day on which the person received the notice.

469 Reconsideration of conservation orders and decisions on review

- (1) Upon receiving the application, the Minister must:
- (a) seek the Secretary's advice on the application; and
 - (b) reconsider the conservation order or the decision on review, as the case requires; and
 - (c) by written instrument:
 - (i) confirm, vary or revoke the order; or
 - (ii) confirm or vary the decision on review; and
 - (d) cause the Secretary to be informed accordingly.
- (2) As soon as practicable after being so informed, the Secretary must:
- (a) notify the applicant in writing of the result of the reconsideration; and
 - (b) if the order is revoked or varied or the decision on review is varied—cause to be published in the *Gazette*, and in any other way required by the regulations, a notice:
 - (i) stating that fact; and
 - (ii) in the case of a variation—setting out a copy of the order or decision as so varied.
- (3) Immediately after a variation of the order, the order continues in effect as so varied.

Subdivision C—Complying with conservation orders

470 Contravening conservation orders is an offence

- (1) A person must not take an action reckless as to whether the action contravenes a conservation order.

Penalty: 500 penalty units.

- (2) If a person believes that taking an action that he or she proposes to take may contravene a particular conservation order, the person may seek the Minister's advice under subsection 471(3) on whether the order would be contravened by taking that action.
- (3) The person does not contravene the order if he or she acts in accordance with advice given to him or her under subsection 471(3) to the effect that the order would not be contravened.

471 Minister to consider proposed actions etc.

- (1) This section applies to a proposed action if it is referred to the Minister under section 470 for the Minister's advice on whether it would contravene a conservation order.
- (2) A person who proposes to take the action may make written submissions to the Minister about the proposed action.
- (3) The Minister must:
 - (a) refer the proposed action, together with any submissions received by the Minister about the proposed action, to the Secretary; and
 - (b) after considering the Secretary's advice on the matter, give the person who sought the Minister's advice under section 470 a written notice of the minister's advice on the proposed action.

Section 472

472 Contents of notices of advice

- (1) The notice of advice must state whether the Minister thinks that the proposed action would contravene a conservation order.
- (2) If the decision to give the advice was not made personally by the Minister and the notice of advice is given to a person who is not a Commonwealth agency, the notice must include:
 - (a) a statement to the effect that, if the person is dissatisfied with the decision to give that advice, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision; and
 - (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision.

473 Review by the Administrative Appeals Tribunal

- (1) Subject to subsections (1A) and (2), applications may be made to the Administrative Appeals Tribunal for review of the decision to give the advice.
- (1A) Subsection (1) does not apply to a decision made personally by the Minister (but the subsection does apply to a decision made by a delegate of the Minister).
- (2) Despite section 27 of the *Administrative Appeals Tribunal Act 1975*, applications are not to be made by or on behalf of Commonwealth agencies.

474 Assistance in complying with conservation orders

- (1) On behalf of the Commonwealth, the Secretary may provide assistance to a person (other than a Commonwealth agency) to comply with prohibitions, restrictions or requirements imposed on a person by a conservation order.
- (2) The assistance may take any one or more of the following forms:

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- (a) payment of money;
 - (b) provision of goods;
 - (c) provision of labour;
 - (d) provision of other services.
- (3) The value of the assistance must not exceed that which the Secretary thinks are the reasonable and direct costs of complying with the prohibitions, restrictions or requirements in question.
- (4) Assistance given under this section must be taken into account in determining compensation payable under section 519.

Division 14—Injunctions

475 Injunctions for contravention of the Act

Applications for injunctions

- (1) If a person has engaged, engages or proposes to engage in conduct consisting of an act or omission that constitutes an offence or other contravention of this Act or the regulations:
 - (a) the Minister; or
 - (b) an interested person (other than an unincorporated organisation); or
 - (c) a person acting on behalf of an unincorporated organisation that is an interested person;may apply to the Federal Court for an injunction.

