

Division 18—Liability of executive officers for corporations

493 Who is an *executive officer* of a body corporate?

In this Act:

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

494 Civil penalties for executive officers of bodies corporate

- (1) If:
- (a) a body corporate contravenes:
 - (i) a civil penalty provision of Part 3 (requirements for approval); or
 - (ii) section 142 (condition of approval); or
 - (iii) section 390SA (declared commercial fishing activity); and
 - (b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention;
- the officer contravenes this subsection.
- (2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order an individual to pay for contravening the civil penalty provision contravened by the body corporate.

Section 495

495 Criminal liability of executive officers of bodies corporate

(1) If:

(a) a body corporate contravenes:

- (i) section 489 (Providing false or misleading information to obtain approval or permit); or
- (ii) section 490 (Providing false or misleading information in response to a condition on an approval or permit); or
- (iii) section 491 (Providing false or misleading information to authorised officer etc.); and

(b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and

(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and

(d) the officer failed to take all reasonable steps to prevent the contravention;

the officer commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

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

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

(2) If:

(a) a body corporate contravenes:

- (i) section 15A (Offences relating to declared World Heritage properties); or
- (ia) section 15C (Offences relating to National Heritage places); or
- (ii) section 17B (Offences relating to declared Ramsar wetlands); or
- (iii) section 18A (Offences relating to threatened species etc.); or

- (iv) section 20A (Offences relating to listed migratory species); or
 - (v) section 22A (Offences relating to nuclear actions); or
 - (vi) section 24A (Offences relating to marine areas); or
 - (via) section 24E (Offences relating to water resources); or
 - (vii) section 27A (Offences relating to Commonwealth land); or
 - (viii) section 27C (Offences relating to Commonwealth heritage places overseas); or
 - (ix) section 142A (Offence of breaching conditions on approval); or
 - (ix) section 390SB (Offence relating to declared commercial fishing activity); and
- (b) an executive officer of the body was reckless as to whether the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention;
- the officer commits an offence.

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

- (3) An offence against subsection (2) is punishable on conviction by imprisonment for a term not exceeding the term specified in the provision contravened by the body corporate.

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

496 Did an executive officer take reasonable steps to prevent contravention?

- (1) For the purposes of sections 494 and 495, in determining whether an executive officer of a body corporate failed to take all

Section 496

reasonable steps to prevent the contravention, a court is to have regard to:

- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
 - (i) that the body arranges regular professional assessments of the body's compliance with this Act and the regulations;
 - (ii) that the body implements any appropriate recommendations arising from such an assessment;
 - (iii) that the body has an appropriate system established for managing the effects of the body's activities on the environment;
 - (iv) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affect the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware that the body was contravening:
 - (i) this Act; or
 - (ii) the regulations; or
 - (iii) if the body contravened Part 3 or section 142 or 142A—any action management plan that was prepared by the body, and approved by the Minister, as required by a condition attached to an approval under Part 9 for the purposes of a provision of Part 3 of the body's taking of an action.
- (2) This section does not, by implication, limit the generality of sections 494 and 495.

Division 18A—Liability of landholders for other people's actions

496A Who is a *landholder*?

For the purposes of this Division, a *landholder*, in relation to an area of land, is a person who is an owner, lessee or occupier of the area of land.

496B Civil penalties for landholders

- (1) If:
- (a) a person (the *actor*) takes an action on an area of land that is a contravention of:
 - (i) a provision of Part 3 that is a civil penalty provision; or
 - (ii) section 142; and
 - (b) a landholder in relation to the area of land knew that, or was reckless or negligent as to whether, the contravention would occur; and
 - (c) the landholder was in a position to influence the conduct of the actor in relation to the contravention; and
 - (d) the landholder failed to take all reasonable steps to prevent the contravention;
- the landholder contravenes this subsection.
- (2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order a landholder contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the landholder to pay, if the landholder had contravened the civil penalty provision contravened by the actor.

496C Criminal liability of landholders

- (1) If:
- (a) a person (the *actor*) takes an action on an area of land that contravenes:

Section 496C

- (i) section 15A (Offences relating to declared World Heritage properties); or
 - (ii) section 15C (Offences relating to National Heritage places); or
 - (iii) section 17B (Offences relating to declared Ramsar wetlands); or
 - (iv) section 18A (Offences relating to threatened species etc.); or
 - (v) section 20A (Offences relating to listed migratory species); or
 - (vi) section 22A (Offences relating to nuclear actions); or
 - (vii) section 24A (Offences relating to marine areas); or
 - (viii) section 24E (Offences relating to water resources); or
 - (viii) section 27A (Offences relating to Commonwealth land); or
 - (ix) section 142A (Offence of breaching conditions on approval); and
- (b) a landholder in relation to the area of land was reckless as to whether the contravention would occur; and
- (c) the landholder was in a position to influence the conduct of the actor in relation to the contravention at the time when the contravention occurred; and
- (d) the landholder failed to take all reasonable steps to prevent the contravention;
- the landholder commits an offence.

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

- (2) An offence against subsection (1) is punishable on conviction by imprisonment for the term specified in the provision contravened by the actor, a fine of the amount specified in that provision, or both.

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

496D Did a landholder take reasonable steps to prevent a contravention?

- (1) For the purposes of sections 496B and 496C, in determining whether a landholder failed to take all reasonable steps to prevent the contravention, a court is to have regard to:
 - (a) what action (if any) the landholder took directed towards ensuring that the actor had an appropriate system established for managing the effects of the actor's activities on the environment; and
 - (b) what action (if any) the landholder took upon becoming aware that there was a substantial risk that the actor was contravening provisions of this Act referred to in subsection 496B(1) or 496C(1), as the case requires.
- (2) This section does not, by implication, limit the generality of sections 496B and 496C.

Division 19—Infringement notices

497 Infringement notices

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence against section 142B or the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

Division 20—Publicising contraventions

498 Minister may publicise contraventions of this Act or the regulations

- (1) The Minister may publicise, in any way he or she thinks appropriate, a contravention of this Act or the regulations for which a person has been convicted or ordered to pay a pecuniary penalty.
- (2) This Division does not:
 - (a) limit the Minister's powers to publicise a contravention of this Act or the regulations; or
 - (b) prevent anyone else from publicising a contravention of this Act or the regulations; or
 - (c) affect any obligation (however imposed) on anyone to publicise a contravention of this Act or the regulations.

