

Section 37L

- (a) by a person for the purposes of trade or commerce 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.

Publishing declarations

- (2) Within 10 business days after the Minister makes a declaration under section 37A, or an instrument under section 37K revoking a declaration, the Minister must publish the declaration or instrument in accordance with the regulations.

Section 37M

Division 3A—Actions covered by conservation agreements

37M Actions declared by conservation agreement not to need approval

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

- (a) the action is included in a class of actions declared in a conservation agreement, in accordance with section 306A, not to require approval under Part 9 for the purposes of the provision; and
- (b) the conservation agreement is in operation when the action is taken; and
- (c) the action is taken in accordance with the conditions (if any) specified in the declaration.

Division 4—Forestry operations in certain regions

Subdivision A—Regions covered by regional forest agreements

38 Part 3 not to apply to certain RFA forestry operations

- (1) Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.
- (2) In this Division:

RFA or *regional forest agreement* has the same meaning as in the *Regional Forest Agreements Act 2002*.

RFA forestry operation has the same meaning as in the *Regional Forest Agreements Act 2002*.

Note: This section does not apply to some RFA forestry operations. See section 42.

Subdivision B—Regions subject to a process of negotiating a regional forest agreement

39 Object of this Subdivision

The purpose of this Subdivision is to ensure that an approval under Part 9 is not required for forestry operations in a region for which a process (involving the conduct of a comprehensive regional assessment, assessment under the *Environment Protection (Impact of Proposals) Act 1974* and protection of the environment through agreements between the Commonwealth and the relevant State and conditions on licences for the export of wood chips) of developing and negotiating a regional forest agreement is being, or has been, carried on.

Section 40

40 Forestry operations in regions not yet covered by regional forest agreements

- (1) A person may undertake forestry operations in an RFA region in a State or Territory without approval under Part 9 for the purposes of a provision of Part 3 if there is not a regional forest agreement in force for any of the region.

Note 1: This section does not apply to some forestry operations. See section 42.

Note 2: The process of making a regional forest agreement is subject to assessment under the *Environment Protection (Impact of Proposals) Act 1974*, as continued by the *Environmental Reform (Consequential Provisions) Act 1999*.

- (2) In this Division:

forestry operations means any of the following done for commercial purposes:

- (a) the planting of trees;
- (b) the managing of trees before they are harvested;
- (c) the harvesting of forest products;

and includes any related land clearing, land preparation and regeneration (including burning) and transport operations. For the purposes of paragraph (c), **forest products** means live or dead trees, ferns or shrubs, or parts thereof.

RFA region has the meaning given by section 41.

- (3) Subsection (1) does not operate in relation to an RFA region that is the subject of a declaration in force under this section.
- (4) The Minister may, by legislative instrument, declare that subsection (1) does not apply to an RFA region.
- (6) The Minister must not make a declaration that has the effect of giving 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, in relation to the taking of the action:

- (a) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
- (b) by a constitutional corporation.

41 What is an *RFA region*?

Regions that are RFA regions

- (1) Each of the following is an ***RFA region***:
 - (a) the area delineated as the Eden RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
 - (b) the area delineated as the Lower North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
 - (c) the area delineated as the Upper North East RFA Region on the map of that New South Wales Region dated 13 May 1999 and published by the Bureau of Resource Sciences;
 - (d) the area delineated as the South Region on the map of the Comprehensive Regional Assessment South CRA Region dated August 1997 and published by the State Forests GIS Branch of the organisation known as State Forests of New South Wales;
 - (e) the area delineated as the Gippsland Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
 - (f) the area delineated as the North East RFA Region in the map of that Region dated 11 March 1998 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;
 - (g) the area delineated as the West Region in the map of that Region dated 3 March 1999 and published by the Forest Information Section of the Department of Natural Resources and Environment of Victoria;

Section 42

- (h) the area delineated as the South East Queensland RFA Region on the map of that Region dated 21 August 1998 and published by the Bureau of Resource Sciences.

Regulations may amend list of regions

- (2) The regulations may amend subsection (1).

Prerequisites for prescribing RFA regions

- (3) Before the Governor-General makes regulations amending subsection (1), the Minister must be satisfied that the proposed regulations, in conjunction with this Subdivision, will 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.

Subdivision C—Limits on application

42 This Division does not apply to some forestry operations

Subdivisions A and B of this Division, and subsection 6(4) of the *Regional Forest Agreements Act 2002*, do not apply to RFA forestry operations, or to forestry operations, that are:

- (a) in a property included in the World Heritage List; or
- (b) in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or
- (c) incidental to another action whose primary purpose does not relate to forestry.

Division 5—Actions in the Great Barrier Reef Marine Park

43 Actions taken in accordance with zoning plan

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

- (a) the action is taken in a zone (within the meaning of the *Great Barrier Reef Marine Park Act 1975*) of the Great Barrier Reef Marine Park; and
- (b) it is for a purpose for which, under the zoning plan for the zone made under the *Great Barrier Reef Marine Park Act 1975*, the zone may be used or entered without permission.

Section 43A

Division 6—Actions with prior authorisation

43A Actions with prior authorisation

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:
- (a) the action consists of a use of land, sea or seabed; and
 - (b) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and
 - (c) immediately before the commencement of this Act, no further specific environmental authorisation was necessary to allow the action to be taken lawfully; and
 - (d) at the time the action is taken, the specific environmental authorisation continues to be in force.
- (1A) For the purposes of paragraphs (1)(c) and (d), a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation unless:
- (a) the action that is authorised by the authorisation following the renewal or extension is the same as the action that was authorised by the authorisation before the commencement of this Act; and
 - (b) the renewal or extension could properly be made or given without any further consideration of the environmental impacts of the action.

Note: If a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation, the condition in paragraph (1)(c) or (d) would not be met.

- (2) In this Act:

environmental authorisation means an authorisation under a law of the Commonwealth, a State or a self-governing Territory that has either or both of the following objects (whether express or implied):

- (a) to protect the environment;

Section 43B

- (b) to promote the conservation and ecologically sustainable use of natural resources.

specific environmental authorisation means an environmental authorisation that:

- (a) identifies the particular action by reference to acts and matters uniquely associated with that action; or
- (b) was issued or granted following a consideration of the particular action by reference to acts and matters uniquely associated with that action.

43B Actions which are lawful continuations of use of land etc.

- (1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act.
- (2) However, subsection (1) does not apply to an action if:
 - (a) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and
 - (b) at the time the action is taken, the specific environmental authorisation continues to be in force.

Note: In that case, section 43A applies instead.