Prohibitory injunctions

- (2) If a person has engaged, is engaging or is proposing to engage in conduct constituting an offence or other contravention of this Act or the regulations, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

- (3) If the court grants an injunction restraining a person from engaging in conduct and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

Mandatory injunctions

- (4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure did, does or would constitute an offence or other contravention of this Act or the regulations, the Court may grant an injunction requiring the person to do the act.

Interim injunctions

- (5) Before deciding an application for an injunction under this section, the Court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
 - (b) requiring a person to do an act.

Meaning of interested person—individuals

- (6) For the purposes of an application for an injunction relating to conduct or proposed conduct, an individual is an **interested person** if the individual is an Australian citizen or ordinarily resident in Australia or an external Territory, and:
- (a) the individual's interests have been, are or would be affected by the conduct or proposed conduct; or
 - (b) the individual engaged in a series of activities for protection or conservation of, or research into, the environment at any time in the 2 years immediately before:
 - (i) the conduct; or
 - (ii) in the case of proposed conduct—making the application for the injunction.

Meaning of interested person—organisations

- (7) For the purposes of an application for an injunction relating to conduct or proposed conduct, an organisation (whether incorporated or not) is an **interested person** if it is incorporated (or was otherwise established) in Australia or an external Territory and one or more of the following conditions are met:
- (a) the organisation's interests have been, are or would be affected by the conduct or proposed conduct;
 - (b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:
 - (i) the organisation's objects or purposes included the protection or conservation of, or research into, the environment; and

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- (ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment;
- (c) if the application relates to proposed conduct—at any time during the 2 years immediately before the making of the application:
 - (i) the organisation's objects or purposes included the protection or conservation of, or research into, the environment; and
 - (ii) the organisation engaged in a series of activities related to the protection or conservation of, or research into, the environment.

476 Injunctions for contraventions of conservation agreements

Applications for injunctions

- (1) If a person bound by a conservation agreement engages or proposes to engage in conduct consisting of an act or omission that constitutes a contravention of the agreement, another person bound by the agreement or the Minister may apply to the Federal Court for an injunction.

Note: Section 307 explains who is bound by a conservation agreement.

Prohibitory injunctions

- (2) If a person has engaged, is engaging or is proposing to engage in conduct contravening the agreement, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

- (3) If the court grants an injunction restraining a person from engaging in conduct and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

Mandatory injunctions

- (4) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure was, is or would be a contravention of the agreement, the Court may grant an injunction requiring the person to do the act.

Interim injunctions

- (5) Before deciding an application for an injunction under this section the Court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
 - (b) requiring a person to do an act.

477 Discharge of injunctions

On application, the Federal Court may discharge or vary an injunction.

479 Certain considerations for granting injunctions not relevant*Prohibitory injunctions*

- (1) The Federal Court may grant an injunction restraining a person from engaging in conduct:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person engages, or continues to engage, in conduct of that kind.

Mandatory injunctions

- (2) The Federal Court may grant an injunction requiring a person to do a particular act or thing:

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- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and
- (b) whether or not the person has previously refused or failed to do the act or thing; and
- (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person refuses or fails, or continues to refuse or fail, to do the act or thing.

480 Powers conferred are in addition to other powers of the Court

The powers conferred on the Federal Court by this Division are in addition to (and do not limit) any other powers of the Court.

Division 14A—Federal Court's power to make remediation orders

480A Remediation orders

- (1) If, after the commencement of this section, a person has engaged, or is engaging, in conduct constituting an offence or other contravention of this Act or the regulations, the Federal Court may make an order (a **remediation order**) requiring the person to take action (the **remediation action**) to repair or mitigate damage that may or will be, or that has been, caused to the environment by the contravention.
- (2) In considering whether to grant a remediation order, the matters to which the Federal Court may have regard include (but are not limited to) the following:
 - (a) the nature and extent of the contravention;
 - (b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the contravention;
 - (c) the circumstances in which the contravention took place;
 - (d) whether the person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;
 - (e) the cost to the person of taking the remediation action.
- (3) The description in a remediation order of the remediation action may either be in general terms (for example, requiring the person to take whatever action is necessary to repair or mitigate the damage), or it may require the person to take particular action to repair or mitigate the damage.
- (4) If the Federal Court makes a remediation order, it may also make an order requiring the person to provide security for the due taking of the remediation action.
- (5) Application to the Federal Court for a remediation order may only be made by the Minister.