Division 21—Immunity of officers

498A Immunity of officers and assistants

- (1) An authorised officer or ranger is not liable to any proceedings relating to an act done, or omitted to be done, in good faith in the exercise or purported exercise of any power conferred on the officer or ranger by this Part, Schedule 1 (in the case of an authorised officer) or regulations made for the purposes of this Part or Division 5 of Part 15.
- (2) A person requested by an authorised officer or ranger to assist the officer or ranger in the exercise or purported exercise of any power conferred on the officer or ranger by this Part, by Schedule 1 (in the case of an authorised officer), or by regulations made for the purposes of this Part or Division 5 of Part 15, is not liable to any proceedings relating to an act done, or omitted to be done, in good faith for the purpose of assisting the officer or ranger.

Division 22—Conduct of directors, employees and agents

498B Conduct of directors, employees and agents

Bodies corporate—conduct

- (1) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Bodies corporate—state of mind

- (2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (1)(a) or (b); and
 - (b) that the person had that state of mind.

Persons other than bodies corporate—conduct

- (3) Any conduct engaged in on behalf of a person other than a body corporate:
- (a) by an employee or agent of the person within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or

Section 498B

agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent; is to be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

Persons other than bodies corporate—state of mind

- (4) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a person as mentioned in paragraph (3)(a) or (b); and
 - (b) that the person had that state of mind.

Reasonable precautions

- (5) For the purposes of subsection (1) or (3), in determining whether a body corporate or other person took reasonable precautions and exercised due diligence to avoid particular conduct, a court must have regard to what steps (if any) the body or person took directed towards ensuring the following (to the extent that the steps are relevant to the conduct):
- (a) that the body or person arranges regular professional assessments of the body's or person's compliance with this Act and the regulations;
 - (b) that the body or person implements any appropriate recommendations arising from such an assessment;
 - (c) that the body or person has an appropriate system established for managing the effects of the body's or person's activities on the environment;
 - (d) that the directors of the body, or the employees or agents of the body or person, have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affect the directors, employees or agents concerned.

*Meaning of **state of mind***

- (6) A reference in subsection (2) or (4) to the **state of mind** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

*Meaning of **director***

- (7) A reference in this section to a **director** of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

*Meaning of **engage in conduct***

- (8) A reference in this section to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

Disapplying Part 2.5 of Criminal Code

- (9) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

Section 499

Part 18—Remediating environmental damage

499 Commonwealth powers to remedy environmental damage

- (1) This section applies if the Minister suspects that an act or omission constitutes a contravention of this Act or the regulations (whether or not the act or omission is an offence against this Act or the regulations).
- (2) On behalf of the Commonwealth, the Minister may cause to be taken such steps as he or she thinks proper:
 - (a) to repair or remove any condition that arises from the act or omission and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
 - (b) to mitigate any damage that arises from the act or omission and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
 - (c) to prevent any damage that is likely to arise from the act or omission and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision.
- (3) If:
 - (a) a person provided false or misleading information in contravention of section 489; and
 - (b) as a result of the contravention the Minister granted an environmental authority to a person, or set conditions relating to the environmental authority, unaware of the certainty or likelihood of the action covered by the authority:

Section 500

- (i) resulting in damage to the environment or to a matter protected by a provision of Part 3; or
 - (ii) giving rise to a condition relating to the environment or to a matter protected by a provision of Part 3; and
 - (c) the action results in damage to the environment or gives rise to a condition relating to the environment;
- then, for the purposes of this section and section 500, the damage or condition is taken to arise from the provision of false or misleading information in contravention of section 489.
- (4) This section does not affect the exercise by the Commonwealth or the Minister of powers under another provision of this Act or under any other law.

500 Liability for loss or damage caused by contravention

- (1) A person (the *wrongdoer*) who contravenes this Act or the regulations is liable to pay to another person (the *affected party*) who suffers loss or damage arising from the contravention an amount equal to the other person's loss or damage.
- (2) Without limiting the amount payable under subsection (1), the loss or damage a person suffers from a contravention of this Act or the regulations includes the expenses and liabilities (if any) reasonably incurred by the affected party to:
 - (a) repair or remove any condition that arises from the act or omission constituting the contravention and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
 - (b) mitigate any damage that arises from the act or omission constituting the contravention and relates to:
 - (i) the environment; or
 - (ii) if the contravention was of a provision of Part 3—the matter protected by the provision; or
 - (c) prevent any damage likely to arise from the act or omission constituting the contravention and relates to:

Section 501

- (i) the environment; or
- (ii) if the contravention was of a provision of Part 3—the matter protected by the provision.

Note: This makes the person who contravenes the Act liable to pay the Commonwealth the expenses reasonably incurred in taking steps under section 499 in relation to the contravention.

- (3) An amount payable under subsection (1) is a debt due to the affected party, recoverable in a court of competent jurisdiction.
- (4) If 2 or more persons are liable under subsection (1) to pay an amount in respect of the same loss or damage, those persons are jointly and severally liable to pay the sum.
- (5) A finding by a court in criminal proceedings or civil proceedings that the wrongdoer contravened this Act or the regulations is admissible as evidence of that fact in proceedings to recover an amount payable under subsection (1).
- (6) This section applies:
 - (a) whether or not the contravention was an offence; and
 - (b) whether or not the provision contravened is a civil penalty provision.
- (7) This section does not apply to a decision (or a failure to make a decision or conduct for the purposes of making a decision) purportedly under this Act or the regulations that contravenes this Act or the regulations.

501 Other powers not affected

This Division does not affect any other powers or rights under this Act, the regulations or any other law.

Part 19—Organisations

Division 1—Establishment and functions of the Threatened Species Scientific Committee

502 Establishment

- (1) The Threatened Species Scientific Committee is established.
- (2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.
- (3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.

503 Functions of the Committee

The functions of the Committee are:

- (a) to advise the Minister in accordance with Division 5 of Part 13 in relation to recovery plans, threat abatement plans and approved conservation advice; and
- (b) to advise the Minister (on the Minister's request or on the Committee's initiative) on the amendment and updating of the lists established under Part 13; and
- (c) to advise the Minister, at his or her request, on matters relating to the administration of this Act; and
- (d) to give the Minister such other advice as is provided for in this Act; and
- (e) to perform such other functions as are conferred on the Committee by this Act.

Division 2A—Indigenous Advisory Committee

505A Establishment

- (1) The Indigenous Advisory Committee is established.
- (2) The Minister is to determine in writing the composition of the Committee, including the qualifications of its members.
- (3) The Minister is to appoint the members of the Committee on a part-time basis, and must appoint one of the members to chair the Committee.

