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- (a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
- (b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.

## **Division 3—Reconsideration of decisions**

### **78 Reconsideration of decision**

#### *Limited power to vary or substitute decisions*

- (1) The Minister may revoke a decision (the **first decision**) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:
- (a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:
    - (i) has or will have; or
    - (ii) is likely to have;on a matter protected by a provision of Part 3; or
  - (aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:
    - (i) has or will have; or
    - (ii) is likely to have;on a matter protected by a provision of Part 3; or
  - (b) the following requirements are met:
    - (i) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77;
    - (ii) the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or
  - (ba) the following requirements are met:
    - (i) the first decision was that the action was not a controlled action because of a provision of a bilateral agreement and a management arrangement or an authorisation process that is a bilaterally accredited

- management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement;
- (ii) the provision of the agreement no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in force under, or set out in, a law of a State or a self-governing Territory identified in or under the agreement; or
- (c) the following requirements are met:
- (i) the first decision was that the action was not a controlled action because of a declaration under section 33 and a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration;
- (ii) the declaration no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in operation under, or set out in, a law of the Commonwealth identified in or under the declaration; or
- (ca) the following requirements are met:
- (i) the first decision was that the action was not a controlled action because of a declaration under section 37A and a bioregional plan to which the declaration relates;
- (ii) the declaration no longer operates in relation to the action, or the bioregional plan is no longer in force; or
- (d) the Minister is requested under section 79 to reconsider the decision.

Note 1: Subsection 75(1) provides for decisions about whether an action is a controlled action and what the controlling provisions for the action are.

Note 2: A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca). See section 78A.

Note 3: If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry

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out the processes referred to in sections 73 and 74 again before making the new decision.

### *Reversing decision that provision of Part 3 is not controlling provision*

- (2) A provision of Part 3 letting an action be taken if the Minister has decided that a particular provision (the **prohibiting provision**) of that Part is not a controlling provision for the action does not prevent the Minister from acting under subsection (1) to revoke a decision that the prohibiting provision is not a controlling provision for an action and substitute a decision that the prohibiting provision is a controlling provision for the action.

### *Decision not to be revoked after approval granted or refused or action taken*

- (3) The Minister must not revoke the first decision after:
- (a) the Minister has granted or refused an approval of the taking of the action; or
  - (b) the action is taken.

### *General effect of change of decision*

- (4) When the first decision is revoked and a new decision is substituted for it:
- (a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and
  - (b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

### *Change of designation of proponent*

- (5) If the Minister believes a person (the **first proponent**) designated under section 75 as proponent of an action is no longer an appropriate person to be the designated proponent of the action, the Minister may revoke the designation and designate another person (the **later proponent**) as proponent of the action.

*Consent to designation*

- (6) The Minister may designate the other person as proponent of the action only if:
- (a) he or she consents to it and the person proposing to take the action agrees to it; or
  - (b) the other person is the person proposing to take the action.

*Effect of change of designated proponent*

- (7) If the Minister revokes the designation of the first proponent and designates the later proponent:
- (a) the provisions of this Chapter that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent; and
  - (b) for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and
  - (c) for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

**78A Request for reconsideration of decision by person other than State or Territory Minister**

- (1) A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca).

Note: Section 79 deals with requests for reconsideration by a Minister of a State or self-governing Territory.

- (2) A request under subsection (1) must:
- (a) be in writing; and
  - (b) set out the basis on which the person thinks the decision should be reconsidered; and
  - (c) if the regulations specify other requirements for requests under subsection (1)—comply with those requirements.

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- (3) If a request is made under subsection (1) in relation to a decision that an action is a controlled action, or that particular provisions are controlling provisions for an action, then:
- (a) if the request is made by the designated proponent of the action—Part 8 ceases to apply in relation to the action until the Minister makes a decision in relation to the request; but
  - (b) if the request is made by another person—the application of Part 8 in relation to the action is not affected by the making of the request (subject to the outcome of the reconsideration).
- (4) If:
- (a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and
  - (b) the Minister confirms the decision that is the subject of the request under subsection (1);
- then:
- (c) the application of Part 8 in relation to the action resumes (as does any assessment process under that Part that had previously commenced in relation to the action); and
  - (d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:
    - (i) on or after the day the Minister received the request; and
    - (ii) on or before the day the Minister confirms the decision.

### **78B Minister must inform interested persons of request and invite comments**

- (1) The Minister (the *Environment Minister*) must comply with this section if he or she receives a request under section 78A to reconsider a decision made under subsection 75(1) about an action.

#### *Informing designated proponent of request and inviting comments*

- (2) If the request is made by a person other than the designated proponent of the action, the Environment Minister must:
- (a) inform the designated proponent of the request in accordance with subsection (3); and

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- (b) invite the designated proponent to give the Environment Minister, within 10 business days, comments on the request.
- (3) For the purpose of paragraph (2)(a), the Environment Minister must inform the designated proponent of the request by giving the designated proponent such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

*Inviting other Commonwealth Ministers to provide information*

- (4) The Environment Minister must:
  - (a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the request; and
  - (b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

*Inviting comments from appropriate State or Territory Minister*

- (5) If the request relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister must:
  - (a) inform the appropriate Minister of the State or Territory of the request; and
  - (b) invite that Minister to give the Environment Minister, within 10 business days:
    - (i) comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action; and
    - (ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

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Note: Subsection (5) also applies in relation to a request that relates to an action that is to be taken in an area offshore from a State or the Northern Territory. See section 157.

### *Inviting public comment*

- (6) The Environment Minister must publish on the internet:
- (a) the request; and
  - (b) an invitation for anyone to give the Environment Minister, within 10 business days (measured in Canberra), comments in writing on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

## **78C Minister must reconsider decision and give notice of outcome**

### *Reconsideration of decision*

- (1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in relation to a request under section 78A to reconsider a decision about an action, the Minister must:
- (a) reconsider the decision; and
  - (b) either:
    - (i) confirm the decision; or
    - (ii) revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

### *Notice of outcome of reconsideration*

- (2) The Minister must give written notice of the outcome of the reconsideration to:
- (a) the person who requested the reconsideration; and
  - (b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and
  - (c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and



- (d) if the reconsideration relates to an action referred to in subsection 78B(5)—the appropriate Minister of the State or Territory.
- (3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

*Reasons for outcome of reconsideration*

- (4) The Minister must give reasons for the outcome of the reconsideration to a person who:
  - (a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and
  - (b) within 28 days after being given the notice, has requested the Minister to provide reasons.

