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Schedule

Endnotes

Each volume has its own contents

**This compilation includes commenced amendments made by Act No. 59,
2015**

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About this compilation

This compilation

This is a compilation of the *Environment Protection and Biodiversity Conservation Act 1999* that shows the text of the law as amended and in force on 1 July 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the protection of the environment and the conservation of biodiversity, and for related purposes

Chapter 1—Preliminary

Part 1—Preliminary

1 Short title

This Act may be cited as the *Environment Protection and Biodiversity Conservation Act 1999*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 12 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects of Act

- (1) The objects of this Act are:
 - (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
 - (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
 - (c) to promote the conservation of biodiversity; and

Section 3

- (ca) to provide for the protection and conservation of heritage;
and
 - (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
 - (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
 - (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity;
and
 - (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.
- (2) In order to achieve its objects, the Act:
- (a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and
 - (b) strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements; and
 - (c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and
 - (d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and
 - (e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:
 - (i) protect native species (and in particular prevent the extinction, and promote the recovery, of threatened species) and ensure the conservation of migratory species; and
 - (ii) establish an Australian Whale Sanctuary to ensure the conservation of whales and other cetaceans; and

Section 3A

- (iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and
- (iv) identify processes that threaten all levels of biodiversity and implement plans to address these processes; and
- (f) includes provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of Ramsar wetlands of international importance; and
- (fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and
- (g) promotes a partnership approach to environmental protection and biodiversity conservation through:
 - (i) bilateral agreements with States and Territories; and
 - (ii) conservation agreements with land-holders; and
 - (iii) recognising and promoting indigenous peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and
 - (iv) the involvement of the community in management planning.

3A Principles of ecologically sustainable development

The following principles are *principles of ecologically sustainable development*:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

Section 4

- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

4 Act to bind Crown

This Act binds the Crown in each of its capacities.

5 Application of Act

Extension to external Territories

- (1) This Act extends to each external Territory.

Limited extraterritorial application

- (2) This Act applies to acts, omissions, matters and things in the Australian jurisdiction, and does not apply to acts, omissions, matters and things outside the Australian jurisdiction except so far as the contrary intention appears.

Application limited to Australians outside exclusive economic zone

- (3) A provision of this Act that has effect in relation to a place that is outside the outer limits of the exclusive economic zone and is not on or in the continental shelf applies only in relation to:
 - (a) Australian citizens; and
 - (b) persons who:
 - (i) are not Australian citizens; and
 - (ii) hold permanent visas under the *Migration Act 1958*; and
 - (iii) are domiciled in Australia or an external Territory; and

Section 5

- (c) corporations incorporated in Australia or an external Territory; and
- (d) the Commonwealth; and
- (e) Commonwealth agencies; and
- (f) Australian aircraft; and
- (g) Australian vessels; and
- (h) members of crews of Australian aircraft and Australian vessels (including persons in charge of aircraft or vessels).

Application to everyone in Australia and exclusive economic zone

- (4) A provision of this Act that has effect in relation to a place that is within the outer limits of the exclusive economic zone (whether the place is in the zone or in Australia or an external Territory) or that is on or in the continental shelf applies in relation to:
 - (a) all persons (including persons who are not Australian citizens); and
 - (b) all aircraft (including aircraft that are not Australian aircraft); and
 - (c) all vessels (including vessels that are not Australian vessels).

Note: A reference to Australia or to an external Territory generally includes a reference to the coastal sea of Australia or the Territory (as appropriate). See section 15B of the *Acts Interpretation Act 1901*.

Definitions

- (5) In this Act:

Australian aircraft means:

- (a) an aircraft that is owned, possessed or controlled by:
 - (i) the Commonwealth or a Commonwealth agency; or
 - (ii) a State, a self-governing Territory or an agency of a State or self-governing Territory; or
- (b) an aircraft that is registered in Australia.

Australian jurisdiction means the land, waters, seabed and airspace in, under or above:

Section 6

- (a) Australia; or
- (b) an external Territory; or
- (c) the exclusive economic zone; or
- (d) the continental shelf.

Note: A reference to Australia or to an external Territory generally includes a reference to the coastal sea of Australia or the Territory (as appropriate). See section 15B of the *Acts Interpretation Act 1901*.

Australian vessel means:

- (a) a vessel that is owned, possessed or controlled by:
 - (i) the Commonwealth or a Commonwealth agency; or
 - (ii) a State, a self-governing Territory or an agency of a State or self-governing Territory; or
- (b) a vessel that is registered in Australia; or
- (c) a vessel that is flying the Australian flag.