Section 480B

480B Discharge of remediation orders

On application by the Minister, the Federal Court may discharge or vary a remediation order.

480C Powers conferred are in addition to other powers of the Court

The powers conferred on the Federal Court by this Division are in addition to (and do not limit) any other powers of the Court.

Division 14B—Minister's power to make remediation determinations

Subdivision A—Making of remediation determinations

480D Minister may make remediation determination

- (1) If:
 - (a) the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3; and
 - (b) the Minister considers it desirable to make an order under this section in relation to the action;the Minister may make a written determination (a ***remediation determination***) requiring the person to take action to repair or mitigate damage that may or will be, or that has been, caused by the contravention, to the matter protected by the provision of Part 3.
- (2) The Minister cannot make a remediation determination at a time that is more than 6 years after the time when the person took the action referred to in paragraph (1)(a).
- (3) A remediation determination is not a legislative instrument.

480E Contents of a remediation determination

- (1) A remediation determination must specify the following:
 - (a) the person (the ***specified person***) referred to in paragraph 480D(1)(a);
 - (b) the action (the ***specified action***) referred to in that paragraph;
 - (c) the civil penalty provision (the ***specified civil penalty provision***) of Part 3 referred to in that paragraph;
 - (d) the action (the ***remediation action***) that the person is required to take.

Section 480F

- (2) A remediation determination may do all or any of the following in relation to some or all of the remediation action:
- (a) require action to be taken in a specified place;
 - (b) require action to be taken at, or by, a specified time;
 - (c) require a specified industry standard or code of practice to be complied with in taking action;
 - (d) require the taking of reasonable steps to obtain any Commonwealth, State or Territory approval or authority needed to carry out action;
 - (e) require the preparation, and submission to the Minister for approval, of a plan for taking action, and require action to be taken in accordance with the plan as approved by the Minister;
 - (f) require the spending of a specified amount of money on the taking of action;
 - (g) require the payment to a specified person of a specified amount or money, for the purpose of activities directed towards the protection and conservation of the matter protected by the specified civil penalty provision;
 - (h) require the payment to the Commonwealth of a specified amount of money as security for the due taking of action;
 - (i) provide for monitoring, auditing, or reporting to the Minister, in relation to the taking of action.
- (3) A remediation determination must contain a statement to the effect that the specified person may apply for a reconsideration of the determination under section 480J.

480F Notifying owners and occupiers of land of proposed remediation determination

- (1) Before the Minister makes a remediation determination that requires action to be taken on land that is not owned or occupied by the person proposed to be specified in the order, the Minister must:
- (a) take all practicable steps to identify each person who is an owner or occupier of all or part of the land; and

- (b) take all practicable steps to advise each person identified of the remediation determination that the Minister proposes to make; and
 - (c) give persons advised at least 20 business days to comment in writing to the Minister on the proposed remediation determination.
- (2) The Minister must take the comments into account in deciding whether to make the proposed remediation determination.

480G Notifying that remediation determination has been made

As soon as practicable after a remediation determination is made, the Minister must:

- (a) give the specified person a copy of the determination; and
- (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the making of the remediation determination.

480H Duration of remediation determinations

- (1) A remediation determination comes into force:
- (a) if a commencement day is specified in the determination (not being a day before paragraph 480G(a) is complied with)—on that day; or
 - (b) otherwise—when paragraph 480G(a) is complied with.
- (2) The determination remains in force:
- (a) for the period (if any) specified in the order; or
 - (b) until it is set aside by the Federal Court under Subdivision B or it is revoked by the Minister under Subdivision D.