505B Functions of the Committee

- (1) The function of the Committee is to advise the Minister on the operation of the Act, taking into account the significance of indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity.
- (2) The Minister may give the Committee written guidelines about its function.

**Division 2B—Establishment and functions of the
Independent Expert Scientific Committee on
Coal Seam Gas and Large Coal Mining
Development**

505C Establishment

- (1) The Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development is established.
- (2) The Committee is to consist of at least 5, but not more than 8, members.
- (3) A member of the Committee is to be appointed by the Minister by written instrument, on a part-time basis.
- (4) The Minister must appoint one member of the Committee to be the Chair.
- (5) When appointing members of the Committee, the Minister must ensure that:
 - (a) each member (other than the Chair) possesses appropriate scientific qualifications or expertise that the Minister considers relevant to the performance of the Committee's functions; and
 - (b) each member's appointment is not being made to represent any particular body, group or community.
- (6) The Minister must also ensure that a majority of the members possess scientific qualifications and expertise in one or more of the following areas:
 - (a) geology;
 - (b) hydrology;
 - (c) hydrogeology;
 - (d) ecology.

Note: Other provisions relating to members are set out in Division 3.

Section 505D

505D Functions of the Committee

- (1) The Committee has the following functions:
- (a) within 2 months of a request by the Minister (the ***Environment Minister***)—to provide scientific advice to the Environment Minister in relation to proposed coal seam gas developments or large coal mining developments that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity;
 - (b) within 2 months of a request by an appropriate Minister of a declared State or Territory—to provide scientific advice to the Minister in relation to proposed coal seam gas developments or large coal mining developments in the relevant State or Territory that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity;
 - (c) at the request of the Environment Minister—to provide advice to the Environment Minister about:
 - (i) how bioregional assessments should be conducted in areas where coal seam gas development or large coal mining development is being carried out or is proposed; and
 - (ii) priority areas in which bioregional assessments should be undertaken; and
 - (iii) bioregional assessments commissioned by the Minister;
 - (d) at the request of the Environment Minister—to provide advice to the Environment Minister about:
 - (i) priorities for research projects to improve scientific understanding of the impacts of coal seam gas developments and large coal mining developments on water resources, including any impacts of associated salt production and/or salinity; and
 - (ii) research projects commissioned by the Minister in relation to the impacts of coal seam gas developments and large coal mining developments on water resources,

Section 505E

- including any impacts of associated salt production and/or salinity;
- (e) to publish information about improving the consistency and comparability of research in relation to the impacts of coal seam gas developments and large coal mining developments on water resources, including any impacts of associated salt production and/or salinity;
 - (f) to publish information relating to the development of standards for protecting water resources from the impacts of coal seam gas development and large coal mining development, including from any impacts of associated salt production and/or salinity;
 - (g) to collect, analyse, interpret and disseminate scientific information in relation to the impacts of coal seam gas development and large coal mining development on water resources, including any impacts of associated salt production and/or salinity;
 - (h) any other functions prescribed by the regulations;
 - (i) to do anything incidental to, or conducive to, the performance of the above functions.
- (2) The Committee also has the following functions:
- (a) at the request of the Environment Minister—to provide scientific advice to the Environment Minister in relation to a matter that is protected by a provision of Part 3;
 - (b) at the request of the appropriate Minister of a declared State or Territory and with the written agreement of the Environment Minister—to provide scientific advice to the Minister of the State or Territory in relation to the matters specified in the request, if the Committee has sufficient scientific expertise.

505E Declared States and Territories

- (1) The Minister may, by legislative instrument, declare a specified State or self-governing Territory to be a ***declared State or Territory***.

Chapter 6 Administration

Part 19 Organisations

Division 2B Establishment and functions of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development

Section 505E

- (2) The Minister must not declare a State or a self-governing Territory unless, at the time of the declaration, the State or Territory is a party to the National Partnership Agreement on Coal Seam Gas and Large Scale Coal Mining Development between the Commonwealth and one or more States or self-governing Territories that commenced on 14 February 2012.

Division 3—Members and procedures of Committees

506 Application

This Division applies to the following Committees:

- (a) the Threatened Species Scientific Committee;
- (c) the Indigenous Advisory Committee;
- (d) the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.

507 Terms and conditions

Term of office

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

Note: Section 509 sets out the circumstances in which a member's appointment may be (or must be) terminated.

Resignation

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

Other terms and conditions

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

508 Remuneration

- (1) A member of a Committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.

Section 509

- (2) A member of a Committee is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

509 Termination of appointments of Committee members

Termination when person stops being qualified for appointment

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

Termination for misbehaviour or incapacity

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

Termination for failure to attend Committee meetings

- (3) The Minister may terminate the appointment of a member of a Committee if the member is absent, except on leave of absence, from 3 consecutive meetings of the Committee of which the member has had notice.

Termination for engaging in conflicting work

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

Termination for failure to disclose interests

- (5) The Minister must terminate the appointment of a member of a Committee if:
 - (a) the member does not comply with any requirements prescribed by the regulations to disclose an interest the

- member has in a matter being considered or about to be considered by the Committee; and
- (b) the member does not have a reasonable excuse for not complying.

Termination for bankruptcy or insolvency

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

510 Procedure of a Committee

- (1) The regulations may provide for:
 - (a) matters relating to the operation of a Committee, including:
 - (i) procedures for convening meetings of the Committee; and
 - (ii) procedures for determining who is to preside at a meeting of the Committee; and
 - (iii) determining who may attend a meeting of the Committee; and
 - (iv) the constitution of a quorum for a meeting of the Committee; and
 - (v) procedures relating to a member's interest in matters being dealt with by the Committee; and
 - (vi) the way in which matters are to be resolved by the Committee; and
 - (b) the appointment and rights of a deputy of a member of a Committee.

Section 510

- (2) The regulations may allow a Committee to determine a matter relating to the operation of the Committee for which the regulations may provide.
- (3) If there are no regulations in force, a Committee may operate in the way it determines.

Division 4—Advisory committees

511 Minister may establish advisory committees

- (1) The Minister may by written instrument establish an advisory committee to advise the Minister on specified matters relating to the administration of this Act.
- (2) However, the Minister must not specify that an advisory committee is to advise the Minister on the management of a jointly managed reserve.
- (3) The Minister is to determine in writing the composition of an advisory committee, including qualifications of its members.