6 Extended application of Act to match extended management of fisheries under the *Fisheries Management Act 1991*

- (1) This section applies if:
 - (a) under the *Fisheries Management Act 1991*, a plan of management in force under that Act applies to particular fishing activities in a particular area of water; and
 - (b) the area of water is not within, or is not wholly within:
 - (i) the Australian jurisdiction; or
 - (ii) a Commonwealth area; or
 - (iii) a Commonwealth marine area; and
 - (c) the area of water is not:
 - (i) an area of water, rights in respect of which have been vested in a State by section 4 of the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; or
 - (ii) an area of water within the limits of a State or the Northern Territory.

Section 6

- (2) If, apart from this subsection, a provision of this Act would, or would not, apply in relation to the fishing activities (or in relation to fish or other things taken in the course of the activities) because the area of water mentioned in subsection (1) is not within, or is not wholly within:

- (a) the Australian jurisdiction; or
- (b) a Commonwealth area; or
- (c) a Commonwealth marine area;

that provision has effect in relation to the fishing activities (and in relation to fish or other things taken in the course of the activities) as if the area of water were wholly within:

- (d) the Australian jurisdiction; or
- (e) a Commonwealth area; or
- (f) a Commonwealth marine area;

as the case requires.

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

Example 1: Fishing activities in an area of water that is not a Commonwealth area generally do not contravene Part 13. However, because of this subsection, that Part applies to fishing activities to which this section applies as if the area of water were within a Commonwealth area. The fishing activities may therefore contravene that Part.

Example 2: If fish taken in the course of fishing activities in an area of water that is not within the Australian jurisdiction are brought into Australia, this generally constitutes an import (being an import by way of introduction from the sea) of the fish into Australia, which may contravene Part 13A. However, because of this subsection, that Part applies to the fish as if the area of water were within the Australian jurisdiction. The bringing of the fish into Australia therefore does not constitute an import for the purposes of that Part.

Example 3: This section allows a plan of management to be accredited under Part 13 in respect of the entire area of water to which the plan relates (even if some of the area is outside the Australian jurisdiction, a Commonwealth area or a Commonwealth marine area).

- (3) In this section:

fishing has the same meaning as in the *Fisheries Management Act 1991*.

Section 7

7 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

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

Note 2: Part 2.5 of the *Criminal Code* (which deals with corporate criminal responsibility) is excluded from applying to offences against this Act by subsection 498B(9).

8 Native title rights not affected

- (1) To avoid doubt, nothing in this Act affects the operation of section 211 of the *Native Title Act 1993* in relation to a provision of this Act.

Note: Section 211 of the *Native Title Act 1993* provides that holders of native title rights covering certain activities do not need authorisation required by other laws to engage in those activities.

- (2) This Act does not affect the operation of:
- (a) the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
 - (b) the *Native Title Act 1993*.

9 Relationship with other Acts

Aboriginal Land Rights (Northern Territory) Act 1976

- (1A) Subsection 70(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* does not prevent a person exercising powers or performing functions or duties under Division 4 or 5 of Part 15, or Division 5 of Part 19, of this Act from entering or remaining on land:
- (a) in the Kakadu region or Uluru region; and
 - (b) in which an Aboriginal Land Trust established under that Act holds an estate in fee simple.

Section 10

Airports Act 1996 not affected

- (1) This Act does not affect the operation of the *Airports Act 1996*.

Antarctic Treaty (Environment Protection) Act 1980 not affected

- (2) To avoid doubt, nothing in this Act affects the operation of subsection 7(1) of the *Antarctic Treaty (Environment Protection) Act 1980* or regulations made for the purposes of that subsection.

10 Relationship with State law

This Act is not intended to exclude or limit the concurrent operation of any law of a State or Territory, except so far as the contrary intention appears.

Section 11

Chapter 2—Protecting the environment

Part 2—Simplified outline of this Chapter

11 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

This Chapter provides a basis for the Minister to decide whether an action that has, will have or is likely to have a significant impact on certain aspects of the environment should proceed.

It does so by prohibiting a person from taking an action without the Minister having given approval or decided that approval is not needed. (Part 9 deals with the giving of approval.)

Approval is not needed to take an action if any of the following declare that the action does not need approval:

- (a) a bilateral agreement between the Commonwealth and the State or Territory in which the action is taken;
- (b) a declaration by the Minister.

Also, an action does not need approval if it is taken in accordance with Regional Forest Agreements or it is for a purpose for which, under a zoning plan for a zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

Part 3—Requirements for environmental approvals

Division 1—Requirements relating to matters of national environmental significance

Subdivision A—World Heritage

12 Requirement for approval of activities with a significant impact on a declared World Heritage property

- (1) A person must not take an action that:
- (a) has or will have a significant impact on the world heritage values of a declared World Heritage property; or
 - (b) is likely to have a significant impact on the world heritage values of a declared World Heritage property.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Section 13

- (3) A property has ***world heritage values*** only if it contains natural heritage or cultural heritage. The ***world heritage values*** of the property are the natural heritage and cultural heritage contained in the property.

- (4) In this section:

cultural heritage has the meaning given by the World Heritage Convention.

natural heritage has the meaning given by the World Heritage Convention.

13 What is a ***declared World Heritage property***?

Properties on World Heritage List

- (1) A property included in the World Heritage List is a ***declared World Heritage property*** as long as the property is included in the List.

Properties not yet on World Heritage List

- (2) A property specified in a declaration made under section 14 (with any amendments made under section 15) is a ***declared World Heritage property*** for the period for which the declaration is in force.

14 Declaring a property to be a ***declared World Heritage property***

Making declarations

- (1) The Minister may declare a specified property to be a declared World Heritage property by notice in the *Gazette* if:
- (a) the property is a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List; or
 - (b) the Minister is satisfied that:

- (i) the property has, or is likely to have, world heritage values; and
- (ii) some or all of the world heritage values of the property are under threat.

Note 1: The Minister may make more than one declaration relating to the same property. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Note 2: The Minister may make an extra declaration to cover property that is an extension of a property previously submitted to the World Heritage Committee.

Consulting State or Territory before making declaration

- (2) Before the Minister makes a declaration relating to property wholly or partly within a State or self-governing Territory, the Minister must inform the appropriate Minister of the State or Territory of the proposal to make the declaration, and give him or her a reasonable opportunity to comment on the proposal.

Consultation not required if threat is imminent

- (3) However, the Minister need not comply with subsection (2) if:
 - (a) he or she proposes to make a declaration in the circumstances described in paragraph (1)(b); and
 - (b) he or she is satisfied that the threat mentioned in subparagraph (1)(b)(ii) is imminent.

Failure to comply with subsection (2)

- (4) The validity of a declaration is not affected by a failure to comply with subsection (2) in relation to the making of the declaration.

When a declaration is in force

- (5) A declaration:
 - (a) comes into force when it is published in the *Gazette*; and
 - (b) remains in force (whether amended under section 15 or not) until the earliest of the following events:

Section 14

- (i) the end of the period specified in the declaration as the period for which the declaration is in force;
- (ii) the revocation of the declaration;
- (iii) if the declaration specifies a property submitted to the World Heritage Committee for inclusion in the World Heritage List—the Committee either includes the property in the List or decides the property should not be included in the List.

Specified period for which declaration is in force

- (6) The Minister must specify in a declaration the period for which it is to be in force. The period must not be longer than the period the Minister believes:
 - (a) the World Heritage Committee needs to decide whether or not to include the property in the World Heritage List, in the case of a declaration specifying a property that has been submitted to the Committee for inclusion in the List; or
 - (b) the Commonwealth needs to decide whether the property has world heritage values and to submit the property to the World Heritage Committee for inclusion in the World Heritage List, in the case of a declaration specifying a property not yet submitted to the Committee for inclusion in the List.

Declarations because of threat in force for a year or less

- (7) The Minister must not specify that a declaration of a property is to be in force for more than 12 months if:
 - (a) the declaration is made in the circumstances described in paragraph (1)(b); and
 - (b) the property is not a property submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention as suitable for inclusion in the World Heritage List.

15 Amending or revoking a declaration of a declared World Heritage property

Revoking declarations specifying nominated property

- (1) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that has been submitted to the World Heritage Committee for inclusion in the World Heritage List if the Commonwealth decides to withdraw the submission of the property for inclusion in the List.

Amending declarations specifying nominated property

- (2) The Minister must, by notice in the *Gazette*, amend a declaration made under section 14 specifying a property that has been submitted to the World Heritage Committee for inclusion in the World Heritage List so as to remove from the specification any part of the property that the Commonwealth decides to withdraw from the submission.

Revoking declarations specifying property not yet nominated

- (3) The Minister must, by notice in the *Gazette*, revoke a declaration made under section 14 specifying a property that is not submitted to the World Heritage Committee for inclusion in the World Heritage List if:
 - (a) the Minister is satisfied that the property does not have world heritage values; or
 - (b) the Commonwealth decides not to submit the property to the Committee for inclusion in the List; or
 - (c) the Minister is satisfied that none of the world heritage values of the property are under threat.

15A Offences relating to declared World Heritage properties

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

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Section 15A

(b) the action results or will result in a significant impact on the world heritage values of a property; and

(c) the property is a declared World Heritage property.

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

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

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

(2) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the world heritage values of a property; and

(c) the property is a declared World Heritage property.

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

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

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

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

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

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

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

(4) Subsections (1) and (2) do not apply to an action if:

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

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

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- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

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

Subdivision AA—National Heritage

15B Requirement for approval of activities with a significant impact on a National Heritage place

- (1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

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

- (2) A person must not, for the purposes of trade or commerce:
 - (a) between Australia and another country; or
 - (b) between 2 States; or
 - (c) between a State and Territory; or
 - (d) between 2 Territories;

take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

- (a) for an individual—5,000 penalty units;

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(b) for a body corporate—50,000 penalty units.

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

- (a) a Commonwealth area; or
- (b) a Territory;

that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

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

(4) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place.

Civil Penalty:

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

Note: For *indigenous heritage value*, see section 528.

(5) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Civil Penalty:

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

(6) Subsection (5) only applies to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, that subsection may not apply to certain actions because of subsection (8).)

(8) Subsections (1) to (5) (inclusive) do not apply to an action if:

Section 15C

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

15C Offences relating to National Heritage places

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:
 - (a) the corporation or agency takes an action; and
 - (b) the action results or will result in a significant impact on the heritage values of a place; and
 - (c) the heritage values are National Heritage values of the place; and
 - (d) the place is a National Heritage place.

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

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

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

- (2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:

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Section 15C

- (a) the corporation or agency takes an action; and
- (b) the action is likely to have a significant impact on the heritage values of a place; and
- (c) the heritage values are National Heritage values of the place; and
- (d) the place is a National Heritage place.

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

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

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

(3) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; and
- (c) the action results or will result in a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place; and
- (e) the place is a National Heritage place.

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

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

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

(4) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or

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- (iv) between 2 Territories; and
- (c) the action is likely to have a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place; and
- (e) the place is a National Heritage place.

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

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

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

(5) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken in:
 - (i) a Commonwealth area; or
 - (ii) a Territory; and
- (c) the action results or will result in a significant impact on the heritage values of a place; and
- (d) the heritage values are National Heritage values of the place; and
- (e) the place is a National Heritage place.

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

(5A) Strict liability applies to paragraphs (5)(d) and (e).

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

(6) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken in:
 - (i) a Commonwealth area; or
 - (ii) a Territory; and
- (c) the action is likely to have a significant impact on the heritage values of a place; and

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(d) the heritage values are National Heritage values of the place;
and

(e) the place is a National Heritage place.

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

(6A) Strict liability applies to paragraphs (6)(d) and (e).

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

(7) A person commits an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and

(c) the heritage values are National Heritage values of the place;
and

(d) the place is a National Heritage place.

Note 1: For *indigenous heritage value*, see section 528.

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

(7A) Strict liability applies to paragraphs (7)(c) and (d).

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

(8) A person commits an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and

(c) the heritage values are National Heritage values of the place;
and

(d) the place is a National Heritage place.

Note 1: For *indigenous heritage value*, see section 528.

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

(8A) Strict liability applies to paragraphs (8)(c) and (d).

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

(9) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action results or will result in a significant impact on the heritage values of a place; and
- (ba) the heritage values are National Heritage values of the place; and
- (bb) the place is a National Heritage place; and
- (c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

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

(9A) Strict liability applies to paragraphs (9)(ba), (bb) and (c).

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

(10) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is likely to have a significant impact on the heritage values of a place; and
- (ba) the heritage values are National Heritage values of the place; and
- (bb) the place is a National Heritage place; and
- (c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

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

(10A) Strict liability applies to paragraphs (10)(ba), (bb) and (c).

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

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- (13) An offence against any of subsections (1) to (10) (inclusive) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

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

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

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

- (14) Subsections (9) and (10) only apply to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, those subsections may not apply to certain actions because of subsection (16).)

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

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

Subdivision B—Wetlands of international importance

16 Requirement for approval of activities with a significant impact on a declared Ramsar wetland

- (1) A person must not take an action that:
- (a) has or will have a significant impact on the ecological character of a declared Ramsar wetland; or
 - (b) is likely to have a significant impact on the ecological character of a declared Ramsar wetland.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

- (3) In this Act:

ecological character has the same meaning as in the Ramsar Convention.

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17 What is a *declared Ramsar wetland*?

Areas designated for listing

- (1) A wetland, or part of a wetland, designated by the Commonwealth under Article 2 of the Ramsar Convention for inclusion in the List of Wetlands of International Importance kept under that Article is a ***declared Ramsar wetland*** as long as the wetland or part is not:
 - (a) excluded by the Commonwealth from the boundaries of a wetland in the List under that Article; or
 - (b) deleted by the Commonwealth from the List under that Article.

Areas declared by the Minister

- (2) A wetland, or part of a wetland, is also a ***declared Ramsar wetland*** for the period for which a declaration of the wetland as a declared Ramsar wetland is in force.

17A Making and revoking declarations of wetlands

Declaring threatened wetlands of international importance

- (1) The Minister may declare a specified wetland to be a declared Ramsar wetland by notice in the *Gazette* if the Minister is satisfied that:
 - (a) the wetland is of international significance or is likely to be of international significance because of its ecology, botany, zoology, limnology or hydrology; and
 - (b) the ecological character of some or all of the wetland is under threat.

Note: The Minister may make more than one declaration of the same wetland under this section. See subsection 33(1) of the *Acts Interpretation Act 1901*.

Consulting State or Territory before making declaration

- (2) Before the Minister makes a declaration relating to a wetland wholly or partly within a State or self-governing Territory, the

Section 17A

Minister must inform the appropriate Minister of the State or Territory of the proposal to make the declaration, and give him or her a reasonable opportunity to comment on the proposal.

Consultation not required if threat is imminent

- (3) However, the Minister need not comply with subsection (2) if he or she is satisfied that the threat mentioned in paragraph (1)(b) is imminent.

Failure to comply with subsection (2)

- (4) The validity of a declaration is not affected by a failure to comply with subsection (2) in relation to the making of the declaration.

When a declaration is in force

- (5) A declaration comes into force on the day it is published in the *Gazette* and remains in force for the period specified in the declaration, unless it is revoked earlier.

Specifying period for which declaration is in force

- (6) The Minister must specify in a declaration the period for which it is to be in force. The period must not be longer than the shorter of the following periods:
- (a) the period the Minister believes the Commonwealth needs to:
 - (i) decide whether the wetland is of international significance in terms of ecology, botany, zoology, limnology or hydrology; and
 - (ii) designate the wetland for inclusion in the List of Wetlands of International Importance kept under Article 2 of the Ramsar Convention;
 - (b) 12 months.

Revocation of declaration of threatened wetland

- (7) The Minister must, by notice in the *Gazette*, revoke a declaration of a wetland if:

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- (a) the Minister is satisfied that the wetland is not of international significance because of its ecology, botany, zoology, limnology or hydrology; or
- (b) the Minister is satisfied that there is no longer a threat to any part of the wetland.

17B Offences relating to declared Ramsar wetlands

- (1) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action results or will result in a significant impact on the ecological character of a wetland; and
 - (c) the wetland is a declared Ramsar wetland.

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

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

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

- (2) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action is likely to have a significant impact on the ecological character of a wetland; and
 - (c) the wetland is a declared Ramsar wetland.

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

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

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

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

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

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

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

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

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

Subdivision C—Listed threatened species and communities

18 Actions with significant impact on listed threatened species or endangered community prohibited without approval

Species that are extinct in the wild

- (1) A person must not take an action that:
- (a) has or will have a significant impact on a listed threatened species included in the extinct in the wild category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the extinct in the wild category.

Civil penalty:

- (a) for an individual—5,000 penalty units;

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- (b) for a body corporate—50,000 penalty units.

Critically endangered species

- (2) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the critically endangered category.

Civil penalty:

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

Endangered species

- (3) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the endangered category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the endangered category.

Civil penalty:

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

Vulnerable species

- (4) A person must not take an action that:
 - (a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

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

Critically endangered communities

- (5) A person must not take an action that:
- (a) has or will have a significant impact on a listed threatened ecological community included in the critically endangered category; or
 - (b) is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category.