480J Ministerial reconsideration of remediation determinations

- (1) Within 20 days after receiving a copy of a remediation determination as required by paragraph 480G(a), the specified person may apply to the Minister for a reconsideration of the determination.

Section 480K

- (2) On receipt of an application for reconsideration of a remediation determination, the Minister may affirm, vary or set aside the determination.
- (3) The Minister may take account of information and comments from any source the Minister considers appropriate in deciding what action to take in relation to an application under this section.
- (4) The Minister must:
 - (a) advise the specified person of the Minister's decision in relation to an application under this section; and
 - (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the Minister's decision in relation to an application under this section.

Subdivision B—Federal Court may set aside remediation determination

480K Applying to Federal Court to have remediation determination set aside

- (1) Within 28 days after any of the following:
 - (a) the specified person receives a copy of a remediation determination as required by paragraph 480G(a); or
 - (b) a remediation determination is affirmed or varied under section 480J; or
 - (c) a remediation determination is varied by the Minister under Subdivision D;the specified person may apply to the Federal Court to have the remediation determination set aside.
- (2) On an application under subsection (1), the Federal Court must set aside the remediation determination if the Court is satisfied that:
 - (a) the specified action did not occur; or
 - (b) the specified person did not take the specified action; or
 - (c) the specified action was not a contravention of the specified civil penalty provision; or

Section 480L

- (d) the remediation action is not a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision.
- (3) In considering whether the remediation determination is a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision, the Federal Court must have regard to the following:
 - (a) the nature and extent of the specified action;
 - (b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision;
 - (c) the circumstances in which the specified action took place;
 - (d) whether the specified person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;
 - (e) the cost to the specified person of taking the remediation action.The Federal Court may also have regard to any other matters it considers relevant.
- (4) The Federal Court must not set aside the remediation determination unless it is satisfied as mentioned in subsection (2).

Subdivision C—Complying with remediation determinations

480L Federal Court may order compliance with remediation determination

- (1) If the Minister considers that the specified person has contravened a remediation determination, the Minister may apply to the Federal Court for an order under subsection (2).

Section 480M

- (2) If the Federal Court is satisfied that the specified person has contravened a remediation determination, the Court may make one or more of the following orders:
 - (a) an order directing the specified person to comply with the remediation determination;
 - (b) any other order that the Court considers appropriate.

480M Civil penalty for contravention of remediation determination

- (1) The specified person must not contravene a remediation determination.
- (2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order the specified person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the specified civil penalty provision.

Subdivision D—Variation or revocation of remediation determinations

480N Variation or revocation of remediation determination

- (1) The Minister may, in writing, vary or revoke a remediation determination.
- (2) Sections 480F and 480G apply in relation to the variation or revocation of a remediation determination in the same way as they apply in relation to the making of a remediation determination.

Division 15—Civil penalties

Subdivision A—Obtaining an order for a civil penalty

481 Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

- (1) Within 6 years of a person (the **wrongdoer**) contravening a civil penalty provision, the Minister may apply on behalf of the Commonwealth to the Federal Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

Court may order wrongdoer to pay pecuniary penalty

- (2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate (but not more than the relevant amount specified for the provision).

Determining amount of pecuniary penalty

- (3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

Section 482

Conduct contravening more than one civil penalty provision

- (4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

482 What is a *civil penalty provision*?

A subsection of this Act (or a section of this Act that is not divided into subsections) is a ***civil penalty provision*** if:

- (a) the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section); or
- (b) another provision of this Act specifies that the subsection (or section) is a civil penalty provision.