- (3) For the purposes of this section, neither of the following is a ***continuation*** of a use of land, sea or seabed:
 - (a) an enlargement, expansion or intensification of use;
 - (b) either:
 - (i) any change in the location of where the use of the land, sea or seabed is occurring; or
 - (ii) any change in the nature of the activities comprising the use;that results in a substantial increase in the impact of the use on the land, sea or seabed.

Chapter 3—Bilateral agreements

Part 5—Bilateral agreements

Division 1—Object of Part

44 Object of this Part

The object of this Part is to provide for agreements between the Commonwealth and a State or self-governing Territory that:

- (a) protect the environment; and
- (b) promote the conservation and ecologically sustainable use of natural resources; and
- (c) ensure an efficient, timely and effective process for environmental assessment and approval of actions; and
- (d) minimise duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (and vice versa).

Division 2—Making bilateral agreements

Subdivision A—Power to make bilateral agreements

45 Minister may make agreement

Making bilateral agreement

- (1) On behalf of the Commonwealth, the Minister may enter into a bilateral agreement.

Note 1: A bilateral agreement can detail the level of Commonwealth accreditation of State practices, procedures, processes, systems, management plans and other approaches to environmental protection.

Note 2: Subdivision B sets out some prerequisites for entering into bilateral agreements.

*What is a **bilateral agreement**?*

- (2) A **bilateral agreement** is a written agreement between the Commonwealth and a State or a self-governing Territory that:
- (a) provides for one or more of the following:
 - (i) protecting the environment;
 - (ii) promoting the conservation and ecologically sustainable use of natural resources;
 - (iii) ensuring an efficient, timely and effective process for environmental assessment and approval of actions;
 - (iv) minimising duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (or vice versa); and
 - (b) is expressed to be a bilateral agreement.

Publishing notice of intention to enter into agreement

- (3) As soon as practicable after starting the process of developing a draft bilateral agreement with a State or self-governing Territory, the Minister must publish, in accordance with the regulations (if

Section 46

any), notice of his or her intention to develop a draft bilateral agreement with the State or Territory.

Publishing bilateral agreements and related material

- (4) As soon as practicable after entering into a bilateral agreement, the Minister must publish in accordance with the regulations:
- (a) the agreement; and
 - (b) a statement of the Minister's reasons for entering into the agreement; and
 - (c) a report on the comments (if any) received on the draft of the agreement published under Subdivision B.

46 Agreement may declare actions do not need approval under Part 9

Declaration of actions not needing approval

- (1) A bilateral agreement may declare that actions in a class of actions specified in the agreement wholly or partly by reference to the fact that their taking has been approved by:
- (a) the State or self-governing Territory that is party to the agreement; or
 - (b) an agency of the State or Territory;
- in accordance with a management arrangement or authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E.

*What is a **bilaterally accredited management arrangement**?*

- (2) A management arrangement is a **bilaterally accredited management arrangement** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E, if and only if:

- (a) the management arrangement is in force under a law of the State or Territory that is a party to the agreement and the law is identified in or under the agreement; and
- (b) the management arrangement has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

*What is a **bilaterally accredited authorisation process**?*

- (2A) An authorisation process is a **bilaterally accredited authorisation process** for the purposes of a bilateral agreement declaring that certain actions do not require approval under Part 9 for the purposes of a specified provision of Part 3, other than section 24D or 24E, if and only if:
- (a) the authorisation process is set out in a law of the State or Territory that is a party to the agreement, and the law and the process are identified in or under the agreement; and
 - (b) the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the agreement.

Accrediting management arrangement or authorisation process

- (3) For the purposes of subsection (2) or (2A), the Minister may accredit in writing a management arrangement or an authorisation process for the purposes of a bilateral agreement with a State or self-governing Territory. However, the Minister may do so only if the Minister is satisfied that:
- (a) the management arrangement or authorisation process and the law under which it is in force, or in which it is set out, meet the criteria prescribed by the regulations; and
 - (b) there has been or will be adequate assessment of the impacts that actions approved in accordance with the management arrangement or authorisation process:
 - (i) have or will have; or
 - (ii) are likely to have;

Section 46

on each matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1); and

- (c) actions approved in accordance with the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1).

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

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

Tabling of management arrangement or authorisation process before accreditation

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

Limitations on accreditation during period for disallowance

- (5) The Minister must not accredit a management arrangement or authorisation process for the purposes of subsection (2) or (2A) under a bilateral agreement:
 - (a) before, or within 15 sitting days after, a copy of the management arrangement or authorisation process is laid before each House of the Parliament; or
 - (b) if, within those 15 sitting days of a House, notice of a motion to disallow the management arrangement or authorisation

process is given in that House—subject to subsection (5A), within 15 sitting days of that House after the notice is given.

(5A) If:

- (a) notice of a motion to disallow accreditation of the management arrangement or authorisation process is given in a House of the Parliament within 15 sitting days after the management arrangement or authorisation process is laid before the House under this section; and
- (b) the notice is withdrawn or otherwise disposed of within 15 sitting days of that House after the notice is given;

then, subject to paragraph (5)(a), the Minister may accredit the management arrangement or authorisation process after the motion is withdrawn or otherwise disposed of.

Disallowance motion passed

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

Disallowance motion not defeated in time

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

Section 46

Extended time after dissolution or prorogation

- (8) If:
- (a) notice of a motion to disallow the management arrangement or authorisation process is given in a House of the Parliament (the ***disallowing House***); and
 - (b) before the end of 15 sitting days of the disallowing House after the notice is given:
 - (i) the House of Representatives is dissolved or expires; or
 - (ii) the Parliament is prorogued; and
 - (c) at the time of the dissolution, expiry or prorogation (as appropriate):
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;
- the management arrangement or relevant part of the law is taken for the purposes of subsections (5), (5A), (6) and (7) to have been laid before the disallowing House on the first sitting day of that House after the dissolution, expiry or prorogation (as appropriate).

No preference

- (9) In accrediting a management arrangement or authorisation process for the purposes of a bilateral agreement making a declaration relating to an action:
- (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.

Requirements for bilateral agreement making declaration

- (10) If the declaration is for actions approved in accordance with a bilaterally accredited management arrangement, the declaration

does not have effect for the purposes of this Act unless the bilateral agreement requires the State or self-governing Territory that is party to the agreement and agencies of the State or Territory:

- (a) to act in accordance with the management arrangement; and
- (b) not to approve the taking of actions that would be inconsistent with the management arrangement.

47 Agreement may declare classes of actions do not need assessment

Declaration of actions that do not need further assessment

- (1) A bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have been assessed in a specified manner need not be assessed under Part 8.