The Minister must do so as soon as practicable, and in any case within 28 days after receiving the request.

## **79 Reconsideration of decision on request by a State or Territory**

- (1) This section applies if the Minister (the *Environment Minister*) has made a decision under subsection 75(1) about whether a provision of Division 1 of Part 3 is a controlling provision for an action proposed to be taken in a State or a self-governing Territory.

Note 1: Division 1 of Part 3 deals with requirements for approvals for actions involving matters of national environmental significance.

Note 2: This section also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

- (2) Within 10 business days after the appropriate Minister of the State or Territory is notified of the decision under subparagraph 77(1)(a)(iii), that Minister may request the Environment Minister to reconsider the Environment Minister's decisions made under subsection 75(1).

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- (3) Within 20 business days after receiving a request to reconsider a decision, the Environment Minister must:
- (a) reconsider the decision; and
  - (b) either confirm it or revoke it and substitute a new decision for it; and
  - (c) give written notice of the outcome of the reconsideration and reasons for the outcome to:
    - (i) the Minister who requested the reconsideration; and
    - (ii) the person proposing to take the action; and
    - (iii) the designated proponent of the action; and
  - (d) after giving notice as described in paragraph (c), publish notice of the outcome and the reasons for it in accordance with the regulations.

Note: Section 156 sets out rules about time limits.

## **Part 8—Assessing impacts of controlled actions**

### **Division 1—Simplified outline of this Part**

#### **80 Simplified outline of this Part**

The following is a simplified outline of this Part:

This Part provides for the assessment of impacts of controlled actions, to provide information for decisions whether or not to approve the taking of the actions. However, this Part does not apply to actions that a bilateral agreement or Ministerial declaration says are to be assessed in another way.

For actions that are to be assessed under this Part, the Minister must choose one of the following methods of assessment:

- (a) an accredited assessment process;
- (aa) an assessment on referral information (see Division 3A);
- (b) an assessment on preliminary documentation (see Division 4);
- (c) a public environment report (see Division 5);
- (d) an environmental impact statement (see Division 6);
- (e) a public inquiry (see Division 7).

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## Division 2—Application of this Part

### 81 Application

- (1) This Part applies to the assessment of the relevant impacts of an action that the Minister has decided under Division 2 of Part 7 is a controlled action.
- (2) This section has effect subject to sections 83 and 84.
- (3) This section does not limit section 82.

### 82 What are the *relevant impacts* of an action?

*If the Minister has decided the action is a controlled action*

- (1) If the Minister has decided under Division 2 of Part 7 that an action is a controlled action, the **relevant impacts** of the action are the impacts that the action:
  - (a) has or will have; or
  - (b) is likely to have;on the matter protected by each provision of Part 3 that the Minister has decided under that Division is a controlling provision for the action.

*If the Minister has not decided whether the action is controlled*

- (2) If an action is a controlled action or would be apart from Division 1, 2, 3 or 3A of Part 4 (which provide that approval under Part 9 is not needed for an action covered by a bilateral agreement or declaration)—the **relevant impacts** of the action are impacts that the action:
  - (a) has or will have; or
  - (b) is likely to have;on the matter protected by each provision of Part 3 that is a controlling provision for the action or would be apart from whichever of those Divisions is relevant.

*Relationship between subsections (1) and (2)*

- (3) Subsection (1) has effect despite subsection (2).
- (4) For the purposes of subsections (1) and (2), if subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 24D(3), 24E(3), 26(1) or 27A(1) is, or would be, a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in or on a Commonwealth area, a Territory, a Commonwealth marine area or Commonwealth land:
  - (a) has or will have; or
  - (b) is likely to have;on the matter.
- (5) For the purposes of subsections (1) and (2), if subsection 24B(1) or 24C(1) or (3) is or would be a controlling provision for the action, then the impacts of the action on the matter protected by that provision are only those impacts that the part of the action that is taken in the Great Barrier Reef Marine Park:
  - (a) has or will have; or
  - (b) is likely to have;on the matter.

**83 This Part does not apply if action covered by bilateral agreement**

- (1) This Part does not apply in relation to an action if:
  - (a) the action is to be taken in a State or self-governing Territory; and
  - (b) a bilateral agreement between the Commonwealth and the State or Territory declares that actions in a class that includes the action need not be assessed under this Part; and
  - (c) the provision of the bilateral agreement making the declaration is in operation in relation to the action.

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

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Note 2: Section 47 deals with bilateral agreements making declarations described in paragraph (1)(b).

Note 2A: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the bilateral agreement.

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

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

### **84 This Part does not apply if action covered by declaration**

#### *When this Part does not apply*

- (1) This Part does not apply in relation to an action if:
- (a) the Minister has declared in writing that actions in a class that includes the action need not be assessed under this Part; and
  - (b) the declaration is in operation.

Note: An action will be in a class of actions declared not to need assessment under this Part only if the action has been assessed in a manner specified in the declaration.

#### *Declaration*

- (2) The Minister may declare in writing that actions in a specified class of actions assessed by the Commonwealth or a Commonwealth agency in a specified manner do not require assessment under this Part.

#### *Prerequisites for making a declaration*

- (3) The Minister may make a declaration only if he or she is satisfied that:

- (a) assessment of an action in the specified manner will include assessment of the impacts the action:
  - (i) has or will have; or
  - (ii) is likely to have;on each matter protected by a provision of Part 3; and
- (b) the specified manner of assessment meets the standards (if any) prescribed by the regulations; and
- (c) if the taking of an action assessed in the specified manner must be approved under Part 9, he or she will receive a report including, or accompanied by, enough information about the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purpose of each controlling provision) the taking of the action.

*Further requirements for making a declaration*

- (3A) Sections 34A, 34B, 34BA, 34C, 34D, 34E and 34F apply in relation to the making of a declaration under this section in the same way that they apply to the making of a declaration under section 33.

*Specified manner of assessment*

- (4) The manner of assessment that may be specified in a declaration includes assessment by a Commonwealth agency under a law of the Commonwealth. This does not limit subsection (2).

*Publishing declaration*

- (5) The Minister must publish a declaration in accordance with the regulations.

*Revoking declaration*

- (6) The Minister may, by instrument in writing published in accordance with the regulations, revoke a declaration.