512 Appointments

- (1) The Minister may appoint a person on a part-time basis to be a member of an advisory committee.
- (2) The Minister must appoint one of the members to chair the committee.

513 Members of advisory committees

The regulations may provide for the terms and conditions applicable to members of an advisory committee, including terms and conditions relating to:

- (a) term of office; and
- (b) remuneration; and
- (c) allowances; and
- (d) leave of absence; and
- (e) disclosure of interests; and
- (f) termination of membership.

Section 514

514 Committee procedure

- (1) An advisory committee may operate in the way it determines, subject to any regulations.
- (2) The regulations may provide for the operation and procedures of an advisory committee. The regulations may allow a committee to determine its own procedure on any matter.

Division 5—Director of National Parks

Subdivision A—Establishment, functions and powers

514A Continuation

The corporation sole that existed under section 15 of the *National Parks and Wildlife Conservation Act 1975* immediately before the commencement of this Act continues in existence as the Director of National Parks.

Note: Subject to section 514U, the *Public Governance, Performance and Accountability Act 2013* applies to the Director. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

514B Functions

- (1) The functions of the Director are:
- (a) to administer, manage and control Commonwealth reserves and conservation zones; and
 - (b) to protect, conserve and manage biodiversity and heritage in Commonwealth reserves and conservation zones; and
 - (ba) to contribute to the protection, conservation and management of biodiversity and heritage in areas outside Commonwealth reserves and conservation zones; and
 - (c) to co-operate with any country in matters relating to the establishment and management of national parks and nature reserves in that country; and
 - (d) to provide, and assist in the provision of, training in the knowledge and skills relevant to the establishment and management of national parks and nature reserves; and
 - (e) to carry out alone or in co-operation with other institutions and persons, and to arrange for any other institution or person to carry out, research and investigations relevant to the establishment and management of Commonwealth reserves; and

Section 514C

- (f) to make recommendations to the Minister in relation to the establishment and management of Commonwealth reserves; and
- (g) to administer the Australian National Parks Fund; and
- (h) any other functions conferred on the Director under this or any other Act; and
- (i) to do anything incidental or conducive to the performance of any of the functions mentioned in paragraphs (a) to (h) (inclusive).

Note 1: Section 514D sets out requirements relating to the performance of the Director's functions.

Note 2: The Minister may delegate additional functions to the Director under subsection 515(1).

- (2) The Director may perform any of the Director's functions in co-operation with a State, a self-governing Territory, an agency of a State or self-governing Territory or a Commonwealth agency.

514C Powers

- (1) The Director has power to do all things necessary or convenient to be done for or in connection with the performance of the Director's functions.
- (2) The Director's powers include, but are not limited to, the following powers:
 - (a) to enter into contracts; and
 - (b) to erect buildings and structures and carry on works; and
 - (c) to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Director; and
 - (d) to acquire, hold and dispose of real or personal property; and
 - (e) despite section 514D, obtain goods or services on credit from any person by the use of a credit card; and
 - (f) to accept gifts, devises and bequests made to the Director whether on trust or otherwise, and to act as trustee of moneys or other property vested in the Director upon trust.

Section 514D

Note: Section 514D sets out limits on the Director's powers.

514D Requirements relating to functions and powers

Ministerial directions

- (1) The Director must perform the Director's functions and exercise the Director's powers in accordance with any directions given by the Minister, unless this Act provides otherwise.

Consultation

- (2) The Director must consult and have regard to the views of the following persons in relation to the performance of the Director's functions and the exercise of the Director's powers in relation to a Commonwealth reserve or conservation zone:
 - (a) if the reserve or zone is wholly or partly in a State or self-governing Territory—the agency (if any) of the State or Territory responsible for managing national parks established under the law of the State or Territory;
 - (b) if the reserve or zone is wholly or partly in an area for which an Aboriginal Land Council has been established under the *Aboriginal Land Rights (Northern Territory) Act 1976*—the Chairperson of the Council;
 - (c) if the reserve is Booderee National Park—the Chairperson of the Wreck Bay Aboriginal Community Council.

Trust property

- (4) The Director must deal with any money or property vested in the Director on trust in accordance with the powers and duties of the Director as trustee, despite the other provisions of this Act.

Limits on contracts and leases

- (5) The Director must not:
 - (a) enter into a contract involving the payment or receipt of an amount more than:
 - (i) \$1,000,000; or

Section 514E

- (ii) if the regulations prescribe a greater amount—that greater amount; or
- (b) take land (except indigenous people’s land) on lease for more than 10 years;
without the Minister’s approval.

No borrowing

- (6) The Director must not borrow money in the performance of the Director’s functions.

Subdivision B—Constitution of Director of National Parks

514E Constitution

- (1) The Director:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a seal; and
 - (c) may sue and be sued in its corporate name.
- (2) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Director appearing on a document; and
 - (b) presume that the document was duly sealed.

514F Appointment

- (1) A person is to be appointed as the Director by the Governor-General by written instrument.
- (2) Before the Governor-General appoints a person as the Director, the Minister must be satisfied that the person has qualifications and experience in connection with national parks or the conservation and management of biodiversity that make the person suitable for the appointment.
- (3) The appointment is on a full-time basis. However, a person appointed as the Director may also hold an office or be employed

in the Australian Public Service on a part-time basis, subject to this Division.

514G Acting appointments

- (1) The Minister may appoint a person to act as the Director:
 - (a) during a vacancy in the office of Director; or
 - (b) during any period, or during all periods, when the person appointed as the Director is absent from duty or from Australia, or is, for any reason, temporarily unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) A person acting as the Director is taken to constitute the corporation mentioned in section 514A while the person is acting.

Subdivision C—Terms and conditions of appointment

514H Term of office

The person appointed as the Director holds office for the period specified in the instrument of appointment. The period must not exceed 7 years.

514J Remuneration

- (1) The person appointed as the Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the person is to be paid the remuneration that is prescribed.
- (2) The person is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Section 514K

514K Outside employment

The person appointed as the Director must not engage in paid employment outside the duties of the Director's office without the Minister's approval.

514M Leave of absence

- (1) The person appointed as the Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the person appointed as the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

514N Resignation

The person appointed as the Director may resign his or her appointment by giving the Governor-General a written resignation.

514P Termination

- (1) The Governor-General may terminate the appointment of a person as the Director for misbehaviour or physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of a person as the Director if:
 - (a) the person:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the person is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the person engages, except with the Minister's approval, in paid employment outside the duties of the office of Director.

Section 514Q

Note: The appointment of a person as the Director may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

514Q Other terms and conditions

The person appointed as the Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

Subdivision D—Australian National Parks Fund

514R Australian National Parks Fund

The fund established by section 45 of the *National Parks and Wildlife Conservation Act 1975* continues in existence as the Australian National Parks Fund, vested in the Director.

514S Payments to Australian National Parks Fund

The following amounts are to be paid into the Australian National Parks Fund:

- (a) any money appropriated by the Parliament for the purposes of the Department and allocated by the Secretary for the management of Commonwealth reserves or conservation zones;
- (b) the proceeds of the sale of any property acquired out of money standing to the credit of the Fund;
- (c) any amounts paid to the Director in respect of leases, licences, permits and other authorities granted by the Director in relation to Commonwealth reserves or conservation zones;
- (d) any other amount paid by a person to the Director if:
 - (i) payment of the amount into the Fund would be consistent with the purposes for which the amount was paid; and

Section 514T

- (ii) the Minister administering the *Public Governance, Performance and Accountability Act 2013* considers it appropriate that the amount should be paid into the Fund;
- (e) any charges paid under section 356A or section 390F;
- (f) any other money received by the Director in the performance of his or her functions.

514T Application of money

- (1) The money of the Australian National Parks Fund may be applied only:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Director in the performance of the Director's functions; and
 - (b) in payment of any remuneration, allowances and compensation payable under this Division or Division 4 of Part 15.
- (2) Subsection (1) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Fund.

Subdivision E—Accountability

514U Application of *Public Governance, Performance and Accountability Act 2013*

- (1) Sections 514A and 514E provide that the Director is a corporation. The *Public Governance, Performance and Accountability Act 2013* applies (subject to subsection (2) of this section) in relation to the corporation as if the person holding, or performing the duties of, the office of Director were an accountable authority of the corporation for the purposes of that Act.

- (2) To avoid doubt, the *Public Governance, Performance and Accountability Act 2013* applies to the Australian National Parks Fund as though the Fund were money held by the Director.

514V Extra matters to be included in annual report

The annual report prepared by the Director under and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must also include particulars of any directions given by the Minister under subsection 514D(1) of this Act during the period.

Subdivision F—Miscellaneous

514W Exemption from taxation

The income of the Australian National Parks Fund and the property and transactions of the Director are not subject to taxation under a law of the Commonwealth or of a State or Territory.

514X Changes in office of Director

An authority given, or a delegation or appointment made, by a person for the time being holding or acting in the office of Director continues in force despite the person ceasing to hold or act in that office, but may be revoked by a person later holding or acting in that office.

Section 514Y

Part 19A—Reconsideration of fees

514Y Applications for reconsideration of fee

- (1) This section applies if a fee is worked out by a person to whom a function or power is delegated under section 515.
- (2) If:
 - (a) a method prescribed by the regulations under subsection 520(4C) has been used to work out a fee; and
 - (b) the person required to pay the fee is dissatisfied with the way the method was used to work out the fee;the person may apply to the Secretary for the Secretary to reconsider the way the method was used to work out the fee.
- (3) The application must:
 - (a) be in a form prescribed by the regulations; and
 - (b) set out the reasons for the application.
- (4) The application must be made within 30 business days after the applicant is informed of the fee.
- (5) A person may apply only once in relation to a fee.

514YA Reconsideration of fee

- (1) Upon receiving an application for reconsideration of a fee, the Secretary must:
 - (a) reconsider the way the method was used to work out the fee; and
 - (b) either:
 - (i) confirm the fee; or
 - (ii) work out a new fee by using the method again.
- (2) The person who undertakes the reconsideration must be:
 - (a) the Secretary; or

Section 514YB

- (b) an employee in the Department who:
 - (i) was not involved in working out the fee; and
 - (ii) occupies a position that is senior to that occupied by any person involved in working out the fee.
- (3) The Secretary must give to the applicant a written notice that:
 - (a) states the outcome of the reconsideration; and
 - (b) gives reasons for that outcome.

514YB Deadline for reconsideration

The Secretary must undertake a reconsideration of a fee within 30 business days after receiving an application for reconsideration.

Section 515

Part 20—Delegation

515 Delegation

- (1) The Minister may, by signed instrument, delegate all or any of his or her powers or functions under this Act to an officer or employee in the Department or to the Director. The delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Minister.
- (2) The Secretary may, by signed instrument, delegate all or any of his or her powers or functions under this Act to an officer or employee in the Department or to the Director. The delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Secretary.
- (3) The Director may, by sealed instrument, delegate all or any of the Director's powers or functions under this Act to a person. The delegate is, in the exercise of a delegated power or function, subject to the directions of the Director.

515AA Delegation by Minister in relation to Great Barrier Reef Marine Park

- (1) The Minister may, by signed instrument, delegate any or all of his or her powers or functions to which subsection (2) applies to:
 - (a) the Great Barrier Reef Marine Park Authority; or
 - (b) the Chairperson of the Great Barrier Reef Marine Park Authority; or
 - (c) a member of the staff of the Great Barrier Reef Marine Park Authority.
- (2) For the purposes of subsection (1), this subsection applies to a power or function if:
 - (a) the exercise of the power or performance of the function relates (including in a way described in subsection 7(1A) of

Section 515AB

the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park; or

- (b) the exercise of the power or performance of the function is incidental to a matter that relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park.

Note: If a power or function is delegated to the Great Barrier Reef Marine Park Authority under this section, the Authority may sub-delegate the power or function under section 47 of the *Great Barrier Reef Marine Park Act 1975*.

- (3) Despite subsection (1), the Minister must not delegate under that subsection a power or function under Part 17 (Enforcement) to a person mentioned in paragraph (1)(c) unless the person:
- (a) is an SES employee or an acting SES employee; or
 - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (4) In exercising a power or performing a function under a delegation, the delegate must comply with any directions of the Minister.
- (5) This section does not limit the Minister's power of delegation under section 515.

515AB Delegation by Secretary in relation to Great Barrier Reef Marine Park

- (1) The Secretary may, by signed instrument, delegate any or all of his or her powers or functions to which subsection (2) applies to:
- (a) the Great Barrier Reef Marine Park Authority; or
 - (b) the Chairperson of the Great Barrier Reef Marine Park Authority; or
 - (c) a member of the staff of the Great Barrier Reef Marine Park Authority.
- (2) For the purposes of subsection (1), this subsection applies to a power or function if:

Section 515AB

- (a) the exercise of the power or performance of the function relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park; or
- (b) the exercise of the power or performance of the function is incidental to a matter that relates (including in a way described in subsection 7(1A) of the *Great Barrier Reef Marine Park Act 1975*) to the Great Barrier Reef Marine Park.

Note: If a power or function is delegated to the Great Barrier Reef Marine Park Authority under this section, the Authority may sub-delegate the power or function under section 47 of the *Great Barrier Reef Marine Park Act 1975*.

- (3) Despite subsection (1), the Secretary must not delegate under that subsection a power or function under Part 17 (Enforcement) to a person mentioned in paragraph (1)(c) unless the person:
 - (a) is an SES employee or an acting SES employee; or
 - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (4) In exercising a power or performing a function under a delegation, the delegate must comply with any directions of the Secretary.
- (5) This section does not limit the Secretary's power of delegation under section 515.

Part 20A—Publication of information on the internet

515A Publication of information on the internet

Without limiting the operation of section 170A, the Secretary must publish on the internet each week a list of:

- (a) all permits issued or granted under this Act in the immediately preceding week; and
- (b) all matters required by this Act to be made available to the public in the immediately preceding week.

Part 21—Reporting

Division 1—Annual reports

516 Annual report on operation of Act

- (1) The Secretary must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operation of this Act (except Divisions 4 and 5 of Part 15 and Division 5 of Part 19) for the 12 months ending on that 30 June.

Note 1: Other provisions of this Act require the report to include certain matters.

Note 2: Section 34C of the *Acts Interpretation Act 1901* sets out rules about the time within which annual reports must be given to the Minister.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

516A Annual reports to deal with environmental matters

Annual reports for Commonwealth entities

- (1) The accountable authority of a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) must ensure that an annual report prepared under section 46 of that Act complies with subsection (6) of this section.

Annual reports of Commonwealth companies

- (4) The directors of a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that is a Commonwealth agency must ensure that the documents given to the responsible Minister (within the meaning of that Act) under section 97 of that Act include a report complying with subsection (6) of this section.

Section 516A

Annual reports of other Commonwealth agencies

- (5) A Commonwealth agency that is:
- (a) established by or under a law of the Commonwealth; and
 - (b) required by law to give the Minister responsible for it an annual report; and
 - (c) not described in subsection (1) or (4);
- must ensure that the annual report complies with subsection (6).

Content of report

- (6) A report described in subsection (1), (4) or (5) relating to a body or person (the **reporter**) for a period must:
- (a) include a report on how the activities of, and the administration (if any) of legislation by, the reporter during the period accorded with the principles of ecologically sustainable development; and
 - (b) identify how the outcomes (if any) specified for the reporter in an Appropriations Act relating to the period contribute to ecologically sustainable development; and
 - (c) document the effect of the reporter's activities on the environment; and
 - (d) identify any measures the reporter is taking to minimise the impact of activities by the reporter on the environment; and
 - (e) identify the mechanisms (if any) for reviewing and increasing the effectiveness of those measures.

Note: The *Auditor-General Act 1997* lets the Auditor-General audit a reporter's compliance with these requirements.

- (7) In subsection (6):

activities includes:

- (a) developing and implementing policies, plans, programs and legislation; and
- (b) the operations of a department, authority, company or agency referred to in this section.

Division 2—State of the environment reports

516B State of the environment reports

- (1) The Minister must cause a report on the environment in the Australian jurisdiction to be prepared in accordance with the regulations (if any) every 5 years. The first report must be prepared by 31 December 2001.
- (2) The report must deal with the matters prescribed by the regulations.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

Chapter 7—Miscellaneous

Part 22—Miscellaneous

517 Determinations of species

- (1) The Minister may, by legislative instrument, determine that a distinct population of biological entities is a species for the purposes of this Act.
- (3) A determination does not apply for the purposes of:
 - (a) Part 13A; or
 - (b) the definitions of *CITES I species*, *CITES II species* and *CITES III species* in section 528.
- (4) Subsection (3) does not affect the meaning of the expression *listed threatened species* when used in Part 13A.

517A Exemption for activities that might harm particular species introduced into particular areas

Provisions for which this section applies

- (1) This section applies for the purposes of the provisions of the following sections:
 - (a) sections 18 and 18A;
 - (b) sections 20 and 20A;
 - (c) sections 196 to 196E;
 - (d) section 207B;
 - (e) sections 211 to 211E;
 - (f) sections 254 to 254E.

Minister may exempt carrying on of activities

- (2) The Minister may, in writing, exempt from the provisions mentioned in subsection (1) the carrying on of particular activities

Section 517A

by particular persons (or a particular class of persons), in a particular area, that will or may have an impact on a particular species or its habitat. The species must be a listed threatened species, a listed migratory species or a listed marine species.

Matters Minister must be satisfied of

- (3) An exemption under subsection (2) may only be given if the Minister is satisfied that:
- (a) members of the species have been, or are proposed to be, introduced into the area by or on behalf of a person (whether the person is a Commonwealth agency or otherwise); and
 - (b) the purpose of the introduction, or proposed introduction, of the members of the species into the area was or is to make a contribution to the conservation of the species; and
 - (c) carrying on the activities in the area will or may have an impact on members of the species, or their habitat, but any such impact would be incidental to, and not the purpose of, the activities; and
 - (d) if the person referred to in paragraph (a) is not the person who is or will be primarily responsible for carrying out the activities—the person who is or will be so responsible has agreed to the introduction of the members of the species into the area.
- (4) For the purpose of deciding whether to give an exemption under subsection (2), the Minister may (subject to subsection (3)):
- (a) have regard to any matters the Minister considers appropriate; and
 - (b) seek, and have regard to, information or advice from any source.

What must be specified in an exemption

- (5) An exemption under subsection (2) must:
- (a) specify the species to which it applies; and
 - (b) specify the area to which it applies; and
 - (c) specify the activities to which it applies; and

Section 517A

- (d) specify the persons (or classes of persons) who, if they engage in actions that are within the activities, are covered by the exemption.

When an exemption comes into force

- (6) An exemption under subsection (2) comes into force on the day the Minister gives the exemption, or on a later day specified in the exemption.

Actions covered by exemption do not contravene provisions for which this section applies

- (7) While an exemption under subsection (2) is in force, an action of a person does not contravene any of the provisions mentioned in subsection (1), in so far as the provisions apply in relation to a member of the species specified as mentioned in paragraph (5)(a), if:
 - (a) the action occurs in the area specified as mentioned in paragraph (5)(b); and
 - (b) the action is within the activities specified as mentioned in paragraph (5)(c); and
 - (c) the person is a person, or is a member of a class of persons, specified as mentioned in paragraph (5)(d).

Note 1: If the action also has an impact on a member of another species that is not covered by an exemption under subsection (2), subsection (7) does not affect the question whether the action may contravene a provision mentioned in subsection (1), in so far as the provision applies to the other species.

Note 2: In a prosecution for an offence against a provision mentioned in subsection (1), the defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Exemption is not a legislative instrument

- (8) An exemption under subsection (2) is not a legislative instrument.

Section 518

518 Non-compliance with time limits

- (1) Anything done by the Commonwealth, the Minister or the Secretary under this Act or the regulations is not invalid merely because it was not done within the period required by this Act or the regulations.
- (2) If, during a financial year, one or more things required to be done under this Act or the regulations were not done within the period required by this Act or the regulations, the Minister must:
 - (a) cause to be prepared a statement setting out the reasons why each of those things was not done within the period required by this Act or the regulations; and
 - (b) cause a copy of the statement to be laid before each House of the Parliament as soon as practicable after the end of the financial year.
- (3) Subsection (1) does not reduce or remove an obligation under this Act or the regulations to do a thing within a particular period.

519 Compensation for acquisition of property

When compensation is necessary

- (1) If, apart from this section, the operation of this Act would result in an acquisition of property from a person that would be invalid because of paragraph 51(xxxi) of the Constitution (which deals with acquisition of property on just terms) the Commonwealth must pay the person a reasonable amount of compensation.

Definition

- (2) In this Act:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Court can decide amount of compensation

- (3) If the Commonwealth and the person do not agree on the amount of compensation to be paid, the person may apply to the Federal Court for the recovery from the Commonwealth of a reasonable amount of compensation fixed by the Court.

Other compensation to be taken into account

- (4) In assessing compensation payable by the Commonwealth, the Court must take into account any other compensation or remedy arising out of the same event or situation.

520 Regulations

- (1) The Governor-General may make regulations prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties for offences against the regulations. A penalty must not be more than 50 penalty units.
- (3) Regulations may be made for and in relation to giving effect to any of the following agreements:
- (a) the Apia Convention;
 - (b) the Convention for the Protection of the Natural Resources and Environment of the South Pacific (the SPREP Convention) signed at Noumea on 24 November 1986;
 - (c) the Bonn Convention;
 - (d) CAMBA;
 - (e) JAMBA;
 - (f) an agreement between the Commonwealth and one or more other countries relating to whales;
 - (g) the World Heritage Convention;
 - (h) the Ramsar Convention;
 - (i) the Biodiversity Convention;

Section 520

- (j) CITES;
- (k) the Framework Convention on Climate Change done at New York on 9 May 1992.
- (4) Regulations made in relation to an agreement that has not entered into force for Australia are not to come into operation on a day earlier than the day on which the agreement enters into force for Australia.
- (4A) The regulations may prescribe fees that are payable for services the Minister or Secretary provides in performing functions, or exercising powers, under this Act or the regulations.
- (4B) A fee prescribed by the regulations is payable to the Commonwealth.
- (4C) Regulations prescribing fees may also:
 - (a) prescribe fees in respect of:
 - (i) a particular class of decision; or
 - (ii) a particular class of action; or
 - (iii) a particular class of person; and
 - (b) prescribe 2 or more fees for the same matter; and
 - (c) prescribe a method for working out a fee; and
 - (d) prescribe a method for working out the refund of part of a fee; and
 - (e) deal with other matters, including the following:
 - (i) specifying the way in which, and times at which, a fee is to be paid;
 - (ii) specifying the fees that must be paid, and by whom, in the event of a transfer under section 145B or a change of person proposing to take an action under section 156F;
 - (iii) the consequences of failure to pay a specified fee;
 - (iv) the circumstances in which the Minister may waive a fee;
 - (v) the circumstances in which a person is exempt from paying a specified fee;

Section 520A

- (vi) the circumstances in which a fee may be refunded, in whole or in part.
- (5) Subsections (3), (4A) and (4C) do not limit subsection (1).
- (6) The regulations may prohibit or regulate the export from an external Territory to Australia or another external Territory of:
 - (a) CITES specimens; and
 - (b) regulated native specimens.
- (7) The regulations may prohibit or regulate the import into an external Territory from Australia or another external Territory of:
 - (a) CITES specimens; and
 - (b) regulated live specimens.
- (8) The regulations may prohibit or regulate the possession in an external Territory of:
 - (a) specimens that have been imported into that Territory in contravention of regulations made for the purposes of subsection (7); or
 - (b) the progeny of such specimens.

520A Statements about the application of the Act

- (1) The Minister may issue, in writing, statements about the way in which the Minister considers that provisions of the Act or the regulations apply or would apply to:
 - (a) persons generally or a class of persons; or
 - (b) persons generally or a class of persons in relation to particular circumstances.
- (2) A statement made under subsection (1) is not a legislative instrument.

521 Fees and charges must not be taxes

A fee or charge provided for by or under this Act, and whether prescribed by the regulations or not, must be reasonably related to

Section 521A

the expenses incurred or to be incurred by the Commonwealth in relation to the matters to which the fee or charge relates and must not be such as to amount to taxation.

521A Time does not run if all or part of fee remains unpaid

- (1) If:
- (a) one or more fees are payable in respect of a service the Minister or Secretary provides in performing functions, or exercising powers, under this Act or the regulations; and
 - (b) a provision of this Act or the regulations:
 - (i) requires or allows the Minister or Secretary to do a thing relating to the service; or
 - (ii) requires or allows the Minister or Secretary to do a thing relating to the service within a particular period; and
 - (c) all of part of a fee relating to the service remains unpaid;
- then:
- (d) if subparagraph (b)(i) applies—the Minister or Secretary need not do the thing until all of the required fee is paid; and
 - (e) if subparagraph (b)(ii) applies and the period has not begun—the period does not begin until all of the required fee is paid; and
 - (f) if subparagraph (b)(ii) applies and the period has begun—the period stops until all of the required fee is paid and, when paid, begins again for the balance of the period.
- (2) For the purposes of paragraphs (1)(e) and (f), the day that all of the required fee is paid is not to be counted in the relevant period.

522 Financial assistance etc. to be paid out of appropriated money

Payment of amounts of financial assistance under this Act, and of any amounts that the Commonwealth is required to pay to a person under this Act or an agreement made under this Act, are to be made out of money appropriated by the Parliament for the purpose.

Section 522A

522A Review of operation of Act

- (1) The Minister must cause independent reviews to be undertaken by a person or body of:
 - (a) the operation of this Act; and
 - (b) the extent to which the objects of this Act have been achieved.
- (2) The first review must be undertaken within 10 years of the commencement of this Act. Later reviews must be undertaken at intervals of not more than 10 years.
- (3) The person or body undertaking a review must give a report of the review to the Minister.
- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

Chapter 8—Definitions

Part 23—Definitions

Division 1—Some definitions relating to particular topics

Subdivision A—Actions

523 *Actions*

- (1) Subject to this Subdivision, ***action*** includes:
- (a) a project; and
 - (b) a development; and
 - (c) an undertaking; and
 - (d) an activity or series of activities; and
 - (e) an alteration of any of the things mentioned in paragraph (a), (b), (c) or (d).

524 *Things that are not actions*

- (1) This section applies to a decision by each of the following kinds of person (***government body***):
- (a) the Commonwealth;
 - (b) a Commonwealth agency;
 - (c) a State;
 - (d) a self-governing Territory;
 - (e) an agency of a State or self-governing Territory;
 - (f) an authority established by a law applying in a Territory that is not a self-governing Territory.
- (2) A decision by a government body to grant a governmental authorisation (however described) for another person to take an action is not an ***action***.

- (3) To avoid doubt, a decision by the Commonwealth or a Commonwealth agency to grant a governmental authorisation under one of the following Acts is not an ***action***:
- (a) the *Customs Act 1901*;
 - (b) the *Export Control Act 1982*;
 - (c) the *Export Finance and Insurance Corporation Act 1991*;
 - (d) the *Fisheries Management Act 1991*;
 - (e) the *Foreign Acquisitions and Takeovers Act 1975*;
 - (f) the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
 - (g) the *Biosecurity Act 2015*;
 - (h) the *Competition and Consumer Act 2010*.

This subsection does not limit this section.

524A Provision of grant funding is not an *action*

Provision of funding by way of a grant by one of the following is not an ***action***:

- (a) the Commonwealth;
- (b) a Commonwealth agency;
- (c) a State;
- (d) a self-governing Territory;
- (e) an agency of a State or self-governing Territory;
- (f) an authority established by a law applying in a Territory that is not a self-governing Territory.

Subdivision B—Areas

525 Commonwealth areas

*What is a **Commonwealth area**?*

- (1) Each of the following, and any part of it, is a ***Commonwealth area***:
- (a) land owned by the Commonwealth or a Commonwealth agency and airspace over the land;

Section 525

- (b) an area of land held under lease by the Commonwealth or a Commonwealth agency and airspace over the land;
- (c) land in:
 - (i) an external Territory; or
 - (ii) the Jervis Bay Territory;and airspace over the land;
- (d) the coastal sea of Australia or an external Territory;
- (e) the continental shelf, and the waters and airspace over the continental shelf;
- (f) the waters of the exclusive economic zone, the seabed under those waters and the airspace above those waters;
- (g) any other area of land, sea or seabed that is included in a Commonwealth reserve.

Territory Land in ACT is not a Commonwealth area

- (2) Despite paragraph (1)(a), an area of land that is Territory Land, within the meaning of the *Australian Capital Territory (Planning and Land Management) Act 1988* is not a **Commonwealth area** merely because of that paragraph, unless it is held under lease by the Commonwealth or a Commonwealth agency.

Coastal waters of States and NT are not Commonwealth areas

- (3) Despite paragraphs (1)(d), (e) and (f), none of the following areas (or parts of them) are **Commonwealth areas**:
 - (a) the seabed vested in a State under section 4 of the *Coastal Waters (State Title) Act 1980*; and
 - (b) the seabed vested in the Northern Territory under section 4 of the *Coastal Waters (Northern Territory Title) Act 1980*; and
 - (c) the subsoil under the seabed described in paragraph (a) or (b); and
 - (d) any water and airspace over seabed described in paragraph (a) or (b).

Subdivision C—Entities

526 Subsidiaries of bodies corporate

The question whether a body corporate is a subsidiary of a body or company is to be determined in the same way as the question whether a body corporate is a subsidiary of another body corporate is determined for the purposes of the *Corporations Act 2001*.

Subdivision D—Criminal law

527 Convictions

A reference in this Act to a conviction of a person of an offence includes a reference to making an order under section 19B of the *Crimes Act 1914* in relation to the person in respect of the offence.

Subdivision E—Specimens

527A Specimens

- (1) For the purposes of this Act, a *specimen* is:
 - (a) an animal; or
 - (b) animal reproductive material; or
 - (c) the skin, feathers, horns, shell or any other part of an animal; or
 - (d) any article wholly produced by or from, or otherwise wholly derived from, a single animal; or
 - (e) a plant; or
 - (f) plant reproductive material; or
 - (g) any part of a plant; or
 - (h) any article wholly produced by or from, or otherwise wholly derived from, a single plant.
- (2) However, a fossil, or a mineralised deposit, is not a *specimen* for the purposes of this Act.

Section 527B

- (3) In any provision of this Act, references to a *specimen* are to be read as including references to an article that consists of, or is derived from:
- (a) a specimen and material other than a specimen; or
 - (b) 2 or more specimens; or
 - (c) 2 or more specimens and material other than a specimen.
- (4) If an article consists of, or is derived from, 2 or more specimens, either with or without any material other than a specimen, then this Act applies to and in relation to that article separately in so far as it consists of, or is derived from, each of those specimens.
- (5) For the purposes of this Act:
- (a) if a live animal (other than animal reproductive material) that was bred in captivity dies, the dead animal and specimens derived from the dead animal are taken to be specimens derived from that live animal; and
 - (b) if a live plant (other than plant reproductive material) that was artificially propagated dies, the dead plant and specimens derived from the dead plant are taken to be specimens derived from that live plant; and
 - (c) a specimen covered by paragraph (1)(b), (c) or (d) is taken to be derived from the animal concerned; and
 - (d) a specimen covered by paragraph (1)(f), (g) or (h) is taken to be derived from the plant concerned; and
 - (e) if a specimen is derived from an animal that belongs to a particular species or taxon, the specimen is taken to belong to that species or taxon; and
 - (f) if a specimen is derived from a plant that belongs to a particular species or taxon, the specimen is taken to belong to that species or taxon.
- (6) In this section:
- this Act* does not include sections 356 and 390E.