Note: A declaration described in subsection (1) can accredit practices, procedures, systems of the State or self-governing Territory for environmental assessment.

Prerequisite to declaration

- (2) The Minister may enter into a bilateral agreement declaring that actions assessed in a specified manner need not be assessed under Part 8 only if he or she is satisfied that assessment of an action in the specified manner will include assessment of the impacts the action:

- (a) has or will have; or
- (b) is likely to have;

on each matter protected by a provision of Part 3.

Assessment approaches that may be accredited

- (3) The manner of assessment of actions that may be specified in a bilateral agreement between the Commonwealth and a State or Territory for the purposes of subsection (1) includes:
 - (a) assessment by any person under a law of the State or Territory; and

Section 48

- (b) assessment by any person under an agreement or other instrument made under a law of the State or Territory; and
- (c) assessment by any person in accordance with criteria specified in an instrument agreed by the parties to the bilateral agreement.

This does not limit subsection (1).

Report on actions that do not need further assessment

- (4) If a bilateral agreement has (or could have) the effect that an action need not be assessed under Part 8 but the action must still be approved under Part 9, the agreement must provide for the Minister to receive a report including, or accompanied by, enough information about the relevant impacts of the action to let the Minister make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

48 Other provisions of bilateral agreements

- (1) A bilateral agreement may include:
 - (a) provisions for State accreditation of Commonwealth processes and decisions; and
 - (b) other provisions for achieving the object of this Part; and
 - (c) provisions for the provision of information by one party to the agreement to the other party; and
 - (d) provisions for the publication of information relating to the agreement; and
 - (e) provisions relating to the operation of the whole agreement or particular provisions of the agreement, such as:
 - (i) provisions for the commencement of all or part of the agreement; or
 - (ii) provisions for auditing, monitoring and reporting on the operation and effectiveness of all or part of the agreement; or
 - (iii) provisions for review of all or part of the agreement; or

Section 48A

- (iv) provisions for rescission of all or part of the agreement;
or
- (v) provisions for expiry of the agreement; and
- (f) provisions varying or revoking another bilateral agreement between the same parties; and
- (g) a provision dealing with a matter that another section of this Act permits a bilateral agreement to deal with.

Consistency with Act and regulations

- (2) A provision of a bilateral agreement has no effect for the purposes of this Act to the extent that it is inconsistent with this Act or the regulations. A provision of a bilateral agreement is not inconsistent with this Act or the regulations if it is possible to comply with both the provision on the one hand and the Act or regulations on the other hand.

Relationship with sections 46 and 47

- (3) Subsection (1) does not limit sections 46 and 47.

48A Mandatory provisions

Application

- (1) A bilateral agreement with a State or self-governing Territory including a declaration that is described in section 46 or 47 and covers actions described in subsection (2) or (3) does not have effect for the purposes of this Act unless the agreement also includes the undertaking required by subsection (2) or (3) (as appropriate).

Agreements including declarations about approvals

- (2) A bilateral agreement including a declaration described in section 46 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have on a thing that is not a matter protected by a provision of Part 3 for

Section 48A

which the declaration has effect will be assessed to the greatest extent practicable:

- (a) actions taken in the State or Territory by a constitutional corporation;
- (b) actions taken in the State or Territory by a 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;
- (c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;
- (d) actions taken in the Territory (if applicable).

Agreements including declarations about assessment

- (3) A bilateral agreement including a declaration described in section 47 must include an undertaking by the State or Territory to ensure that the environmental impacts that the following actions covered by the declaration have, will have or are likely to have (other than the relevant impacts of those actions) will be assessed to the greatest extent practicable:
 - (a) actions taken in the State or Territory by a constitutional corporation;
 - (b) actions taken in the State or Territory by a 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;
 - (c) actions that are taken in the State or Territory and are actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries;
 - (d) actions taken in the Territory (if applicable).

Auditing

- (4) A bilateral agreement does not have effect for the purposes of this Act unless it includes a provision recognising that, under the *Auditor-General Act 1997*, the Auditor-General may audit the operations of the Commonwealth public sector (as defined in section 18 of that Act) relating to the bilateral agreement.

49 Certain limits on scope of bilateral agreements

- (1) A provision of a bilateral agreement does not have any effect in relation to an action in a Commonwealth area or an action by the Commonwealth or a Commonwealth agency, unless the agreement expressly provides otherwise.
- (1A) A provision of a bilateral agreement does not have any effect in relation to an action in the Great Barrier Reef Marine Park, unless the agreement expressly provides otherwise.
- (2) A provision of a bilateral agreement does not have any effect in relation to an action in Booderee National Park, Kakadu National Park or Uluru-Kata Tjuta National Park.
- (3) ***Booderee National Park*** is the Commonwealth reserve (as it exists from time to time) to which the name Booderee National Park was given by Proclamation continued in force by the *Environmental Reform (Consequential Provisions) Act 1999*.

Subdivision B—Prerequisites for making bilateral agreements

49A Consultation on draft agreement

The Minister may enter into a bilateral agreement only if he or she:

- (a) has published in accordance with the regulations:
- (i) a draft of the agreement; and
 - (ii) an invitation for any person to give the Minister comments on the draft within a specified period of at least 28 days after the latest day on which the draft or invitation was published; and

Section 50

- (b) has taken into account the comments (if any) received in response to the invitation; and
- (c) has considered the role and interests of indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement, taking into account Australia's relevant obligations under the Biodiversity Convention.

50 Minister may only enter into agreement if prescribed criteria are met

The Minister may enter into a bilateral agreement only if the Minister is satisfied that the agreement:

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

51 Agreements relating to declared World Heritage properties

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the World Heritage Convention; and
 - (b) the Minister is satisfied that the agreement will promote the management of the property in accordance with the Australian World Heritage management principles; and
 - (c) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a declared World Heritage property only if:
 - (a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with Australia's obligations under the World Heritage Convention; and

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

51A Agreements relating to National Heritage places

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a National Heritage place only if:
 - (a) the Minister is satisfied that the agreement will promote the management of the place in accordance with the National Heritage management principles; and
 - (b) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of such a bilateral agreement only if he or she is satisfied that the management arrangement or authorisation process will promote the management of the place concerned in accordance with the National Heritage management principles.