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*Minister must not give preference*

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



## **Division 3—Decision on assessment approach**

### **Subdivision A—Simplified outline of this Division**

#### **85 Simplified outline of this Division**

The following is a simplified outline of this Division:

The Minister must choose one of the following ways of assessing the relevant impacts of an action the Minister has decided is a controlled action:

- (a) an accredited assessment process;
- (aa) an assessment on referral information;
- (b) an assessment on preliminary documentation;
- (c) a public environment report;
- (d) an environmental impact statement;
- (e) a public inquiry.

### **Subdivision B—Deciding on approach for assessment**

#### **87 Minister must decide on approach for assessment**

*Minister must choose one assessment approach*

- (1) The Minister must decide which one of the following approaches must be used for assessment of the relevant impacts of an action that the Minister has decided is a controlled action:
  - (a) assessment by an accredited assessment process;
  - (aa) assessment on referral information under Division 3A;
  - (b) assessment on preliminary documentation under Division 4;

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- (c) assessment by public environment report under Division 5;
- (d) assessment by environmental impact statement under Division 6;
- (e) assessment by inquiry under Division 7.

*Considerations in making choice*

- (3) In making the decision, the Minister must consider:
  - (a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
  - (b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
  - (c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and
  - (d) the matters (if any) prescribed by the regulations; and
  - (e) the guidelines (if any) published under subsection (6).

*Accredited assessment process*

- (4) The Minister may decide on an assessment by an accredited assessment process only if the Minister is satisfied that:
  - (a) the process is to be carried out under a law of the Commonwealth, a State or a self-governing Territory; and
  - (b) the process and the law meet the standards (if any) prescribed by the regulations; and
  - (c) the process will ensure that the relevant impacts of the action are adequately assessed; and
  - (d) he or she will receive a report of the outcome of the process that will provide enough information on the relevant impacts of the action to let him or her make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

*Assessment on referral information*

- (4A) The Minister may decide on an assessment on referral information under Division 3A only if the Minister is satisfied (after considering the matters in subsection (3)) that the action meets the criteria prescribed in the regulations for the purposes of this subsection.

*Assessment on preliminary documentation*

- (5) The Minister may decide on an assessment on preliminary documentation under Division 4 only if the Minister is satisfied (after considering the matters in subsection (3)) that that approach will allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

*Guidelines for choosing assessment approach*

- (6) The Minister may publish in the *Gazette* guidelines setting out criteria for deciding which approach must be used for assessing the relevant impacts of an action.

## **88 Timing of decision on assessment approach**

*Initial decision*

- (1) The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: Section 156 sets out rules about time limits.

*When initial decision must be made*

- (2) The Minister must make the decision under subsection (1) on the same day as the Minister has decided, under subsection 75(1), that the action is a controlled action, unless the Minister has requested more information under subsection 76(3) or section 89 for the

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purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.

*Time does not run while further information sought*

- (4) If the Minister has requested more information in relation to the action under subsection 76(1), (2) or (3) or section 89, a day is not to be counted as a business day for the purposes of subsection (1) if it is:
- (a) on or after the day the Minister requested the information; and
  - (b) on or before the day on which the Minister receives the last of the information requested.

*Running of time may be suspended by agreement*

- (5) The Minister and the designated proponent of the action may agree in writing that days within a period worked out in accordance with the agreement are not to be counted as business days for the purposes of subsection (1). If the agreement is made, those days are not to be counted for the purposes of that subsection.

### **89 Minister may request more information for making decision**

- (1) If the Minister believes on reasonable grounds that the information given to the Minister in relation to an action is not enough to allow the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action, the Minister may request the designated proponent to provide specified information relevant to making the decision.
- (2) Without limiting subsection (1), if the action is to be taken in a State or self-governing Territory, the Minister may request the designated proponent of the action to provide information about:
- (a) whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and
  - (b) if so, the method of assessment that was, or is being, used and what stage the assessment has reached.

- (3) The Minister may make a request in relation to an action under this section even if the Minister has made a request under subsection 76(3) in relation to the action.

## **90 Directing an inquiry after starting an assessment**

### *Application*

- (1) This section applies if:
- (a) the Minister has made a decision (the ***first decision***) under section 87 that the relevant impacts of an action must be assessed by:
    - (i) assessment by public environment report under Division 5; or
    - (ii) assessment by environmental impact statement under Division 6; and
  - (b) the designated proponent publishes:
    - (i) a draft report under section 98 (about public environment reports); or
    - (ii) a draft statement under section 103 (about environmental impact statements).

### *Revoking and substituting decision*

- (2) The Minister may revoke the first decision and make another decision (the ***new decision***) under section 87 (in substitution for the first decision) that the relevant impacts of the action must be assessed by an inquiry under Division 7.

### *Effect of revocation and substitution*

- (3) When the first decision is revoked and the new decision is substituted for it:
- (a) whichever of Divisions 5 and 6 applied in relation to the action because of the first decision ceases to apply in relation to the action; and
  - (b) Division 7 applies in relation to the action.

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### **91 Notice of decision on assessment approach**

- (1) Within 10 business days after making a decision on the approach to be used for assessment of the relevant impacts of an action, the Minister must:
- (a) give written notice of the decision to:
    - (i) the person proposing to take the action; and
    - (ia) the designated proponent of the action (if the designated proponent is not the person proposing to take the action); and
    - (ii) if the action is to be taken in a State or self-governing Territory and a controlling provision for the action is in Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of the State or Territory; and
  - (b) publish notice of the decision in accordance with the regulations.

Note 1: Section 156 sets out rules about time limits.

Note 2: Subparagraph (1)(a)(ii) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

- (1A) In the written notice of the decision, the Minister must also advise the person proposing to take the action that the person may elect under section 132B to submit an action management plan for approval.

Note: An action management plan is approved after a decision is made approving the taking of the action.

- (2) If the Minister decided that the relevant impacts of the action are to be assessed by an accredited assessment process, the written notice and the published notice must specify the process.

## **Division 3A—Assessment on referral information**

### **92 Application of this Division**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by assessment on referral information under this Division.