Civil penalty:

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

Endangered communities

- (6) A person must not take an action that:
- (a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or
 - (b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category.

Civil penalty:

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

18A Offences relating to threatened species etc.

- (1) A person commits an offence if:
- (a) the person takes an action; and
 - (b) the action results or will result in a significant impact on:
 - (i) a species; or
 - (ii) an ecological community; and
 - (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Chapter 2 Protecting the environment

Part 3 Requirements for environmental approvals

Division 1 Requirements relating to matters of national environmental significance

Section 18A

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

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

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

(2) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is likely to have a significant impact on:
 - (i) a species; or
 - (ii) an ecological community; and
- (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

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

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

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

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

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

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

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

(4) Subsections (1) and (2) do not apply to an action if:

- (a) the listed threatened species subject to the significant impact (or likely to be subject to the significant impact) is:
 - (i) a species included in the extinct category of the list under section 178; or
 - (ii) a conservation dependent species; or
- (b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant

impact) is an ecological community included in the vulnerable category of the list under section 181.

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

Note 2: Section 19 sets out other defences. The defendant bears an evidential burden in relation to the matters in that section too. See subsection 13.3(3) of the *Criminal Code*.

19 Certain actions relating to listed threatened species and listed threatened ecological communities not prohibited

- (1) A subsection of section 18 or 18A relating to a listed threatened species does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of any subsection of that section that relates to a listed threatened species.
- (2) A subsection of section 18 or 18A relating to a listed threatened ecological community does not apply to an action if an approval of the taking of the action by the person is in operation under Part 9 for the purposes of either subsection of that section that relates to a listed threatened ecological community.
- (3) A subsection of section 18 or 18A does not apply to an action if:
 - (a) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
 - (b) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (c) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (4) A subsection of section 18 or 18A does not apply to an action, to the extent that it is covered by subsection 517A(7).

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Subdivision D—Listed migratory species

20 Requirement for approval of activities with a significant impact on a listed migratory species

- (1) A person must not take an action that:
- (a) has or will have a significant impact on a listed migratory species; or
 - (b) is likely to have a significant impact on a listed migratory species.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

20A Offences relating to listed migratory species

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

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

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

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

(2) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is likely to have a significant impact on a species; and
- (c) the species is a listed migratory species.

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

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

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

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

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

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

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

(4) Subsections (1) and (2) do not apply to an action if:

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

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the notice of the decision under section 77, the action is taken in that manner; or

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

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

20B Certain actions relating to listed migratory species not prohibited

A subsection of section 20 or 20A does not apply to an action, to the extent that it is covered by subsection 517A(7).

Subdivision E—Protection of the environment from nuclear actions

21 Requirement for approval of nuclear actions

- (1) A constitutional corporation, the Commonwealth or Commonwealth agency must not take a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

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

- (2) A person must not, for the purposes of trade or commerce:

- (a) between Australia and another country; or
(b) between 2 States; or
(c) between a State and a Territory; or
(d) between 2 Territories;

take a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (3) A person must not take in a Territory a nuclear action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (4) Subsections (1), (2) and (3) do not apply to an action if:
- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

22 What is a *nuclear action*?

- (1) In this Act:

nuclear action means any of the following:

- (a) establishing or significantly modifying a nuclear installation;
- (b) transporting spent nuclear fuel or radioactive waste products arising from reprocessing;
- (c) establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;

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- (d) mining or milling uranium ore;
- (e) establishing or significantly modifying a large-scale disposal facility for radioactive waste;
- (f) de-commissioning or rehabilitating any facility or area in which an activity described in paragraph (a), (b), (c), (d) or (e) has been undertaken;
- (g) any other action prescribed by the regulations.

nuclear installation means any of the following:

- (a) a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and sub-critical assemblies);
- (b) a plant for preparing or storing fuel for use in a nuclear reactor as described in paragraph (a);
- (c) a nuclear waste storage or disposal facility with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section;
- (d) a facility for production of radioisotopes with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section.

Note: A nuclear waste storage or disposal facility could include a facility for storing spent nuclear fuel, depending on the regulations.

radioactive waste means radioactive material for which no further use is foreseen.

reprocessing means a process or operation to extract radioactive isotopes from spent nuclear fuel for further use.

spent nuclear fuel means nuclear fuel that has been irradiated in a nuclear reactor core and permanently removed from the core.

(2) In this Act:

large-scale disposal facility for radioactive waste means, if regulations are made for the purposes of this definition, a facility prescribed by the regulations.