52 Agreements relating to declared Ramsar wetlands

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a declared Ramsar wetland only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the Ramsar Convention; and
 - (b) the Minister is satisfied that the agreement will promote the management of the wetland in accordance with the Australian Ramsar management principles; and
 - (c) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a

Section 53

bilateral agreement containing a provision relating to a declared Ramsar wetland only if:

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

53 Agreements relating to listed threatened species and ecological communities

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:
 - (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; and
 - (b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species or community to which the provision relates; and
 - (c) the Minister is satisfied that the provision is not inconsistent with any recovery plan for the species or community or a threat abatement plan; and
 - (ca) the Minister has had regard to any approved conservation advice for the species or community; and
 - (d) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed threatened species or a listed threatened ecological community only if:

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

54 Agreements relating to migratory species

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

Section 55

- (2) The Minister may accredit a management arrangement or an authorisation process under section 46 for the purposes of a bilateral agreement containing a provision relating to a listed migratory species only if:
- (a) the Minister is satisfied that the management arrangement or authorisation process is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is listed:
 - (i) the Bonn Convention;
 - (ii) CAMBA;
 - (iii) JAMBA;
 - (iv) an international agreement approved under subsection 209(4); and
 - (b) the Minister is satisfied that the management arrangement or authorisation process will promote the survival and/or enhance the conservation status of each species to which the provision relates.

55 Agreements relating to nuclear actions

The Minister must not enter into a bilateral agreement, or accredit for the purposes of a bilateral agreement a management arrangement or an authorisation process, containing a provision that:

- (a) relates to a nuclear action; and
- (b) has the effect of giving 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, in relation to the taking of a nuclear action:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation.

56 Agreements relating to prescribed actions

The Minister must not enter into a bilateral agreement containing a provision that:

- (a) relates to an action prescribed for the purposes of subsection 25(1); and
- (b) has the effect of giving 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, in relation to the taking of the action:
 - (i) by a person for the purposes of trade or commerce between Australia and another country or between 2 States; or
 - (ii) by a constitutional corporation.

Subdivision C—Minor amendments of bilateral agreements

56A Ministerial determination of minor amendments to bilateral agreements

- (1) This section applies if:
 - (a) the Minister intends to develop a draft amendment to a bilateral agreement (the *principal agreement*); and
 - (b) the Minister is satisfied that the amendment will not have a significant effect on the operation of the principal agreement; and
 - (c) the Minister makes a determination, in writing, to that effect.
- (2) If the Minister makes a determination under paragraph (1)(c):
 - (a) the following provisions of this Part do not apply in relation to the amendment to the principal agreement:
 - (i) subsection 45(3);
 - (ii) paragraphs 45(4)(b) and (c);
 - (iii) section 49A; and
 - (b) the Minister must publish the principal agreement, as amended by the amending agreement, at the same time as

Chapter 3 Bilateral agreements

Part 5 Bilateral agreements

Division 2 Making bilateral agreements

Section 56A

publishing the amending agreement under
paragraph 45(4)(a).

- (3) A determination made under paragraph (1)(c) is not a legislative instrument.

Division 3—Suspending and ending the effect of bilateral agreements

Subdivision A—Suspension and cancellation of effect

57 Representations about suspension or cancellation

Representations

- (1) A person may refer to the Minister a matter that the person believes involves a contravention of a bilateral agreement.

Minister must decide whether agreement has been contravened

- (2) The Minister must:
- (a) decide whether or not the bilateral agreement has been contravened; and
 - (b) decide what action he or she should take in relation to any contravention.

Publication of decision and reasons

- (3) The Minister must publish in accordance with the regulations each decision he or she makes, and the reasons for it.

Minister need not decide on vexatious referrals

- (4) Despite subsection (2), the Minister need not make a decision under that subsection if he or she is satisfied that:
- (a) the referral was vexatious, frivolous, or not supported by sufficient information to make a decision; or
 - (b) the matter referred is the same in substance as a matter that has been referred before; or
 - (c) if the alleged contravention of the bilateral agreement were a contravention of the Act, the person referring the matter would not be entitled to apply under section 475 for an injunction in relation to the contravention.

Section 58

58 Consultation before cancellation or suspension

- (1) The Minister (the *Environment Minister*) must consult the appropriate Minister of a State or Territory that is party to a bilateral agreement if the Environment Minister believes that the State or Territory:
 - (a) has not complied with the agreement or will not comply with it; or
 - (b) has not given effect, or will not give effect, to the agreement in a way that:
 - (i) accords with the objects of this Act and the objects of this Part; and
 - (ii) promotes the discharge of Australia's obligations under any agreement with one or more other countries relevant to a matter covered by the agreement.
- (2) Subsection (1) operates whether the Environment Minister's belief relates to a matter referred to him or her under section 57 or not.

59 Suspension or cancellation

Minister may give notice of suspension or cancellation

- (1) If, after the consultation, the Environment Minister is not satisfied that the State or Territory:
 - (a) has complied with, and will comply with, the agreement; and
 - (b) has given effect, and will give effect, to the agreement in a way that:
 - (i) accords with the objects of this Act and the objects of this Part; and
 - (ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement;

he or she may give the appropriate Minister of the State or Territory a written notice described in subsection (2) or (3).

Example 1: The Minister could give notice if the agreement declared that certain actions affecting the world heritage values of a declared world

Section 59

heritage property did not require approval under Part 9 if approved by the State, and the State approved an action that was not consistent with the protection, conservation and presentation of those values.

Example 2: The Minister could give notice if the agreement declared that certain actions affecting the ecological character of a declared Ramsar wetland did not require approval under Part 9 if approved by the State, and the State approved an action that had a significant adverse impact on that character.

Example 3: The Minister could give notice if the agreement declared that certain actions affecting a listed threatened species did not require approval under Part 9 if approved by the State, and the State approved an action that caused the species to become more threatened.

Notice of suspension

- (2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:
- (a) starting on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given; and
 - (b) ending on a specified later day or on the occurrence of a specified event.

Notice of cancellation

- (3) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is cancelled, either generally or in relation to actions in a specified class, on a specified day at least 10 business days (in the capital city of the State or Territory) after the day on which the notice is given.

Effect suspended or cancelled in accordance with notice

- (4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of this Act, either generally or in relation to

Section 60

actions in a specified class, in accordance with the notice. This subsection has effect subject to sections 61 and 62.

Reasons for giving notice

- (5) When giving a notice, the Environment Minister must give the appropriate Minister of the State or Territory a written statement of reasons for the giving of the notice.

Publishing notice and reasons

- (6) As soon as practicable after the suspension or cancellation occurs, the Environment Minister must publish in accordance with the regulations:
- (a) notice of the suspension or cancellation; and
 - (b) reasons for the suspension or cancellation.