### **93 Recommendation report**

- (1) The Secretary must comply with this section within 30 business days after the Minister makes the decision under section 87.
- (2) The Secretary must prepare a draft recommendation report that includes recommendations on:
  - (a) whether the taking of the action should be approved under Part 9; and
  - (b) if approval is recommended, any conditions that should be attached to the approval.
- (3) The Secretary must publish on the internet:
  - (a) the draft recommendation report; and
  - (b) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing relating to the draft recommendation report or the action.
- (3A) The Secretary may refuse to publish on the internet, under subsection (3), so much of the draft recommendation report as:
  - (a) is:
    - (i) an exempt document under subparagraph 33(a)(i) of the *Freedom of Information Act 1982* (documents affecting national security, defence or international relations); or
    - (ii) a conditionally exempt document under section 47C of that Act (deliberative processes) to which access would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act; or

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- (b) the Secretary is satisfied is commercial-in-confidence.
- (3B) The Secretary must not be satisfied that a part of the draft recommendation report is commercial-in-confidence unless a person demonstrates to the Secretary that:
  - (a) release of the information in that part would cause competitive detriment to the person; and
  - (b) the information in that part is not in the public domain; and
  - (c) the information in that part is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
  - (d) the information in that part is not readily discoverable.
- (4) After the end of the period for comment, the Secretary must finalise the draft recommendation report, taking account of any comments received within that period.
- (5) As soon as practicable after finalising the draft recommendation report, the Secretary must give the Minister:
  - (a) the finalised recommendation report; and
  - (b) either:
    - (i) a copy of any comments received within the period for comment; or
    - (ii) if no comments were received within that period—a written statement to that effect.



## **Division 4—Assessment on preliminary documentation**

### **94 Application of this Division**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by assessment on preliminary documentation under this Division.

### **95 Direction to publish referral information and invitation to comment—no further information required**

- (1) This section applies if the Minister was satisfied, at the time of making the decision (the *assessment approach decision*) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.
- (2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:
  - (a) specified information included in the referral to the Minister of the proposal to take the action; and
  - (b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and
  - (c) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.
- (3) The designated proponent must comply with the direction.

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

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- (4) A direction given under subsection (2) is not a legislative instrument.

**95A Direction to publish referral information and invitation to comment—further information required**

- (1) This section applies if the Minister was not satisfied, at the time of making the decision (the *assessment approach decision*) under section 87, that the Minister had enough information in relation to the action to allow the Minister to assess the relevant impacts of the action.
- (2) Within 10 business days after the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must request the designated proponent to give the Minister specified information relevant to assessing the relevant impacts of the action, including information about strategies for mitigating any adverse impacts.
- (3) Within 10 business days after receiving the information requested under subsection (2), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:
- (a) specified information included in the referral to the Minister of the proposal to take the action; and
  - (b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and
  - (c) specified information relating to the action that was received in response to the Minister's request under subsection (2); and
  - (d) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.
- (4) The designated proponent must comply with the direction.

Note: If the designated proponent does not comply with the direction, the Minister may take action under section 155.

- (5) A direction given under subsection (3) is not a legislative instrument.

## **95B Procedure after end of period for comment**

### *Procedure if comments are received*

- (1) If comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as practicable after the end of that period:
- (a) prepare a document that:
    - (i) sets out the information given to the Minister previously in relation to the action, with any changes or additions needed to take account of the comments; and
    - (ii) contains a summary of the comments received and how those comments have been addressed; and
  - (b) give the Minister:
    - (i) a copy of the document prepared under paragraph (a); and
    - (ii) a copy of the comments received.
- (1A) The designated proponent is taken not to have given the Minister the documents referred to in paragraph (1)(b) if the required fee has not been paid.
- (2) Within 10 business days after the designated proponent has given the Minister the documents referred to in paragraph (1)(b), the designated proponent must publish, in accordance with the regulations, a copy of the document prepared under paragraph (1)(a).

### *Procedure if no comments are received*

- (3) If no comments are received by the designated proponent within the period for comment, the designated proponent must, as soon as

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practicable after the end of that period, give the Minister a written statement to that effect.

- (3A) The designated proponent is taken not to have given the Minister the statement referred to in subsection (3) if the required fee has not been paid.
- (4) Within 10 business days after the designated proponent has given the Minister the statement referred to in subsection (3), the designated proponent must publish, in accordance with the regulations, a copy of the information referred to in paragraphs 95(2)(a) and (b) or 95A(3)(a), (b) and (c), as the case requires.

### *Definition*

- (5) In this section:

***period for comment*** means the period within which comments may be given under 95(2)(c) or 95A(3)(d), as the case requires.

## **95C Recommendation report**

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
- (a) whether the taking of the action should be approved under Part 9; and
  - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires, and before the end of the period applicable under paragraph 130(1B)(c) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

## **Division 5—Public environment reports**

### **96 Application**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by a public environment report under this Division.

#### **96A Minister must give designated proponent written guidelines for preparation of draft public environment report**

- (1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft public environment report about the relevant impacts of the action. The guidelines so given are referred to as the ***PER guidelines***.
- (2) The PER guidelines must be:
  - (a) one or more sets of standard guidelines prepared under section 96B that the Minister decides are appropriate for the preparation of the draft report in relation to the action; or
  - (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft report in relation to the action—tailored guidelines prepared under section 97.
- (3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft report in relation to the action, the Minister must seek to ensure that the draft report, if prepared in accordance with those guidelines, will:
  - (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
  - (b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 97(2).

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- (4) The Minister must give the PER guidelines to the designated proponent:
  - (a) within 20 business days after the assessment approach decision was made under section 87; or
  - (b) if the Minister, under section 97, invites a person to comment on a draft of tailored guidelines for the preparation of the draft report within a specified period—within 20 business days after:
    - (i) the end of that period; or
    - (ii) if there is more than one such period, the end of the later or latest of those periods.

### 96B Standard guidelines

- (1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft public environment reports about the relevant impacts of actions.

Note: See also subsection 96A(3).

- (2) A set of standard guidelines must set out requirements for the content and presentation of draft public environment reports about the relevant impacts of actions.
- (3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:
  - (a) actions that are proposed to be taken by a specified industry sector; or
  - (b) actions for which a specified provision of Part 3 is a controlling provision.
- (4) A set of standard guidelines made under this section is not a legislative instrument.

### 97 Tailored guidelines

- (1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft public environment report about the relevant impacts of an action if the Minister decides that standard guidelines

are not appropriate for the preparation of the draft report in relation to that action.

- (1A) Tailored guidelines must set out requirements for the content and presentation of the draft report in relation to the action.
- (2) In preparing tailored guidelines, the Minister must seek to ensure that the draft report will:
  - (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
  - (b) address the matters (if any) prescribed by the regulations.
- (3) Tailored guidelines may also provide for the draft report to include information about other certain and likely impacts of the action if:
  - (a) the action is to be taken in a State or self-governing Territory; and
  - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft report includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and
  - (c) the action:
    - (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
    - (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

- (3A) Tailored guidelines may also provide for the draft report to include information about other certain and likely impacts of the action if:

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- (a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and
  - (b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft report includes information about those other impacts for the purposes of deciding whether to grant the permission.
- (4) Division 2 does not limit:
  - (a) subsection (3) or (3A); or
  - (b) section 98 so far as it relates to tailored guidelines prepared in reliance on that subsection.
- (5) In preparing tailored guidelines, the Minister may:
  - (a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and
  - (b) take account of the comments received (if any).
- (6) Tailored guidelines made under this section are not a legislative instrument.