483 Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

484 Persons involved in contravening civil penalty provision

- (1) A person must not:
 - (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
 - (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
 - (d) conspire to contravene a civil penalty provision.
- (2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

485 Recovery of a pecuniary penalty

If the Federal Court orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

Subdivision B—Civil penalty proceedings and criminal proceedings

486A Civil proceedings after criminal proceedings

The Federal Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

486B Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
 - (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

486C Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

Section 486D

486D Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

Subdivision C—Enforceable undertakings relating to contraventions of Part 3 civil penalty provisions

486DA Acceptance of undertakings relating to contraventions of Part 3 civil penalty provisions

- (1) This section applies if the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3.
- (2) The Minister may accept a written undertaking given by the person in relation to the action, in which the person undertakes to pay a specified amount, within a specified period:
 - (a) to the Commonwealth; or
 - (b) to some other specified person, for the purpose of activities directed towards the protection and conservation of the matter protected by the civil penalty provision referred to in subsection (1).
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Minister.

486DB Enforcement of undertakings

- (1) If the Minister considers that a person who gave an undertaking under section 486DA has breached any of its terms, the Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) any other order that the Court considers appropriate.

Division 15A—Notices to produce or attend

486E Application of Division

- (1) This Division applies if the Minister believes, on reasonable grounds, that a person is capable of giving information, or producing books, records or documents, that are relevant for the purposes of investigating or preventing:
 - (a) an offence against an environmental law; or
 - (b) a contravention of an environmental penalty provision.
- (2) In this Division:

official means any of the following:

 - (a) the Minister;
 - (b) an officer or employee in the Department;
 - (c) the Director;
 - (d) the Chairperson of the Great Barrier Reef Marine Park Authority;
 - (e) a member of the staff of the Great Barrier Reef Marine Park Authority.

486F Minister may require person to provide information etc.

- (1) The Minister may, by written notice, require the person to give to an official specified in the notice, in the manner and within the period specified in the notice:
 - (a) such information as is specified in the notice; or
 - (b) any book, record or document that is specified in the notice.The period must end not less than 14 days after the notice is given.
- (2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the *Criminal Code*.
- (3) A person commits an offence if:

Section 486G

- (a) the person is required to give information or a book, record or document to an official under subsection (1); and
- (b) the person does not give the information, book, record or document to the official.

Penalty: Imprisonment for 6 months.

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

486G Minister may require person to appear before Minister

- (1) The Minister may, by written notice, require the person to appear before an official specified in the notice, at a time and place specified in the notice:
 - (a) to answer any questions put by the official; and
 - (b) to produce to the official such books, records or documents as are specified in the notice.

The time must not be earlier than 14 days after the notice is given.

- (2) A notice under subsection (1) must set out the effect of section 491 of this Act and of sections 137.1 and 137.2 of the *Criminal Code*.
- (3) A person commits an offence if:
 - (a) the person is required to appear before an official under subsection (1); and
 - (b) the person does not appear before the official.

Penalty: Imprisonment for 6 months.

- (4) A person commits an offence if:
 - (a) the person is required to appear before an official under subsection (1); and
 - (b) when appearing before the official, the person does not:
 - (i) answer a question put by the official; or
 - (ii) produce a book, record or document to the official as required by the notice given under that subsection.

Penalty: Imprisonment for 6 months.

Section 486H

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

486H Persons to whom notices may not be given

A notice under subsection 486F(1) or 486G(1) must not be given to a person if the person is, or has been, a lawyer for:

- (a) if the notice relates to the investigation or prevention of an offence against an environmental law—the person suspected of having committed the offence; or
- (b) if the notice relates to the investigation or prevention of a contravention of an environmental penalty provision—the person suspected of having contravened the provision.

486J Self-incrimination

- (1) An individual is not excused from giving information (including by answering a question), or from giving or producing a book, record or document, under this Division on the ground that the information, or the giving or production of the book, record or document, might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
 - (a) the information given, or the book, record or document given or produced; or
 - (b) giving the information, or giving or producing the book record or document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, or giving or producing the book, record or document;is not admissible in evidence against the person:
 - (d) in any civil proceedings; or
 - (e) in any criminal proceedings other than:
 - (i) proceedings for an offence against subsection 486F(3) or 486G(3) or (4); or

Section 486J

- (ii) proceedings for an offence against section 491 that relates to a requirement under this Division; or
- (iii) proceedings for an offence against section 137.1 or 137.2 (false or misleading information or documents) of the *Criminal Code* that relates to a requirement under this Division.

Division 16—Review of administrative decisions

487 Extended standing for judicial review

- (1) This section extends (and does not limit) the meaning of the term *person aggrieved* in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:
 - (a) a decision made under this Act or the regulations; or
 - (b) a failure to make a decision under this Act or the regulations; or
 - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations.
- (2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:
 - (a) the individual is an Australian citizen or ordinarily resident in Australia or an external Territory; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment.
- (3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:
 - (a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and
 - (b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment; and
 - (c) at the time of the decision, failure or conduct, the objects or purposes of the organisation or association included

protection or conservation of, or research into, the environment.

- (4) A term (except *person aggrieved*) used in this section and in the *Administrative Decisions (Judicial Review) Act 1977* has the same meaning in this section as it has in that Act.

488 Applications on behalf of unincorporated organisations

- (1) A person acting on behalf of an unincorporated organisation that is a person aggrieved (for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*) by:
- (a) a decision made under this Act or the regulations; or
 - (b) a failure to make a decision under this Act or the regulations; or
 - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations;
- may apply under that Act for a review of the decision, failure or conduct.
- (2) The *Administrative Decisions (Judicial Review) Act 1977* applies in relation to the person as if he or she were a person aggrieved.

Division 17—Duty to provide accurate information

489 Providing false or misleading information to obtain approval or permit

- (1) A person commits an offence if:
- (a) the person provides information in response to a requirement or request under Part 7, 8, 9, 13 or 13A; and
 - (b) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1)(b) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the *Criminal Code*.

- (2) An offence against subsection (1) is punishable on conviction by:
- (a) imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or
 - (b) imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

Note: 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.

- (2A) A person commits an offence if:
- (a) the person provides information in response to a requirement or request under Part 7, 8, 9, 13 or 13A; and
 - (b) the person is negligent as to whether the information is false or misleading in a material particular.

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

- (2B) An offence against subsection (2A) is punishable on conviction by a fine not more than 30 penalty units.

Section 490

Note: 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.

- (3) Subsections (1) and (2A) do not apply to a requirement to provide information that is imposed by a condition attached to an environmental authority.

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

490 Providing false or misleading information in response to a condition on an approval or permit

- (1) A person commits an offence if:
- (a) the person is the holder of an environmental authority; and
 - (b) a condition attached to the environmental authority requires the person to provide information; and
 - (c) the person provides information in response (or purportedly in response) to the requirement; and
 - (d) the person is reckless as to whether the information is false or misleading in a material particular.

Note: The fault element in paragraph (1)(d) can be demonstrated by proof of knowledge. See subsection 5.4(4) of the *Criminal Code*.

- (2) The offence is punishable on conviction by:
- (a) imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both, if it is proved the person knew the information was false or misleading; or
 - (b) imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both, if it is proved the person was reckless as to whether the information was false or misleading.

Note: 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.

Section 491

491 Providing false or misleading information to authorised officer etc.

- (1) A person commits an offence if the person:
- (a) provides information or a document to another person (the *recipient*); and
 - (b) knows the recipient is:
 - (i) an authorised officer; or
 - (ii) the Minister; or
 - (iii) an employee or officer in the Department; or
 - (iv) a commissioner;
performing a duty or carrying out a function under this Act or the regulations; and
 - (c) knows the information or document is false or misleading in a material particular.
- (2) The offence is punishable on conviction by imprisonment for a term not more than 1 year, a fine not more than 60 penalty units, or both.

Note: 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.