60 Emergency suspension of effect of bilateral agreement

- (1) This section applies if the Minister is satisfied that:
- (a) the State or Territory that is party to a bilateral agreement is not complying with it, or will not comply with it; and
 - (b) as a result of the non-compliance, a significant impact is occurring or imminent on any matter protected by a provision of Part 3 that is relevant to an action in a class of actions to which the agreement relates.
- (2) The Minister may suspend the effect of the agreement or specified provisions of the agreement for the purposes of this Act or specified provisions of this Act, by notice:
- (a) given to the appropriate Minister of the State or Territory; and
 - (b) published in accordance with the regulations.
- (3) The suspension continues for the shorter of the following periods:
- (a) 3 months;
 - (b) the period that is specified in the notice (either by reference to time or by reference to the occurrence of an event).

- (4) Subsection (3) has effect subject to section 62.
- (5) As soon as practicable after the Minister (the ***Environment Minister***) gives the appropriate Minister of the State or Territory (the ***State or Territory Minister***) notice of the suspension, the Environment Minister must consult the State or Territory Minister about the non-compliance.
- (6) To avoid doubt, this section has effect despite sections 58 and 59.

61 Cancellation during suspension

- (1) The Minister may give notice of the cancellation of the effect of a bilateral agreement even while its effect is suspended under section 59 or 60.
- (2) The cancellation may occur even though the period of suspension has not ended.
- (3) This section applies whether the cancellation or suspension has effect generally or in relation to actions in a specified class.

62 Revocation of notice of suspension or cancellation

- (1) This section applies if the Minister:
 - (a) has given a notice under section 59 or 60 to suspend or cancel the effect of a bilateral agreement (either generally or in relation to actions in a specified class); and
 - (b) is later satisfied that the State or Territory that is party to the agreement will comply with the agreement and give effect to it in a way that:
 - (i) accords with the objects of this Act and the objects of this Part; and
 - (ii) promotes the discharge of Australia's obligations under all international agreements (if any) relevant to a matter covered by the agreement.
- (2) The Minister must revoke the notice of suspension or cancellation by another written notice:

Section 63

(a) given to the appropriate Minister of the State or Territory;
and

(b) published in accordance with the regulations.

However, the Environment Minister must not revoke the notice of cancellation after cancellation of the effect of the agreement occurs.

- (3) Suspension or cancellation of the effect of the agreement does not occur if the notice of suspension or cancellation is revoked before the suspension or cancellation would otherwise occur.
- (4) Suspension of the effect of the agreement ends when the notice of suspension is revoked.

63 Cancellation or suspension at request of other party

Minister must give notice of cancellation or suspension

- (1) The Minister must give the appropriate Minister of a State or self-governing Territory that is party to a bilateral agreement a notice under subsection (2) or (3) if the appropriate Minister has requested a notice under that subsection in accordance with the agreement.

Notice of suspension

- (2) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or specified provisions of this Act is suspended, either generally or in relation to actions in a specified class, for a period:
- (a) starting on a specified day after the day on which the notice is given; and
- (b) ending on a specified later day or on the occurrence of a specified event.

Notice of cancellation

- (3) A notice may state that the effect of the agreement, or specified provisions of the agreement, for the purposes of this Act or

specified provisions of this Act is cancelled, either generally or in relation to actions in a specified class, on a specified day after the day on which the notice is given.

Effect suspended or cancelled in accordance with notice

- (4) The effect of an agreement or specified provision of an agreement is suspended or cancelled for the purposes of this Act, or of a specified provision of this Act, either generally or in relation to actions in a specified class, in accordance with the notice.

Publishing notice and reasons

- (5) As soon as practicable after the suspension or cancellation occurs, the Minister must publish in accordance with the regulations:
- (a) notice of the suspension or cancellation; and
 - (b) reasons for the suspension or cancellation.

64 Cancellation or suspension of bilateral agreement does not affect certain actions

Application

- (1) This section explains how this Act operates in relation to an action that a person was able to take without approval under Part 9 for the purposes of a provision of Part 3 because of Division 1 of Part 4 and a provision of a bilateral agreement immediately before the cancellation or suspension of the operation of the provision of the agreement for the purposes of this Act or of any provision of this Act.

Actions approved in specified manner may be taken

- (2) If the action was able to be taken without approval under Part 9 because its taking had already been approved in accordance with 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,

Section 65

this Act continues to operate in relation to the action as if the suspension or cancellation had not occurred.

Subdivision B—Expiry of bilateral agreements

65 Expiry and review of bilateral agreements

- (1) A bilateral agreement ceases to have effect for the purposes of this Act at the time when the agreement provides for it to cease to so have effect.

Note: The parties to a bilateral agreement may also agree to revoke it.

- (2) The Minister must cause a review of the operation of a bilateral agreement to be carried out at least once every 5 years while the agreement remains in effect. The Minister must give a copy of the report of each review to the appropriate Minister of the State or Territory that is party to the agreement.

Note: A bilateral agreement may also provide for review of its operation.

- (3) The Minister must publish the report on each subsection (2) review in accordance with the regulations.

65A Expiry of bilateral agreement does not affect certain actions

Application of subsection (2)

- (1) Subsection (2) explains how this Act operates in relation to an action that a person was able to take without approval under Part 9 for the purposes of a provision of Part 3 because of Division 1 of Part 4 and a provision of a bilateral agreement immediately before the agreement ceases to have effect for the purposes of this Act under section 65.

Actions already approved may be taken

- (2) This Act continues to operate in relation to the action as if the agreement had not ceased to have effect if the action was able to be taken without approval under Part 9 because its taking had already been approved in accordance with a management arrangement or

Section 65A

an authorisation process that was a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement.

Chapter 4—Environmental assessments and approvals

Part 6—Simplified outline of this Chapter

66 Simplified outline of this Chapter

The following is a simplified outline of this Chapter:

This Chapter deals with assessment and approval of actions that Part 3 prohibits without approval (*controlled actions*). (It does not deal with actions that a bilateral agreement declares not to need approval.)

A person proposing to take an action, or a government body aware of the proposal, may refer the proposal to the Minister so he or she can decide:

- (a) whether his or her approval is needed to take the action; and
- (b) how to assess the impacts of the action to be able to make an informed decision whether or not to approve the action.

An assessment may be done using:

- (a) a process laid down under a bilateral agreement; or
- (b) a process specified in a declaration by the Minister; or
- (c) a process accredited by the Minister; or
- (ca) information included in the referral; or

Section 66

- (d) preliminary documentation provided by the proponent; or
- (e) a public environment report; or
- (f) an environmental impact statement; or
- (g) a public inquiry.