**98 Designated proponent must invite comment on draft public environment report**

*Designated proponent's obligations*

- (1) The designated proponent of the action must:
  - (a) prepare a draft public environment report in accordance with the PER guidelines about:
    - (i) the relevant impacts of the action; and
    - (ii) if the PER guidelines are tailored guidelines that require the draft report to include information about other impacts—those other impacts; and
  - (ab) give the draft report to the Minister; and
  - (b) obtain the Minister's approval for publication of the draft report; and



- (c) publish in accordance with the regulations:
  - (i) the draft report; and
  - (ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft report or the action within the period specified in the invitation.

*Approval of publication of draft report*

- (2) The Minister may only approve the publication of the draft report if he or she is satisfied that the draft report is in accordance with the PER guidelines.

*Period for comment*

- (3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.

## **99 Finalising public environment report**

- (1) After the end of the period specified in the invitation to comment under section 98, the designated proponent must finalise the draft public environment report.
- (2) The finalised report must:
  - (a) take account of any comments received within the period for comment; and
  - (b) contain a summary of any such comments and how those comments have been addressed.
- (3) As soon as practicable after finalising the draft report, the designated proponent must give the Minister:
  - (a) the finalised report; and
  - (b) either:
    - (i) a copy of any comments received within the period for comment; or

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- (ii) if no comments were received within that period—a written statement to that effect.
- (3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.
- (4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised report in accordance with the regulations.

**100 Recommendation report**

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
  - (a) whether the taking of the action should be approved under Part 9; and
  - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the finalised public environment report under section 99 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

Note: This is the period within which the Minister must decide whether or not to approve the taking of the action.

## **Division 6—Environmental impact statements**

### **101 Application**

This Division applies in relation to an action if the Minister has decided under section 87 that the relevant impacts of the action must be assessed by an environmental impact statement under this Division.

#### **101A Minister must give designated proponent written guidelines for preparation of draft environmental impact statement**

- (1) The Minister must give the designated proponent of the action written guidelines for the preparation of a draft environmental impact statement about the relevant impacts of the action. The guidelines so given are referred to as the *EIS guidelines*.
- (2) The EIS guidelines must be:
  - (a) one or more sets of standard guidelines prepared under section 101B that the Minister decides are appropriate for the preparation of the draft statement in relation to the action; or
  - (b) if the Minister decides that standard guidelines are not appropriate for the preparation of the draft statement in relation to the action—tailored guidelines prepared under section 102.
- (3) In deciding whether one or more sets of standard guidelines are appropriate for the preparation of the draft statement in relation to the action, the Minister must seek to ensure that the draft statement, if prepared in accordance with those guidelines, will:
  - (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
  - (b) address the matters (if any) prescribed by the regulations.

Note: Similar considerations apply in relation to tailored guidelines: see subsection 102(2).

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- (4) The Minister must give the EIS guidelines to the designated proponent:
  - (a) within 20 business days after the assessment approach decision was made under section 87; or
  - (b) if the Minister, under section 102, invites a person to comment on a draft of tailored guidelines for the preparation of the draft statement within a specified period—within 20 business days after:
    - (i) the end of that period; or
    - (ii) if there is more than one such period, the end of the later or latest of those periods.

### 101B Standard guidelines

- (1) The Minister may prepare one or more sets of standard guidelines, in writing, for the preparation of draft environmental impact statements about the relevant impacts of actions.

Note: See also subsection 101A(3).

- (2) A set of standard guidelines must set out requirements for the content and presentation of draft environmental impact statements about the relevant impacts of actions.
- (3) Without limiting subsections (1) and (2), a set of standard guidelines may relate to:
  - (a) actions that are proposed to be taken by a specified industry sector; or
  - (b) actions for which a specified provision of Part 3 is a controlling provision.
- (4) A set of standard guidelines made under this section is not a legislative instrument.

### 102 Tailored guidelines

- (1) The Minister must prepare tailored guidelines, in writing, for the preparation of a draft environmental impact statement about the relevant impacts of an action if the Minister decides that standard

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guidelines are not appropriate for the preparation of the draft statement in relation to that action.

- (1A) Tailored guidelines must set out requirements for the content and presentation of the draft statement in relation to the action.
- (2) In preparing tailored guidelines, the Minister must seek to ensure that the draft statement will:
  - (a) contain enough information about the action and its relevant impacts to allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action; and
  - (b) address any matters specified by the regulations.
- (3) Tailored guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:
  - (a) the action is to be taken in a State or self-governing Territory; and
  - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the draft statement includes information about those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and
  - (c) the action:
    - (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
    - (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (3)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

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- (3A) Tailored guidelines may also provide for the draft statement to include information about other certain and likely impacts of an action if:
- (a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and
  - (b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the draft statement includes information about those other impacts for the purposes of deciding whether to grant the permission.
- (4) Division 2 does not limit:
- (a) subsection (3) or (3A); or
  - (b) section 103 so far as it relates to tailored guidelines prepared in reliance on that subsection.
- (5) In preparing tailored guidelines, the Minister may:
- (a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and
  - (b) take account of the comments (if any) received.
- (6) Tailored guidelines made under this section are not a legislative instrument.

**103 Designated proponent must invite comment on draft environmental impact statement**

*Designated proponent's obligations*

- (1) The designated proponent of the action must:
- (a) prepare a draft environmental impact statement in accordance with the EIS guidelines about:
    - (i) the relevant impacts of the action; and
    - (ii) if the EIS guidelines are tailored guidelines that require the draft statement to include information about other impacts—those other impacts; and

- (ab) give the draft statement to the Minister; and
- (b) obtain the Minister's approval for publication of the draft statement; and
- (c) publish in accordance with the regulations:
  - (i) the draft statement; and
  - (ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft statement or the action within the period specified in the invitation.

*Approval of publication of draft statement*

- (2) The Minister may only approve the publication of the draft statement if he or she is satisfied that the draft statement is in accordance with the EIS guidelines.

*Period for comment*

- (3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.