Once the report of the assessment is given to the Minister, he or she must decide whether or not to approve the action, and what conditions to attach to any approval.

Part 7—Deciding whether approval of actions is needed

Division 1—Referral of proposals to take action

67 What is a *controlled action*?

An action that a person proposes to take is a ***controlled action*** if the taking of the action by the person without approval under Part 9 for the purposes of a provision of Part 3 would be (or would, but for section 25AA or 28AB, be) prohibited by the provision. The provision is a ***controlling provision*** for the action.

67A Prohibition on taking controlled action without approval

A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the relevant provision of Part 3.

Note: A person can be restrained from contravening this section by an injunction under section 475.

68 Referral by person proposing to take action

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (3) In a referral under this section, the person must state whether or not the person thinks the action the person proposes to take is a controlled action.

Section 68A

- (4) If the person states that the person thinks the action is a controlled action, the person must identify in the statement each provision that the person thinks is a controlling provision.
- (5) Subsections (1) and (2) do not apply in relation to a person proposing to take an action if the person has been informed by the Minister under section 73 that the proposal has been referred to the Minister.
- (6) This section is affected by section 68A.

68A Actions proposed to be taken under a contract etc.

- (1) This section applies in relation to an action that is proposed to be taken under a contract or an agreement, arrangement or understanding, other than:
 - (a) a subcontract; or
 - (b) an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding.

Note: A person proposing to take an action under a subcontract, or an agreement, arrangement or understanding entered into for the purposes of a contract or another agreement, arrangement or understanding, is not required or permitted to refer the proposal to take the action to the Minister under section 68.

- (2) For the purposes of section 68 and subject to subsection (3), a reference to, or relating to, a person proposing to take the action is a reference to, or relating to, any of the following persons:
 - (a) a party to the contract, agreement, arrangement or understanding for whose benefit the action is proposed to be taken;
 - (b) a person who:
 - (i) requested or procured, or proposes to request or procure, the creation of the contract, agreement, arrangement or understanding; and
 - (ii) is to be responsible for controlling and directing the taking of the proposed action.

Section 69

- (3) If a person (the **first person**) referred to in paragraph (2)(a) or (b) refers a proposal to take the action to the Minister under section 68:
 - (a) no other person is required or permitted to refer a proposal to take the action to the Minister under section 68; and
 - (b) for the purposes of this Chapter, a reference to, or relating to, the person proposing to take the action is a reference to, or relating to, the first person.
- (4) For the purposes of this section, a reference to a contract or subcontract or an agreement, arrangement or understanding includes a reference to a proposed contract, proposed subcontract, proposed agreement, proposed arrangement or proposed understanding.
- (5) Nothing in this section is intended to affect the capacity of a person to refer a proposal to take an action to the Minister under subsection 68(1) or (2) on behalf of the person proposing to take the action.

69 State or Territory may refer proposal to Minister

- (1) A State, self-governing Territory or agency of a State or self-governing Territory that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the State, Territory or agency has administrative responsibilities relating to the action.
- (2) This section does not apply in relation to a proposal by a State, self-governing Territory or agency of a State or self-governing Territory to take an action.

Note: Section 68 applies instead.

70 Minister may request referral of proposal

- (1) If the Minister believes a person proposes to take an action that the Minister thinks may be or is a controlled action, the Minister may request:

- (a) the person; or
 - (b) a State, self-governing Territory or agency of a State or self-governing Territory that the Minister believes has administrative responsibilities relating to the action;
- to refer the proposal to the Minister within 15 business days or a longer period agreed by the Minister and the requested person, State, Territory or agency (as appropriate).

Note 1: If the proposal to take the action is not referred, the person cannot get an approval under Part 9 to take the action. If taking the action without approval contravenes Part 3, an injunction could be sought to prevent or stop the action, or the person could be ordered to pay a pecuniary penalty.

Note 2: Section 156 sets out rules about time limits.

- (2) In making a request, the Minister must act in accordance with the regulations (if any).

Deemed referral of proposal

- (3) If:
 - (a) the Minister has made a request under subsection (1); and
 - (b) the period for compliance with the request has ended; and
 - (c) the requested person has not referred the proposal to the Minister in accordance with the request;the Minister may, within 20 business days after the end of that period, determine in writing that this Act has effect as if:
 - (d) if paragraph (1)(a) applies—the requested person had referred the proposal to the Minister under subsection 68(1) at the time the determination was made; or
 - (e) if paragraph (1)(b) applies—the requested person had referred the proposal to the Minister under subsection 69(1) at the time the determination was made.
- (4) A determination under subsection (3) has effect accordingly.
- (5) A copy of a determination under subsection (3) is to be given to the requested person.

Section 71

- (6) Subsection 68(3) and section 72 do not apply to a referral covered by subsection (3) of this section.
- (8) Subsection 74(3) applies to a referral covered by subsection (3) of this section as if the reference in paragraph 74(3)(a) to the referral were a reference to the determination concerned.

71 Commonwealth agency may refer proposal to Minister

- (1) A Commonwealth agency that is aware of a proposal by a person to take an action may refer the proposal to the Minister for a decision whether or not the action is a controlled action, if the agency has administrative responsibilities relating to the action.
- (2) This section does not apply in relation to a proposal by the Commonwealth or a Commonwealth agency to take an action.

Note: Section 68 applies instead.

72 Form and content of referrals

- (1) A referral of a proposal to take an action must be made in a way prescribed by the regulations.
- (2) A referral of a proposal to take an action must include the information prescribed by the regulations.
- (3) A referral of a proposal to take an action may include alternative proposals relating to any of the following:
 - (a) the location where the action is to be taken;
 - (b) the time frames within which the action is to be taken;
 - (c) the activities that are to be carried out in taking the action.

73 Informing person proposing to take action of referral

As soon as practicable after receiving a referral under section 69 or 71 of a proposal by a person to take an action, the Minister must:

- (a) inform the person of the referral; and

- (b) invite the person to give the Minister relevant information about whether the action is a controlled action, within 10 business days.

73A Informing Great Barrier Reef Marine Park Authority of proposal affecting Great Barrier Reef Marine Park

If:

- (a) a proposal to take an action is referred to the Minister; and
- (b) the action, or a component of the action, is to be taken in the Great Barrier Reef Marine Park;

the Minister must, as soon as practicable after receiving the referral, give a copy of the referral to the Great Barrier Reef Marine Park Authority.

74 Inviting provision of information on referred proposal

Inviting other Commonwealth Ministers to provide information

- (1) As soon as practicable after receiving a referral of a proposal to take an action, the Minister (the **Environment Minister**) must:
 - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and
 - (b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

Inviting comments from the Australian Heritage Council

- (1A) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 15B or 15C could be a controlling provision for the proposed action because of National Heritage values of a National Heritage place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Section 74

Note: Sections 15B and 15C protect the National Heritage values of National Heritage places.

- (1B) If the Minister thinks, in relation to an action that is the subject of a proposal referred to the Minister, that section 23, 24A, 24B, 24C, 26, 27A, 27B, 27C or 28 could be a controlling provision for the proposed action because of heritage values of a place, the Minister may invite the Australian Heritage Council to give the Minister comments, within 10 business days (measured in Canberra), on whether the proposed action is a controlled action.

Note: Sections 23, 24A, 24B, 24C, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of *environment* in section 528.

Inviting comments from appropriate State or Territory Minister

- (2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she 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):
- (a) inform the appropriate Minister of the State or Territory; and
 - (b) invite that Minister to give the Environment Minister within 10 business days:
 - (i) comments on whether the proposed action is a controlled action; and
 - (ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

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

Inviting public comment

- (3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the internet:

Section 74A

- (a) the referral; and
- (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

Note: If the action is also the subject of a permit application under section 200, 215, 237 or 257 and the application is made at the same time as the referral, the referral and invitation for comments that must be published under this subsection may be published together with the application and invitation for comments that must be published under section 200, 215, 237 or 257.

Non-disclosure of commercial-in-confidence information

- (3A) The Environment Minister may refuse to cause to be published on the internet, under subsection (3), so much of the information included in a referral as the Minister is satisfied is commercial-in-confidence.
- (3B) The Environment Minister must not be satisfied that particular information included in a referral is commercial-in-confidence unless a person demonstrates to the Minister that:
 - (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.

74A Minister may request referral of a larger action

- (1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.
- (2) If the Minister decides to not accept a referral under subsection (1), the Minister:

Section 74AA

- (a) must give written notice of the decision to the person who referred the proposal to the Minister; and
 - (b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and
 - (c) may, under section 70, request of the person proposing to take the action that was the subject of the referral, that they refer the proposal, to take the larger action, to the Minister.
- (3) To avoid doubt, sections 73 and 74 do not apply to a referral that has not been accepted in accordance with subsection (1).
- (4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:
 - (a) give written notice of the decision to the person who referred the proposal to the Minister;
 - (b) publish in accordance with the regulations (if any), a copy or summary of the decision.

74AA Offence of taking action before decision made in relation to referral etc.

Referral made: taking action while decision making process still going on

- (1) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) either:
 - (i) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister by the person under section 68; or
 - (ii) a proposal to take the action (or a larger action of which the action is a component) has been referred to the Minister under section 69 or 71 and the person has been informed of the referral under section 73; and
 - (c) the referral has not been withdrawn under section 170C; and

Section 74AA

- (d) the Minister has not decided under subsection 74A(1) not to accept the referral; and
- (e) provisions of this Chapter are not stopped by Division 1A from applying in relation to the referral; and
- (f) provisions of this Chapter are not stopped by section 155 from applying because of the referral in relation to the action (or a larger action of which the action is a component); and
- (g) no decision that the action (or a larger action of which the action is a component) is not a controlled action is in operation under section 75 in relation to the referral; and
- (h) no decision is in operation under Part 9 in relation to the referral approving, or not approving, the taking of the action (or a larger action of which the action is a component).

Penalty: 500 penalty units.

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

- (2) Subsection (1) does not apply to the taking of an action by a person if:
- (a) the taking of the action is reasonably necessary in order to comply with a requirement or request made under this Part or Part 8 or 9 in relation to the action (or a larger action of which the action is a component); and
 - (b) before taking the action, the person gave the Minister written notice of the taking of the action; and
 - (c) the notice was given in accordance with any applicable requirements of the regulations.

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

Referral requested: taking action before requested referral is made

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

Section 74AA

- (b) the Minister, under section 70, has requested the referral by the person of a proposal to take the action (or a larger action of which the action is a component) to the Minister; and
- (c) the request has not been revoked; and
- (d) the referral has not been made.

Penalty: 500 penalty units.

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

Division 1A—Decision that action is clearly unacceptable

74B Application of this Division

- (1) This Division applies to the referral of a proposal to take an action if, within 20 business days after the Minister receives the referral:
 - (a) the Minister considers, on the basis of the information in the referral, that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
 - (b) the Minister decides that this Division should apply to the referral.
- (2) If this Division applies to a referral, any other provisions of this Chapter that would, apart from this subsection, have applied to the referral cease to apply to the referral.
- (3) Subsection (2) has effect subject to paragraph 74D(6)(a).

74C Informing person proposing to take action that action is clearly unacceptable

- (1) As soon as practicable after making the decision under paragraph 74B(1)(b) in relation to a referral, the Minister must give written notice of the decision to:
 - (a) the person proposing to take the action that is the subject of the referral; and
 - (b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action that is the subject of the referral).
- (2) The notice must:
 - (a) state that the Minister considers that the action would have unacceptable impacts on a matter protected by a provision of Part 3; and
 - (b) set out the reasons for the Minister's decision.

Section 74D

- (3) After receiving the notice under subsection (1), the person proposing to take the action may:
- (a) withdraw the referral and take no further action in relation to the proposed action; or
 - (b) withdraw the referral and refer a new proposal to take a modified action to the Minister in accordance with Division 1; or
 - (c) request the Minister, in writing, to reconsider the referral.

Note 1: Section 170C sets out the procedure for withdrawing a referral.

Note 2: A referral of a proposal to take a modified action will be a new referral for the purposes of this Chapter.

74D Procedure if Minister is requested to reconsider referral

- (1) This section applies if the Minister receives a request under paragraph 74C(3)(c) to reconsider a referral.

Inviting public comment

- (2) The Minister must, within 10 business days after receiving the request, publish on the internet:
- (a) a notice stating that the Minister proposes not to approve the taking of the action that is the subject of the referral; and
 - (b) the reasons for the Minister's decision; and
 - (c) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing on:
 - (i) the impacts that the action would have on a matter protected by a provision of Part 3; and
 - (ii) the Minister's proposal to refuse to approve the taking of the action.

Report about relevant impacts of action

- (3) Within 10 business days after the end of the period for comment under paragraph (2)(c), the Secretary must:

Section 74D

- (a) prepare a written report about the relevant impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3; and
- (b) give the Minister:
 - (i) the report; and
 - (ii) a copy of any comments received by the Secretary within the period for comment.

In preparing the report, the Secretary must have regard to the comments referred to in subparagraph (b)(ii).