## **104 Finalising environmental impact statement**

- (1) After the end of the period specified in the invitation to comment under section 103, the designated proponent must finalise the draft environmental impact statement.
- (2) The finalised statement must:
  - (a) take account of any comments received within the period for comment; and
  - (b) contain a summary of any such comments and how those comments have been addressed.
- (3) As soon as practicable after finalising the draft statement, the designated proponent must give the Minister:
  - (a) the finalised statement; and

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- (b) either:
  - (i) a copy of any comments received within the period for comment; or
  - (ii) if no comments were received within that period—a written statement to that effect.
- (3A) The designated proponent is taken not to have given the Minister the documents required under subsection (3) if the required fee has not been paid.
- (4) Within 10 business days after the designated proponent has given the Minister the documents required under subsection (3), the designated proponent must publish the finalised statement in accordance with the regulations.

### **105 Recommendation report**

- (1) The Secretary must prepare, and give to the Minister, a recommendation report relating to the action. The report must include recommendations on:
  - (a) whether the taking of the action should be approved under Part 9; and
  - (b) if approval is recommended, any conditions that should be attached to the approval.
- (2) The recommendation report must be given to the Minister after the Minister receives the finalised environmental impact statement under section 104 and before the end of the period applicable under paragraph 130(1B)(d) in relation to the action.

**Note:** This is the period within which the Minister must decide whether or not to approve the taking of the action.



## **Division 7—Inquiries**

### **Subdivision A—Preliminary**

#### **106 Simplified outline**

The following is a simplified outline of this Division:

This Division provides for the Minister to appoint commissions to carry out inquiries in a flexible way into the impacts of actions.

Commissioners have powers to call witnesses, obtain documents and inspect places for the purposes of their inquiries.

Commissioners must report to the Minister and publish their reports.

### **Subdivision B—Establishment of inquiries**

#### **107 Appointing commissioners and setting terms of reference**

- (1) If the Minister decides that the relevant impacts of an action must be assessed by inquiry under this Division, the Minister must:
  - (a) appoint in writing one or more persons (the ***commissioners***) as a commission to conduct the inquiry and report to the Minister in relation to the action; and
  - (b) specify in writing (the ***terms of reference***):
    - (i) the matters relating to the action that are to be the subject of the inquiry and report; and
    - (ii) the period within which the commission must report to the Minister.

Note 1: The Minister may revoke an appointment and amend terms of reference. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Subdivision E contains more provisions about the basis on which a commissioner holds office.

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- (2) If the Minister appoints 2 or more commissioners for an inquiry, the Minister must appoint one of them to preside at the inquiry.
- (3) In specifying in the terms of reference the matters relating to the action that are to be the subject of the inquiry and report, the Minister:
  - (a) must specify the relevant impacts of the action; and
  - (b) if subsection (4) or (4A) applies—may specify other certain or likely impacts of the action.
- (4) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:
  - (a) the action is to be taken in a State or self-governing Territory; and
  - (b) the appropriate Minister of the State or Territory has asked the Minister administering this section to ensure that the inquiry reports on those other impacts to help the State or Territory, or an agency of the State or Territory, make decisions about the action; and
  - (c) the action:
    - (i) is to be taken by any person for the purposes of trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories or by a constitutional corporation; or
    - (ii) is an action whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Note: Paragraph (4)(a) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

- (4A) For the purposes of paragraph (3)(b), the Minister may specify other certain or likely impacts of the action if:
  - (a) the referral of the proposal to take the action is, because of section 37AB of the *Great Barrier Reef Marine Park Act 1975*, taken to be an application for a permission for the purposes of that Act; and

- (b) the Great Barrier Reef Marine Park Authority has asked the Minister to ensure that the report includes information about those other impacts for the purposes of deciding whether to grant the permission.
- (5) The Minister may also specify in the terms of reference the manner in which the commission is to carry out the inquiry.

### **108 Publicising inquiry**

- (1) As soon as practicable, the commission must publish in accordance with the regulations and in any other way it thinks fit:
  - (a) the terms of reference; and
  - (b) the information relating to the action given to the Minister under this Chapter before the Minister made the decision under Division 3 to use an inquiry to assess the relevant impacts of the action.
- (2) The commission need not publish the information described in paragraph (1)(b) if, before the Minister appointed the commission, the designated proponent of the action published:
  - (a) a draft report under section 98 (which deals with draft public environment reports); or
  - (b) a draft statement under section 103 (which deals with draft environmental impact statements).

However, in this case the commission must publish as described in subsection (1) notice of the fact that the draft report or draft statement has already been published.

## **Subdivision C—Conduct of inquiries**

### **109 Procedure of inquiries**

- (1) A commission must comply with the terms of reference in conducting its inquiry.
- (2) Subject to this Division, a commission:

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- (a) may determine the procedure to be followed in its inquiry; and
- (b) is not subject to any directions by an employee of the Commonwealth or by a Commonwealth agency; and
- (c) is not bound by the rules of evidence.

### **110 Inquiry to be public**

- (1) A hearing held as part of an inquiry must be conducted in public, except so far as the commission directs otherwise.
- (2) The commission must make publicly available (in any way the commission thinks fit) the content of any submission or evidence given to the commission in writing, except so far as the commission directs otherwise.
- (3) If the commission believes that it is desirable in the public interest, the commission may:
  - (a) give directions that all or part of the inquiry be held in private, specifying the persons who may be present; and
  - (b) give directions prohibiting or restricting the publication of all or specified passages of submissions or evidence given to the commission orally or in writing.

### **111 Calling witnesses**

#### *Summoning witnesses*

- (1) A commissioner may, by writing signed by the commissioner, summon a person to appear before the commission at a time and place specified in the summons to give evidence and produce any documents mentioned in the summons.

#### *Failure of witness to attend*

- (2) A person served with a summons to appear as a witness at an inquiry by a commission must not:
  - (a) fail to attend as required by the summons; or

- (b) fail to appear and report from day to day unless excused or released from further attendance by or on behalf of the commission.

Note: A defendant bears an evidential burden in relation to the excuse or release from further attendance mentioned in paragraph (2)(b). See subsection 13.3(3) of the *Criminal Code*.

*Offence*

- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 penalty units, or both.

*Allowances for witnesses*

- (4) A person summoned by a commission to appear as a witness at an inquiry is entitled to be paid by the Commonwealth such allowances for travelling and other expenses as are prescribed by the regulations.

## **112 Dealing with witnesses**

*Power to administer oath or affirmation*

- (1) A commissioner may administer an oath or affirmation to a person appearing as a witness before the commission.

Note: This means that proceedings before the commission are **judicial proceedings** for the purposes of Part III of the *Crimes Act 1914*, which creates various offences relating to judicial proceedings.

*Refusal to be sworn or to answer questions*

- (2) A person appearing as a witness at an inquiry by a commission must not:
- (a) refuse or fail to be sworn or to make an affirmation; or
  - (b) refuse or fail to answer a question that the person is required to answer by the commissioner (or the commissioner presiding at the inquiry if there is more than one commissioner for the inquiry); or

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- (c) refuse or fail to produce a document that the person was required to produce by a summons served on the person.

*Offence*

- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 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.

*No privilege against self-incrimination*

- (4) An individual is not excused from answering a question or producing a document on the ground that answering the question or producing the document would tend to incriminate the individual or to expose the individual to a penalty.

*Answers and documents cannot be used in criminal proceedings*

- (5) However, none of the following is admissible in evidence in criminal proceedings against the individual (except proceedings under section 491):
  - (a) the answer to the question;
  - (b) the production of the document;
  - (c) any information, document or thing obtained as a direct or indirect consequence of answering the question or producing the document.

*Sworn witnesses may also give written evidence on oath*

- (6) A commission may permit a person who is appearing as a witness before the commission and has been sworn or has made an affirmation to give evidence by tendering a written statement and verifying it by oath or affirmation.

### 113 Dealing with documents given to commission

#### *Inspecting and copying documents produced or given at inquiry*

- (1) A commissioner, or a person assisting a commission and authorised by a commissioner to do so, may:
  - (a) inspect a document produced or given to the commission; and
  - (b) make a copy of, or take an extract from, the document.

#### *Keeping documents produced or given at inquiry*

- (2) A commission may keep for a reasonable period a document produced or given to the commission.

### 114 Inspections of land, buildings and places

- (1) If a commissioner, or a person authorised by a commissioner, enters any land, building or place by consent as described in section 115 or under a warrant issued under section 116, the commissioner or person may:
  - (a) inspect the land, building or place; and
  - (b) inspect any material on the land, or on or in the building or place.
- (2) However, the commissioner or authorised person may not make the inspection if:
  - (a) the person occupying or in charge of the land, building or place asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
  - (b) the commissioner or person does not produce it.
- (3) A person (the **offender**) commits an offence punishable on conviction by imprisonment for not more than 6 months if:
  - (a) the offender obstructs or hinders another person; and

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- (b) the offender knows the other person is a commissioner, or a person authorised by a commissioner, acting under subsection (1) or a warrant issued under section 116.

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).

### 115 Entering premises by consent

- (1) A commissioner, or a person authorised by a commissioner, may enter land, a building or a place at any reasonable time for any reasonable purpose of an inquiry, if the person (the **occupant**) occupying or in charge of the land, building or place consents.
- (2) Before obtaining the consent, the commissioner or authorised person must inform the occupant that the occupant may refuse to give consent.
- (3) The commissioner or authorised person may not enter the land, building or place if:
  - (a) the occupant asks the commissioner or authorised person to produce his or her identity card or other written evidence of his or her identity; and
  - (b) the commissioner or authorised person does not produce it.
- (4) An entry by a commissioner or authorised person with the occupant's consent is not lawful if the occupant's consent was not voluntary.

### 116 Entering premises under warrant

- (1) A commissioner may apply to a magistrate for a warrant authorising the commissioner or a person authorised by the commissioner to enter any land, building or place if the commissioner has reason to believe that it is necessary or desirable



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for the purposes of an inquiry for the commissioner or person to enter the land, building or place for the purposes of the inquiry.

Note: Section 117 allows applications for warrants to be made by telephone.

- (2) If the magistrate is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of the inquiry, he or she may grant a warrant authorising the person named in the warrant to enter the land, building or place for the purposes specified in the warrant.
- (3) The magistrate must specify in the warrant the date after which the warrant ceases to have effect.
- (4) The person named in a warrant may not enter the land, building or place if:
  - (a) the person occupying or in charge of the land, building or place asks the person named in the warrant to produce his or her identity card or other written evidence of his or her identity; and
  - (b) the person named in the warrant does not produce it.

### **117 Warrants by telephone or other electronic means**

#### *Application*

- (1) A commissioner may apply to a magistrate for a warrant by telephone, telex, fax or other electronic means:
  - (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

#### *Voice communication*

- (2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

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*Information*

- (3) An application under this section must include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn or affirmed.

*Issue of warrant*

- (4) The magistrate may complete and sign the same form of warrant that would be issued under section 116 if, after considering the information and having received and considered any further information he or she required, the magistrate is satisfied that:
- (a) a warrant in the terms of the application should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

*Notification*

- (5) If the magistrate decides to issue the warrant, the magistrate must inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

*Form of warrant*

- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

*Completed form of warrant to be given to magistrate*

- (7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
- (a) the form of warrant completed by the applicant; and

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- (b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

*Attachment*

- (8) The magistrate must attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

*Presumption*

- (9) If:
  - (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
  - (b) the form of warrant signed by the magistrate is not produced in evidence;the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

**118 Identity cards**

- (1) The Minister may cause to be issued to a commissioner or a person authorised by a commissioner an identity card:
  - (a) in a form approved by the Minister; and
  - (b) containing a recent photograph of the person to whom it is issued.
- (2) As soon as practicable after the commission to which the commissioner was appointed has reported to the Minister on its inquiry, the commissioner or authorised person must return his or her identity card to the Minister.
- (3) A person must not contravene subsection (2).

Penalty: 1 penalty unit.

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**119 Contempt**

- (1) A person commits an offence punishable on conviction by a fine of not more than 30 penalty units if:
  - (a) the person insults, disturbs or uses insulting language towards another person; and
  - (b) the person knows the other person is a commissioner exercising the powers or performing the functions or duties of a commissioner.
- (2) A person commits an offence punishable on conviction by a fine of not more than 30 penalty units if:
  - (a) the person creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place; and
  - (b) the person knows the place is a place where a commission is holding an inquiry.
- (3) A person must not:
  - (a) interrupt an inquiry by a commission; or
  - (b) do any other act or thing that would, if a commission were a court of record, constitute a contempt of that court.

Penalty: 30 penalty units.

**120 Protection of commissioners and witnesses**

*Protection of commissioners*

- (1) In performing his or her duties as a commissioner, a commissioner has the same protection and immunity as a Justice of the High Court.

*Rights and obligations of witnesses*

- (2) A person appearing before a commission as a witness at an inquiry:
  - (a) has the same protection as a witness in proceedings in the High Court; and

- (b) is subject to the same liabilities in any civil or criminal proceedings as such a witness (in addition to the penalties provided by this Division).

*Interfering with witness is an offence*

- (3) A person must not:
  - (a) use violence to or inflict injury on; or
  - (b) cause or procure violence, damage, loss or disadvantage to; or
  - (c) cause or procure the punishment of;another person (the **witness**) because the witness will appear or did appear as a witness at an inquiry or because of any submission or evidence the witness gave to a commission.

*Interference with a witness' employment*

- (4) An employer must not dismiss an employee, or prejudice an employee in his or her employment, because the employee appeared as a witness or gave any submission or evidence at an inquiry by a commission.

*Interference with employee who proposes to give evidence*

- (5) An employer must not dismiss or threaten to dismiss an employee or prejudice, or threaten to prejudice, an employee in his or her employment, because the employee proposes to appear as a witness or to give a submission or evidence at an inquiry by a commission.

*Offences*

- (6) A person who contravenes subsection (3), (4) or (5) commits an offence punishable on conviction by imprisonment for not more than 6 months, a fine of not more than 30 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.

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### *Burden of proof in proceedings relating to witness*

- (7) In proceedings arising out of subsection (4), the employer has the burden of proving that the employee was not dismissed or prejudiced because the employee appeared as a witness or gave a submission or evidence at an inquiry by a commission, if it is established that:
- (a) the employee was dismissed from, or prejudiced in, his or her employment; and
  - (b) before the employee was dismissed or prejudiced, the employee appeared as a witness, or gave any submission or evidence, at an inquiry by a commission.

### *Burden of proof in proceedings relating to employee proposing to give evidence*

- (8) In any proceedings arising out of subsection (5), the employer has the burden of proving that the employee was not dismissed, prejudiced in his or her employment or threatened with dismissal or prejudice because the employee proposed to appear as a witness or give evidence at an inquiry by a commission, if it is established that:
- (a) the employee was dismissed, prejudiced or threatened; and
  - (b) the employee made the proposal before the employee was dismissed, prejudiced or threatened.

### *Relationship of subsections (3), (4) and (5)*

- (9) Subsections (4) and (5) do not limit subsection (3).

## **Subdivision D—Inquiry reports**

### **121 Timing of report**

The commission must report to the Minister on the inquiry within the period specified by the Minister in the terms of reference.

## **122 Publication of report**

- (1) After reporting to the Minister, the commission must publish the report in accordance with the regulations.
- (2) However, the commission must not publish the report so far as it sets out any submission or evidence whose publication the commission prohibited or restricted by a direction under paragraph 110(3)(b).

## **Subdivision E—Commissioners' terms and conditions**

### **123 Basis of appointment**

- (1) A commissioner is to be appointed on a full-time basis or a part-time basis.
- (2) A commissioner appointed on a full-time basis must not engage in paid employment outside the duties of the commissioner's office without the Minister's approval.
- (3) A commissioner appointed on a part-time basis must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the commissioner's duties.

### **124 Remuneration**

- (1) A commissioner who is not appointed or engaged under the *Public Service Act 1999* is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the commissioner is to be paid the remuneration that is prescribed.
- (2) A commissioner is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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### 125 Leave of absence

- (1) A commissioner appointed on a full-time basis has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a commissioner appointed on a full-time basis leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The commissioner (the *presiding commissioner*) appointed to preside at an inquiry may grant leave of absence to any other commissioner for the inquiry on the terms and conditions that the presiding commissioner determines, if the other commissioner has been appointed on a part-time basis.

### 126 Resignation

A commissioner may resign his or her appointment by giving the Minister a written resignation.

### 127 Termination of appointment

- (1) The Minister may terminate a commissioner's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a commissioner if:
  - (a) the commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the commissioner fails, without reasonable excuse, to comply with section 128 (about disclosure of interests); or



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- (c) the Minister becomes aware that the commissioner has a pecuniary or other interest in the subject-matter of the inquiry and the Minister considers that the commissioner should not continue to participate in the conduct of the inquiry.
- (3) The Minister must terminate the appointment of a commissioner on a full-time basis if:
  - (a) the commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (b) the commissioner engages, except with the Minister's approval, in paid employment outside the duties of his or her office.
- (4) The Minister must terminate the appointment of a commissioner on a part-time basis if:
  - (a) the commissioner is absent, except on leave of absence, from 3 consecutive meetings of his or her commission (if it consists of 2 or more commissioners); or
  - (b) the commissioner engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of his or her office.

**128 Disclosure of interests**

- (1) A commissioner must give written notice to the Minister of all direct and indirect pecuniary interests that he or she has or acquires in a business or in a body corporate carrying on a business.
- (2) If a commissioner has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties, he or she must:
  - (a) inform the Minister of the interest; and
  - (b) ensure that the interest is disclosed in the report of his or her inquiry.

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**129 Other terms and conditions**

A commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## **Part 9—Approval of actions**

### **Division 1—Decisions on approval and conditions**

#### **Subdivision A—General**

#### **130 Timing of decision on approval**

##### *Basic rule*

- (1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.
- (1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.
- (1B) The **relevant period**, in relation to a controlled action, is as follows:
  - (a) if the action is the subject of an assessment report—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;
  - (b) if Division 3A of Part 8 (assessment on referral information) applies to the action—the period of 20 business days beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);
  - (c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;
  - (d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public

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environment report or the finalised environmental impact statement, as the case requires;

- (e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

*What is an **assessment report**?*

- (2) An **assessment report** is a report given to the Minister as described in:
  - (a) subsection 47(4) (about assessments under a bilateral agreement); or
  - (b) subsection 84(3) (about assessments in a manner specified in a declaration); or
  - (c) subsection 87(4) (about assessments by accredited assessment processes).

*Notice of extension of time*

- (4) If the Minister specifies a longer period for the purposes of subsection (1A), he or she must:
  - (a) give a copy of the specification to the person proposing to take the action; and
  - (b) publish the specification in accordance with the regulations.

*Time does not run while awaiting advice from Independent Expert Scientific Committee*

- (4A) If, under section 131AB, the Minister is required to obtain advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development before making a decision whether or not to approve the taking of an action, a day is not to be counted as a business day for the purposes of subsection (1B) if it is:
  - (a) on or after the day the Minister requested the advice; and
  - (b) on or before the day on which the Minister obtains the advice.