Decision following reconsideration

- (4) Within 20 business days after receiving the report under subsection (3), the Minister must:
 - (a) if the Minister still considers that it is clear that the action would have unacceptable impacts on a matter protected by a provision of Part 3—decide to refuse to approve the taking of the action; or
 - (b) decide that the referral is to be dealt with under the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral.
- (5) If the Minister decides to refuse to approve the taking of the action, the Minister must, within 10 business days after making the decision, give notice of the decision to:
 - (a) the person proposing to take the action; and
 - (b) the person who referred the proposal to the Minister (if that person is not the person proposing to take the action).

Note: The person proposing to take the action may request reasons for the refusal and the Minister must give them. See section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.

- (6) If the Minister makes a decision under paragraph (4)(b):
 - (a) the provisions of this Chapter that, because of subsection 74B(2), have ceased to apply to the referral start to apply to the referral; and

Section 74D

- (b) for the purposes of the application of those provisions, a day is not to be counted as a business day if it is:
- (i) on or after the day the Minister received the referral;
and
 - (ii) on or before the day the Minister makes the decision under paragraph (4)(b).

Note: If the Minister had already complied with section 74 in relation to the referral before the Minister made the decision under paragraph 74B(1)(b) in relation to the referral, the Minister is not required to comply with section 74 again.

Division 2—Ministerial decision whether action needs approval

75 Does the proposed action need approval?

Is the action a controlled action?

- (1) The Minister must decide:
- (a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
 - (b) which provisions of Part 3 (if any) are controlling provisions for the action.

Note: The Minister may revoke a decision made under subsection (1) about an action and substitute a new decision. See section 78.

- (1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

- (1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:
- (a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and
 - (b) within the period specified in the invitation.

Considerations in decision

- (2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:
- (a) the Minister must consider all adverse impacts (if any) the action:
 - (i) has or will have; or
 - (ii) is likely to have;

Section 75

- on the matter protected by each provision of Part 3; and
- (b) must not consider any beneficial impacts the action:
- (i) has or will have; or
 - (ii) is likely to have;
- on the matter protected by each provision of Part 3.

Note: **Impact** is defined in section 527E.

- (2A) For the purposes of subsection (2), if the provision of Part 3 is subsection 15B(3), 15C(5), 15C(6), 23(1), 24A(1), 24D(3), 24E(3), 26(1) or 27A(1), 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.
- (2AA) For the purposes of subsection (2), if the provision of Part 3 is subsection 24B(1) or 24C(1) or (3), 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.
- (2B) Without otherwise limiting any adverse impacts that the Minister must consider under paragraph (2)(a), the Minister must not consider any adverse impacts of:
- (a) any RFA forestry operation to which, under Division 4 of Part 4, Part 3 does not apply; or
 - (b) any forestry operations in an RFA region that may, under Division 4 of Part 4, be undertaken without approval under Part 9.

Designating a proponent of the action

- (3) If the Minister decides that the action is a controlled action, the Minister must designate a person as proponent of the action.

Consent to designation

- (4) The Minister may designate a person who does not propose to take the action only if:
- (a) the person agrees to being designated; and
 - (b) the person proposing to take the action agrees to the designation.

Timing of decision and designation

- (5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

Note: If the Minister decides, under subsection 75(1), that the action is a controlled action, the Minister must, unless the Minister has requested more information under subsection 76(3) or section 89, decide on the approach to be used for assessment of the relevant impacts of the action on the same day as the Minister makes the decision under subsection 75(1)—see subsection 88(2).

Time does not run while further information being sought

- (6) If the Minister has requested more information under subsection 76(1) or (2) for the purposes of making a decision, a day is not to be counted as a business day for the purposes of subsection (5) 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.

Section 76

Running of time may be suspended by agreement

- (7) The Minister and the person proposing to take 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 (5). If the agreement is made, those days are not to be counted for the purposes of that subsection.

76 Minister may request more information for making decisions

- (1) If the Minister believes on reasonable grounds that the referral of a proposal to take an action does not include enough information for the Minister to decide:
- (a) whether the action is a controlled action; or
 - (b) which provisions of Part 3 (if any) are controlling provisions for the action;
- the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.
- (2) Before the Minister makes the decisions under subsection 75(1) in relation to the action, the Minister may request the person proposing to take the action to provide information about whether or not the action is a component of a larger action that is proposed to be taken by the person.
- (3) If the Minister believes on reasonable grounds that the information given to the Minister in relation to the 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 person proposing to take the action to provide specified information relevant to making the decision.
- (4) Without limiting subsection (3), if the action is to be taken in a State or self-governing Territory, the Minister may request the person proposing to take 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.
- (5) The Minister may make a request under subsection (3) even if the Minister has not yet made the decisions under subsection 75(1) in relation to the action.

77 Notice and reasons for decision

Giving notice

- (1) Within 10 business days after deciding whether an action that is the subject of a proposal referred to the Minister is a controlled action or not, the Minister must:
 - (a) give written notice of the decision to:
 - (i) the person proposing to take the action; and
 - (ii) if the Minister has designated as proponent of the action a person who does not propose to take the action—that person; and
 - (iii) if the Minister decided that the action is a controlled action because of Division 1 of Part 3 (which deals with matters of national environmental significance)—the appropriate Minister of each State or self-governing Territory in which the action is to be taken; 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)(iii) also applies to actions to be taken in an area offshore from a State or the Northern Territory. See section 157.

Notice must identify any applicable controlling provisions

- (2) If the decision is that the action is a controlled action, the notice must identify each of the controlling provisions.

Reasons for decision

- (4) The Minister must give reasons for the decision to a person who:

Section 77A

- (a) has been given the notice; and
- (b) within 28 days of 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 of receiving the request.

77A Action to be taken in a particular manner

- (1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the *component decision*) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner, the notice, to be provided under section 77, must set out the component decision, identifying the provision and the manner.

Note: The Minister may decide that a provision of Part 3 is not a controlling provision for an action because he or she believes that the action will be taken in a manner that will ensure the action will not have (and is not likely to have) an adverse impact on the matter protected by the provision.

- (1A) For the purposes of subsection (1), it does not matter whether or not the Minister believes that the action will be taken in accordance with:
- (a) an accredited management arrangement or an accredited authorisation process for the purposes of a declaration under section 33; or
 - (b) a bioregional plan to which a declaration made under section 37A relates; or
 - (c) a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of a bilateral agreement.
- (2) A person must not take an action, that is the subject of a notice that includes a particular manner under subsection (1), in a way that is inconsistent with the manner specified in the notice.

Civil penalty: