

as are specified in the determination. The determination has effect accordingly.

- (3) If the Minister makes a determination under subsection (2) about a named individual, the Minister must give the individual a copy of the determination.

397 Inspectors *ex officio*

- (1) By force of this section each of the following is an inspector:
- (a) each member or special member of the Australian Federal Police;
 - (b) each person appointed as an inspector under subsection 43(1) of the *Great Barrier Reef Marine Park Act 1975* (other than such a person whose appointment relates only to the powers of an inspector under Part VIIA of that Act);
 - (c) each officer of Customs.
- (2) Paragraph (1)(b) does not apply for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A.
- (3) By force of this section, for the purposes of the application of this Act to an offence against, or a matter relating to, Part 13A, each of the following is an inspector:
- (b) each member of the police force of an external Territory;
 - (c) each biosecurity officer (within the meaning of the *Biosecurity Act 2015*).

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

398 Arrangements for State and Territory officers to be inspectors

- (1) The Minister may enter into an arrangement with the appropriate Minister of a State or of the Australian Capital Territory or of the Northern Territory for:
- (a) officers or employees of the Public Service of the State or Territory, or of an authority of the State or Territory (including a local government body); or
 - (b) members of the police force of the State or Territory;

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to be inspectors, and that arrangement has effect accordingly.

- (3) The Minister may make a written determination that a specified person, or a person included in a specified class of persons, who is an inspector because of this section does not have such of the powers conferred on an inspector by this Act as are specified in the determination. The determination has effect accordingly.
- (4) If the Minister makes a determination under subsection (3) about a named individual, the Minister must give the individual a copy of the determination.

399 Identity cards

- (1) The Minister must issue to an inspector an identity card in a form approved by the Minister, containing a photograph of the person to whom it is issued.
- (1A) Subsection (1) does not apply in relation to an inspector who is:
 - (a) a member of a police force; or
 - (b) an inspector by force of paragraph 397(1)(b); or
 - (c) an officer of Customs.
- (2) If a person stops being an inspector, the person must immediately return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding one penalty unit.
- (4) For the purposes of this Act, a requirement for a person who is an inspector by force of paragraph 397(1)(b) to produce his or her identity card is satisfied if the person shows his or her identity card issued under section 45 of the *Great Barrier Reef Marine Park Act 1975*.

**Subdivision BA—Exercise of powers of authorised officers
outside the territorial sea**

399A Powers to be exercised consistently with UNCLOS

- (1) This section applies in relation to the powers of an authorised officer under this Part (including powers an authorised officer has under or because of a search warrant or a monitoring warrant), to the extent that the powers are otherwise permitted to be exercised:
 - (a) outside the territorial sea; and
 - (b) in relation to a person, aircraft or vessel, other than a person aircraft or vessel of a kind referred to in any of paragraphs 5(3)(a) to (h).
- (2) The powers of an authorised officer, to the extent to which this section applies to them, must be exercised consistently with Australia's rights and obligations under:
 - (a) UNCLOS; and
 - (b) any other international agreements specified in regulations made for the purposes of this section.
- (3) In this section:

UNCLOS means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31. In 2006, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

**Subdivision BB—Exercise of powers of authorised officers in
relation to Great Barrier Reef Marine Park**

**399B Certain powers to be exercised only by certain authorised
officers**

- (1) The powers of an authorised officer in relation to:

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- (a) an offence against an environmental law that is the *Great Barrier Reef Marine Park Act 1975* or regulations made under that Act; or
 - (b) an environmental penalty provision that is a civil penalty provision of that Act; or
 - (c) a thing that may be done for the purposes of that Act;
- may only be exercised by an authorised officer who is an inspector by force of paragraph 397(1)(a) or (b).
- (2) To avoid doubt, an authorised officer who is an inspector by force of paragraph 397(1)(a) or (b) and also by force of paragraph 397(1)(c) is an authorised officer who may exercise the powers referred to in subsection (1).

Subdivision C—Miscellaneous

400 Regulations may give wardens, rangers and inspectors extra powers, functions and duties

The regulations may provide for functions and powers to be conferred, and duties to be imposed, on wardens, rangers and inspectors.

401 Impersonating authorised officers and rangers

- (1) A person commits an offence if:
- (a) the person:
 - (i) impersonates an authorised officer or a ranger on an occasion; and
 - (ii) does so knowing it to be an occasion when the officer or ranger would be on duty and doing an act or attending a place; or
 - (b) the person:
 - (i) falsely represents himself or herself to be an authorised officer or a ranger; and
 - (ii) does an act or attends a place in the assumed character of that officer or ranger; or

- (c) the person:
 - (i) impersonates an authorised officer or a ranger or falsely represents himself or herself to be an authorised officer or a ranger; and
 - (ii) does so with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.
- (2) Subsection (1) does not apply to an authorised officer or a ranger.
- (3) An authorised officer or a ranger commits an offence if:
 - (a) the officer or ranger:
 - (i) impersonates another authorised officer or ranger on an occasion; and
 - (ii) does so knowing it to be an occasion when the other officer or ranger would be on duty and doing an act or attending a place; or
 - (b) the officer or ranger:
 - (i) falsely represents himself or herself to be another authorised officer or a ranger; and
 - (ii) does an act or attends a place in the assumed character of the other officer or ranger; or
 - (c) the officer or ranger:
 - (i) impersonates another authorised officer or a ranger or falsely represents himself or herself to be another authorised officer or a ranger; and
 - (ii) does so with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.
- (4) An offence against this section is punishable, on conviction, by imprisonment for not more than 2 years or a fine not exceeding 120 penalty units, or both.

402 Offences against authorised officers and rangers

- (1) A person commits an offence if the person:
 - (a) uses or threatens violence against another person; and

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- (b) does so knowing that the other person is an authorised officer or a ranger; and
 - (c) does so because of that other person's status as an authorised officer or ranger.
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment for not more than 7 years or a fine not exceeding 420 penalty units, or both.
- (3) A person commits an offence if the person:
 - (a) obstructs, intimidates, resists or hinders another person who is an authorised officer or a ranger exercising or performing his or her powers, duties or functions; and
 - (b) does so knowing that the other person is an authorised officer or ranger.
- (4) An offence against subsection (3) is punishable, on conviction, by imprisonment for not more than 2 years or a fine not exceeding 120 penalty units, or both.
- (5) It is immaterial whether the defendant was aware that the authorised officer or ranger was engaged in the exercise or performance, or attempted exercise or performance of a power, duty or function of such officer or ranger.
- (6) It is a defence in proceedings for an offence against subsection (3), if at the time of the conduct constituting the offence, the authorised officer or ranger was abusing his or her power.
- (7) This section does not limit the power of a court to punish a contempt of that court.
- (8) Subsections (1) and (3) are not intended to exclude or limit the concurrent operation of any law of the Australian Capital Territory in a case where the other person referred to in that subsection is a member or special member of the Australian Federal Police.

Division 2—Boarding of vessels etc. and access to premises

403 Boarding of vessels etc. by authorised officers

- (1) This section applies to:
 - (a) any Australian vessel or Australian aircraft, whether or not it is in the Australian jurisdiction; or
 - (b) any other vessel or aircraft, or any vehicle or platform, that is in the Australian jurisdiction.
- (2) If an authorised officer suspects on reasonable grounds that there is in, or on, a vehicle, vessel, aircraft or platform to which this section applies any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, the authorised officer may, with such assistance as he or she thinks necessary:
 - (a) board the vehicle, vessel, aircraft or platform at any reasonable time for the purpose of exercising, and may exercise, the powers of an authorised officer under section 406; and
 - (b) in the case of a vehicle, vessel or aircraft—stop and detain the vehicle, vessel or aircraft for that purpose.
- (2A) An authorised officer who boards a vehicle, vessel, aircraft or platform under paragraph (2)(a) may require a person on the vehicle, vessel, aircraft or platform to:
 - (a) answer a question asked by the authorised officer; or
 - (b) give the authorised officer information requested by the authorised officer; or
 - (c) produce to the authorised officer records or documents kept on the vehicle, vessel, aircraft or platform.
- (3) If an authorised officer or the person in command of a Commonwealth ship or of a Commonwealth aircraft suspects on reasonable grounds that a vessel to which this section applies has

Section 403

been used or otherwise involved in the commission of an offence against an environmental law, he or she may:

- (a) bring the vessel to the nearest port in Australia or an external Territory to which it is safe and practicable to bring the vessel; or
 - (b) by means of an international signal code or other internationally recognised means of communication with a vessel, require the person in charge of the vessel to bring the vessel to that port.
- (4) An authorised officer, or the person in command of a Commonwealth ship or of a Commonwealth aircraft, may require the person in charge of an aircraft to which this section applies to bring the aircraft to the nearest airport in Australia or an external Territory to which it is safe and practicable to bring the aircraft if:
- (a) the authorised officer, or the person in command of the Commonwealth ship or Commonwealth aircraft, suspects on reasonable grounds that the aircraft has been used or otherwise involved in the commission of an offence against an environmental law; and
 - (b) the requirement is made by means of an international signal code or other internationally recognised means of communication with an aircraft.
- (5) An authorised officer may, for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975* (other than Part VIIA of that Act (compulsory pilotage)), require the person in charge of a vehicle, vessel, aircraft or platform to which this section applies to give information concerning any or all of the following:
- (a) the vehicle, vessel, aircraft or platform;
 - (b) the crew or any other person on board the vehicle, vessel, aircraft or platform;
 - (c) in the case of a vessel—any dory being operated in association with the vessel;
 - (d) in the case of a vessel—any person operating a dory in association with the vessel.

(5A) A person commits an offence if:

- (a) a requirement is made of the person under this section; and
- (b) the person fails to comply with the requirement.

Penalty:

- (a) if the requirement is made under subsection (2A)—
imprisonment for 6 months or 30 penalty units, or both; or
 - (b) if the requirement is made under subsection (3), (4) or (5)—
50 penalty units.
- (5B) If there is a restraint on the liberty of a person on a vessel resulting from an authorised officer's exercise of a power under this section in relation to the vessel:
- (a) the restraint is not unlawful; and
 - (b) civil or criminal proceedings in respect of the restraint may not be instituted or continued in any court against:
 - (i) the authorised officer; or
 - (ii) any person assisting the authorised officer in the exercise of the power; or
 - (iii) the Commonwealth.

This subsection is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

- (5C) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

- (6) In this Act:

Commonwealth aircraft means an aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is displayed.

Commonwealth ship means a ship in the service of the Commonwealth on which the prescribed ensign of the ship is flying.

Section 404

404 Authorised officers to produce identification

- (1) If an authorised officer (subject to subsection (1A)) boards a vehicle, vessel, aircraft or platform under section 403, the authorised officer must:
 - (a) in the case of a member of a police force—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is a member of that police force; or
 - (aa) in the case of an officer of Customs—produce, for inspection by the person in charge of that vehicle, vessel, aircraft or platform, written evidence of the fact that he or she is an officer of Customs; or
 - (b) in any other case—produce his or her identity card for inspection by that person.
- (1A) Subsection (1) does not apply to an authorised officer if:
 - (a) the authorised officer is a member of a police force or an officer of Customs; and
 - (b) the officer is in uniform.
- (2) An authorised officer who does not comply with subsection (1) is not authorised to remain, or to require any person assisting the authorised officer to remain, on board the vehicle, vessel, aircraft or platform, or to detain the vehicle, vessel or aircraft.
- (3) If an authorised officer (subject to subsection (3A)) makes a requirement of a person under section 403 the authorised officer, unless it is impracticable to do so, must:
 - (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or
 - (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or
 - (b) in any other case—produce his or her identity card for inspection by that person;

and, if the authorised officer fails to do so, that person is not obliged to comply with the requirement.

- (3A) Subsection (3) does not apply to an authorised officer if:
- (a) the authorised officer is a member of a police force or an officer of Customs; and
 - (b) the officer is in uniform.

405 Access to premises

- (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the powers of an authorised officer under section 406.
- (2) If an authorised officer enters any premises under subsection (1), he or she may exercise the powers of an authorised officer under section 406.
- (3) An authorised officer who enters premises under subsection (1) must, if the occupier of the premises revokes his or her consent, leave the premises forthwith, and is not entitled to exercise, or continue to exercise, the powers of an authorised officer under section 406 in relation to the premises.
- (4) An authorised officer is not entitled to:
 - (a) enter premises under subsection (1); or
 - (b) exercise any powers as mentioned in subsection (2);if the occupier of the premises has required the officer to produce written identification for inspection by the occupier and:
 - (c) if the authorised officer is a member of a police force—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is a member of that police force; or
 - (d) if the authorised officer is an officer of Customs—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is an officer of Customs; or
 - (e) in any other case—the officer fails to produce his or her identity card for inspection by the occupier.

Section 406

406 Powers of authorised officers

- (1) An authorised officer who boards a vehicle, vessel, aircraft or platform under section 403, or enters premises under section 405 may:
- (a) inspect and search the vehicle, vessel, aircraft, platform or premises, as the case may be; and
 - (aa) take photographs (including a video recording), and make sketches, of the premises or of any substance or thing on the vehicle, vessel, aircraft, platform or premises; and
 - (b) inspect, take extracts from, and make copies of, any document that is, or that the authorised officer suspects on reasonable grounds is, evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and
 - (ba) in the case of an authorised officer who boards a vessel under section 403—subject to section 406A, search without warrant:
 - (i) a person on the vessel; and
 - (ii) the person's clothing;
to find out whether there is hidden on the person or in the clothing:
 - (iii) an eligible seizable item; or
 - (iv) a thing that may be evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and
 - (c) inspect, and take samples of, any other evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; and
 - (ca) take measurements of, and conduct tests on, the vehicle, vessel, aircraft, platform or premises or any substance or thing on the vehicle, vessel, aircraft, platform or premises; and

- (d) exercise powers of seizure conferred on the authorised officer by section 444A or 445; and
 - (e) take onto the vehicle, vessel, aircraft, platform or premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in any of the other paragraphs of this subsection.
- (2) For the purposes of this Part, ***evidential material*** means:
- (a) in relation to an offence against an environmental law:
 - (i) any thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or
 - (ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of the offence; or
 - (iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing the offence; and
 - (b) in relation to a contravention of an environmental penalty provision:
 - (i) any thing with respect to which the environmental penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or
 - (ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the contravention of the environmental penalty provision; or
 - (iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of contravening the environmental penalty provision.
- (2A) A reference to a thing in subsection (2) includes a reference to any such thing in electronic form.
- (3) For the purposes of exercising a power under subsection (1), an authorised officer may break open any hold or compartment, or any container or other receptacle (including any place that could be

Section 406A

used as a receptacle), on a vehicle, vessel, aircraft or platform or on any premises.

406A Searches under paragraph 406(1)(ba)

- (1) A search under paragraph 406(1)(ba) of a person (the *subject*) may only be conducted by an authorised officer of the same sex as the subject.
- (2) However, if an authorised officer of the same sex as the subject is not available to conduct the search, it may be conducted by another person who:
 - (a) is of the same sex as the subject; and
 - (b) agrees, at the request of an authorised officer, to conduct the search.
- (3) Paragraph 406(1)(ba) and this section do not authorise the authorised officer or other person:
 - (a) to remove any of the subject's clothing; or
 - (b) to require the subject to remove any of his or her clothing; or
 - (c) to use more force, or subject the subject to greater indignity, than is reasonably necessary to conduct the search.

406AA Taking things into possession

- (1) This section applies if, in conducting a search referred to in paragraph 406(1)(a) or (ba), an authorised officer or a person who conducts a search because of subsection 406A(2) finds:
 - (a) an eligible seizable item; or
 - (b) a thing that may be evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.
- (2) An authorised officer may:
 - (a) take possession of the item or thing; and

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- (b) keep the item or thing for so long as he or she thinks necessary for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975*.
- (3) A person who conducts a search because of subsection 406A(2) must take possession of the item or thing and give it to an authorised officer.
- (4) An authorised officer who is given an item or thing under subsection (3) may keep it for so long as he or she thinks necessary for the purposes of this Act or the *Great Barrier Reef Marine Park Act 1975*.
- (5) If:
 - (a) an authorised officer is keeping an item or thing under subsection (2) or (4); and
 - (b) the item or thing was found in conducting a search of a person under paragraph 406(1)(ba); and
 - (c) the person is detained under Schedule 1;the authorised officer may continue to keep the item or thing for so long as he or she thinks necessary for the purposes of this Act, the *Great Barrier Reef Marine Park Act 1975* or the *Migration Act 1958*.

Note: Once the person ceases to be detained under Schedule 1, the person will generally need to be detained under the *Migration Act 1958* while he or she is in the migration zone (because his or her enforcement visa under that Act will cease to have effect). Subsection (5) ensures the officer can keep the item or thing while the person is detained under this Act or that Act.

406B Thing taken into possession is not a thing seized

A reference in this Act to a thing (however described) seized under this Part or this Act does not include a reference to a thing that has been taken into possession under section 406AA or Schedule 1.

Division 3—Monitoring of compliance

407 Monitoring powers

- (1) For the purposes of this Division, each of the following powers is a **monitoring power** in relation to particular premises:
 - (a) the power to inspect and search the premises;
 - (b) the power to take photographs (including a video recording), or to make sketches, of the premises or of any substance or thing at the premises;
 - (c) the power to inspect, examine and take samples of, any substance or thing on or in the premises;
 - (ca) the power to take measurements of, and conduct tests on, the premises or any substance or thing on the premises;
 - (cb) the power to mark a live specimen on the premises (see subsection (2));
 - (d) the power to take extracts from, or make copies of, any document, book or record on the premises;
 - (da) the powers to operate electronic equipment, and do other things, at the premises as mentioned in section 407A;
 - (e) the power to take onto the premises any equipment or material reasonably necessary for the purpose of exercising a power referred to in any other paragraph of this subsection.
- (2) For the purposes of paragraph (1)(cb), **mark** includes:
 - (a) in the case of a live plant:
 - (i) mark or label a cage or container in which the plant is kept or in which the plant is growing; and
 - (ii) place a label or tag on the plant; and
 - (b) in the case of a live animal:
 - (i) implant a scannable device in the animal; and
 - (ii) place a band on any part of the animal; and
 - (iii) place (whether by piercing or otherwise) a tag or ring on any part of the animal; and

Section 407A

- (iv) mark or label a cage or container within which the animal is kept.
- (3) If:
 - (a) damage is caused to a specimen, or a cage or container in which a specimen is kept, as a result of an authorised officer exercising the power to mark under paragraph (1)(cb); and
 - (b) the damage was caused as a result of insufficient care being exercised by the authorised officer;compensation for the damage is payable to the owner of the specimen, or to the owner of the cage or container, as the case requires.
- (4) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (5) In determining the amount of compensation payable, regard is to be had to whether the owner, if the owner was available at the time, had provided any warning or guidance relating to the marking of the specimen, cage or container.

407A Operation of electronic equipment at premises

Monitoring powers include the powers set out in this section

- (1) Monitoring powers in relation to premises include the powers set out in this section. This section does not authorise these powers to be exercised otherwise than in situations in which this Division allows monitoring powers to be exercised.

Operation of equipment

- (2) An authorised officer may operate electronic equipment at premises to see whether relevant material is accessible by doing so, if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Section 407A

Seizure etc.

- (3) If an authorised officer operates electronic equipment at premises under subsection (2), and the authorised officer finds that relevant material is accessible by doing so, he or she may:
- (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the relevant material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the relevant material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

Limitation on seizure

- (4) An authorised officer may seize equipment under paragraph (3)(a) only if:
- (a) it is not practicable to put the relevant material in documentary form as mentioned in paragraph (3)(b) or to copy the material as mentioned in paragraph (3)(c); or
 - (b) possession of the equipment by the occupier could constitute an offence.

How this Part applies to things seized

- (5) The other provisions of this Part apply in relation to a thing seized under paragraph (3)(a) or (b) as if the thing had been seized under section 445.

Securing equipment

- (6) If an authorised officer believes on reasonable grounds that:
- (a) relevant material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice about securing equipment

- (7) An authorised officer who wishes to secure electronic equipment under subsection (6) must give notice to the occupier of the premises of:
- (a) his or her intention to secure the equipment; and
 - (b) the fact that the equipment may be secured for up to 24 hours.

Period for which equipment may be secured

- (8) Electronic equipment may be secured under subsection (6):
- (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;
- whichever happens first.

Extension of period

- (9) If an authorised officer believes on reasonable grounds that expert assistance will not be available within 24 hours, the authorised officer may apply to a magistrate for an extension of that period.

Notice to occupier

- (10) An authorised officer must give notice to the occupier of the premises of his or her intention to apply for an extension under

Section 407B

subsection (9), and the occupier is entitled to be heard in relation to the application.

Provisions relating to extensions

- (11) The provisions of this Division relating to the issue of a monitoring warrant apply, with such modifications as are necessary, to the issuing of an extension.

Definition

- (12) In this section:

relevant material means:

- (a) evidential material; or
- (b) any other material that is relevant for the purposes of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

407B Compensation for damage to electronic equipment

- (1) If:
- (a) damage is caused to electronic equipment as a result of it being operated as mentioned in section 407A; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;
- compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had

provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

408 Monitoring searches with occupier's consent

Entry by consent

- (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Entry for monitoring purposes

- (2) An authorised officer may only enter premises under subsection (1) to the extent that it is reasonably necessary for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Exercise of monitoring powers

- (3) If an authorised officer enters premises under subsection (1), the authorised officer may exercise monitoring powers in relation to those premises.

Exercise of seizure powers

- (4) If an authorised officer enters premises under subsection (1), the authorised officer may exercise powers of seizure conferred by section 444A or 445.

Right to refuse to give consent

- (5) Before obtaining the consent of a person for the purposes of this section, an authorised officer must tell the person that the person may refuse to give consent.

Section 409

Consent must be voluntary

- (6) An entry by an authorised officer in consequence of the consent of a person is not lawful unless the person voluntarily consented to the entry.

Production of identity card etc.

- (7) An authorised officer is not entitled to:
- (a) enter premises under subsection (1); or
 - (b) exercise any powers referred to in subsection (3) or (4) in relation to premises;
- if the occupier of the premises has required the officer to produce written identification for inspection by the occupier and:
- (c) if the authorised officer is a member of a police force—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is a member of that police force; or
 - (ca) if the authorised officer is an officer of Customs—the officer fails to produce, for inspection by the occupier, written evidence of the fact that he or she is an officer of Customs; or
 - (d) in any other case—the officer fails to produce his or her identity card for inspection by the occupier.

Extension to vehicles, vessels and aircraft

- (8) Subsections (1), (2), (3), (4), (5), (6) and (7) apply in relation to:
- (a) a vehicle, vessel or aircraft in the same way as they apply in relation to premises; and
 - (b) a person apparently in charge of a vehicle, vessel or aircraft in the same way as they apply in relation to the occupier of premises.

409 Monitoring warrants

Application for monitoring warrant

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to particular premises. The warrant is to be known as a **monitoring warrant**.

Note: Urgent applications may be made by telephone or other electronic means under section 409A.

Issue of monitoring warrant

- (2) Subject to subsection (3), the magistrate may issue the monitoring warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the authorised officer should have access to the premises for the purpose of finding out whether any or all of the provisions of an environmental law have been, are being or will be complied with.

Information about grounds for issue of monitoring warrant

- (3) The magistrate must not issue the monitoring warrant unless the authorised officer or another person has given the magistrate, either orally (on oath or affirmation) or by affidavit, such further information as the magistrate requires about the grounds on which the issue of the monitoring warrant is being sought.

Terms of warrant

- (4) The monitoring warrant must:
- (a) name an authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and
 - (aa) authorise the executing officer, with such assistance and by such force as is necessary and reasonable, from time to time while the monitoring warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise monitoring powers in relation to the premises; and

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- (b) state whether an entry under the monitoring warrant is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the monitoring warrant) on which the monitoring warrant ceases to have effect; and
- (d) state the purpose for which the monitoring warrant is issued.

Seizure powers

- (5) If an authorised officer enters premises under a monitoring warrant, he or she may exercise powers of seizure conferred by section 444A or 445.

409A Monitoring warrants by telephone or other electronic means

Application

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

Voice communication

- (2) The magistrate:
 - (a) may require communication by voice to the extent that is practicable in the circumstances; and
 - (b) may make a recording of the whole or any part of any such communication by voice.

Information

- (3) An application under this section must include all information as required to be provided in an application under section 409, but the

application may, if necessary, be made before the information is sworn or affirmed.

Issue of monitoring warrant

- (4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:
- (a) a monitoring warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the monitoring warrant;
- the magistrate may complete and sign the same form of monitoring warrant that would be issued under section 409.

Notification

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

Form of monitoring warrant

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

Completed form of monitoring warrant to be given to magistrate

- (7) The applicant must, not later than 48 hours after making the application, give or transmit to the magistrate:
- (a) the form of monitoring warrant completed by the applicant; and
 - (b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

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Attachment of form of warrant to subsection (7) documents

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

Presumption if form of warrant not produced in evidence

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

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

Court may admit evidence even if subsection (7) or (8) not complied with

- (10) A court may admit evidence obtained because of the issue of a warrant pursuant to this section even if either or both of subsections (7) and (8) have not been complied with if, having regard to the nature of and reasons for the non-compliance and any other relevant matters, the court is satisfied that it was not practicable to comply with that subsection or those subsections (as the case requires).

409B Executing officer to be in possession of warrant

When executing a warrant, the executing officer must be in possession of:

- (a) the original warrant issued by the magistrate under section 409, or a copy of the original warrant as so issued; or
- (b) the original form of warrant completed under subsection 409A(6), or a copy of the original form as so completed.

410 Details of monitoring warrant to be given to occupier etc.

- (1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the executing officer must make available to that person a copy of the monitoring warrant.
- (2) The executing officer must identify himself or herself to that person at the premises.
- (3) The copy of the monitoring warrant referred to in subsection (1) need not include the signature of the magistrate or the seal of the relevant court.

411 Occupier entitled to be present during search

- (1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

412 Announcement before entry

- (1) Before any person enters premises under a monitoring warrant, the executing officer must:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.

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- (2) The executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including an authorised officer); or
 - (b) that the effective execution of the monitoring warrant is not frustrated.

412A Other powers when on premises under monitoring warrant

- (1) If the executing officer enters premises under a monitoring warrant, he or she may require a person on the premises to:
 - (a) answer a question asked by the executing officer; or
 - (b) give the executing officer information requested by the executing officer; or
 - (c) produce to the executing officer records or documents kept on the premises.
- (2) A person commits an offence if:
 - (a) the executing officer has entered premises under a monitoring warrant; and
 - (b) the person is on the premises; and
 - (c) the executing officer requires the person to:
 - (i) answer a question asked by the executing officer; or
 - (ii) give the executing officer information requested by the executing officer; or
 - (iii) produce to the executing officer records or documents kept on the premises; and
 - (d) the person contravenes the requirement.
- (3) The offence is punishable on conviction by imprisonment for a term not more than 6 months, a fine of not more than 30 penalty units, or both.

Division 4—Search warrants

413 When search warrants can be issued

- (1) A magistrate may issue a warrant authorising an authorised officer to search premises if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, at the premises evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.
- (2) A magistrate may issue a warrant authorising an authorised officer to carry out an ordinary search or a frisk search of a person if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that the person has in his or her possession, or will within the next 72 hours have in his or her possession, any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both.
- (3) For the purposes of this Act, *frisk search* means:
 - (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
 - (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.
- (4) If the authorised officer applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the authorised officer must state that suspicion, and the grounds for that suspicion, in the information.
- (5) If the application for the warrant is made under section 416, this section applies as if subsections (1) and (2) referred to 48 hours rather than 72 hours.
- (6) If the applicant for a warrant is a member or special member of the Australian Federal Police and has, at any time previously, applied

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for a warrant relating to the same person or premises, the person must state particulars of those applications and their outcome in the information.

414 Statements in warrants

- (1) If a magistrate issues a warrant under section 413, the magistrate is to state in the warrant:
 - (a) each offence and/or environmental penalty provision to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates or the name or description of a person to whom it relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (f) if the warrant relates to premises—whether the premises may be entered at any time of the day or night or only during particular hours of the day or night; and
 - (g) if the warrant relates to a person—whether the search of the person may be carried out at any time of the day or night or only during particular hours of the day or night.
- (2) The magistrate is also to state, in a warrant in relation to premises:
 - (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or

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- (ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or
 - (iii) evidential material in relation to another contravention of an environmental penalty provision;
if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and
- (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an officer assisting suspects on reasonable grounds that the person has in his or her possession:
 - (i) any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; or
 - (ii) any eligible seizable items.
- (3) For the purposes of this Act, **ordinary search** means a search of a person or of articles in the possession of a person that may include:
 - (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
 - (b) an examination of those items.
- (4) The magistrate is also to state, in a warrant in relation to a person:
 - (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found, in the course of the search, on or in the possession of the person or in an aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, being a thing that the executing officer or an officer assisting believes on reasonable grounds to be:

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- (i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or
 - (ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or
 - (iii) evidential material in relation to another contravention of an environmental penalty provision;
if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and
 - (b) the kind of search of a person that the warrant authorises.
- (5) Paragraph (1)(e) does not prevent the issue of successive warrants in relation to the same premises or person.
- (6) If the application for the warrant is made under section 416, this section applies as if paragraph (1)(e) referred to 48 hours rather than 7 days.

415 Powers of magistrate

- (1) A magistrate in a State or internal Territory may:
- (a) issue a warrant in relation to premises or a person in that State or Territory; or
 - (b) issue a warrant in relation to premises or a person in an external Territory; or
 - (c) issue a warrant in relation to premises or a person in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or
 - (d) issue a warrant in relation to a person wherever the person is in Australia or in an external Territory if he or she is satisfied that it is not possible to predict where the person may be.

- (2) A magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises or a person in the Jervis Bay Territory.

416 Warrants by telephone or other electronic means

Application

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

Voice communication

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

Information

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

Issue of warrant

- (4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:
- (a) a warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;
- the magistrate may complete and sign the same form of warrant that would be issued under section 413.

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Notification

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

Form of warrant

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

Completed form of warrant to be given to magistrate

- (7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
- (a) the form of warrant completed by the applicant; and
 - (b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.

Attachment

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

Presumption

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

417 The things that are authorised by a search warrant

Search of premises

- (1) A warrant that is in force in relation to premises authorises the executing officer or an officer assisting:
- (a) to enter the premises; and
 - (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
 - (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
 - (d) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or
 - (ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or
 - (iii) evidential material in relation to another contravention of an environmental penalty provision;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and
 - (e) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be eligible seizable items; and
 - (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an officer assisting suspects on

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reasonable grounds that the person has in his or her possession:

- (i) any evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both; or
- (ii) any eligible seizable items.

Search of a person

(2) A warrant that is in force in relation to a person authorises the executing officer or an officer assisting:

(a) to search:

- (i) the person as specified in the warrant and things found in the possession of the person; and
- (ii) any aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, for things specified in the warrant; and

(b) to:

- (i) seize things of that kind; or
 - (ii) record fingerprints from things; or
 - (iii) take forensic samples from things;
- found in the course of the search; and

(c) to seize other things found on or in the possession of the person or in the aircraft, vehicle or vessel mentioned in subparagraph (a)(ii) in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:

- (i) evidential material in relation to an offence, or in relation to a contravention of an environmental penalty provision, to which the warrant relates; or
- (ii) evidential material in relation to another offence against an environmental law, where the other offence is an indictable offence; or
- (iii) evidential material in relation to another contravention of an environmental penalty provision;

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if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against an environmental law or in contravening an environmental penalty provision; and

- (d) to seize other things found in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be eligible seizable items.

Hours when premises may be searched

- (3) If a warrant in relation to premises states that the premises may be entered only during particular hours, the premises must not be entered outside those hours.

Hours when person may be searched

- (3A) If a warrant in relation to a person states that the search of the person may be carried out only during particular hours, the search must not be carried out outside those hours.

Ordinary searches or frisk searches

- (4) If a warrant authorises an ordinary search or a frisk search of a person, a search of the person different from that so authorised must not be done.

Seized items may be made available to other agencies

- (5) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

418 Availability of assistance, and use of force, in executing a warrant

- (1) In executing a warrant:

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- (a) the executing officer may obtain such assistance as is necessary and reasonable in the circumstances; and
 - (b) the executing officer, or an authorised officer who is assisting in executing the warrant, may use such force against persons and things as is necessary and reasonable in the circumstances; and
 - (c) a person who is not an authorised officer, but who has been authorised to assist in executing the warrant, may use such force against things as is necessary and reasonable in the circumstances.
- (2) A person who is not an authorised officer must not take part in searching or arresting a person.

418A Executing officer to be in possession of warrant

When executing a warrant, the executing officer must be in possession of:

- (a) the original warrant issued by the magistrate under section 415, or a copy of the original warrant as so issued; or
- (b) the original form of warrant completed under subsection 416(6), or a copy of the original form as so completed.

419 Details of warrant to be given to occupier etc.

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or an officer assisting must make available to that person a copy of the warrant.
- (2) If a warrant in relation to a person is being executed, the executing officer or an officer assisting must make available to that person a copy of the warrant.

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- (3) If a person is searched under a warrant in relation to premises, the executing officer or an officer assisting must show the person a copy of the warrant.
- (4) The executing officer must identify himself or herself to the person at the premises or the person being searched, as the case may be.
- (5) The copy of the warrant referred to in subsections (1) and (2) need not include the signature of the magistrate who issued the warrant.

420 Specific powers available to person executing warrant

- (1) In executing a warrant in relation to premises, the executing officer or an officer assisting may take photographs (including video recordings) of the premises or of things at the premises:
 - (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing.
- (2) If a warrant in relation to premises is being executed, the executing officer and all officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:
 - (a) for not more than one hour; or
 - (b) for a longer period if the occupier of the premises consents in writing.
- (3) The execution of a warrant that is stopped by an order of a court may be completed if:
 - (a) the order is later revoked or reversed on appeal; and
 - (b) the warrant is still in force.

421 Use of equipment to examine or process things

- (1) The executing officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.

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- (2) If:
 - (a) it is not practicable to examine or process the things at the warrant premises; or
 - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:
 - (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or an officer assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or an officer assisting believes on reasonable grounds that:
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or thing.

422 Use of electronic equipment at premises

Operation of equipment

- (1) The executing officer or an officer assisting may operate electronic equipment at the premises to see whether evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, is accessible by doing so if he or she believes on

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reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Seizure etc.

- (2) If the executing officer or an officer assisting, after operating the equipment, finds that evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, is accessible by doing so, he or she may:
- (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

Limitation on seizure

- (3) A person may seize equipment under paragraph (2)(a) only if:
- (a) it is not practicable to put the material in document form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
 - (b) possession of the equipment by the occupier could constitute an offence.

Securing equipment

- (4) If the executing officer or an officer assisting believes on reasonable grounds that:
-

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- (a) evidential material in relation to an offence against an environmental law, in relation to a contravention of an environmental penalty provision or in relation to both, may be accessible by operating electronic equipment at the premises; and
- (b) expert assistance is required to operate the equipment; and
- (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice about securing equipment

- (5) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

Period for which equipment may be secured

- (6) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;whichever happens first.

Extension of period

- (7) If the executing officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of that period.

Notice to occupier

- (8) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an

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extension, and the occupier is entitled to be heard in relation to the application.

Provisions relating to extensions

- (9) The provisions of this Division relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

423 Compensation for damage to electronic equipment

- (1) If:
- (a) damage is caused to equipment as a result of it being operated as mentioned in section 421 or 422; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;
- compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

424 Copies of seized things to be provided

- (1) Subject to subsection (2), if an authorised officer seizes, under a warrant relating to premises:
- (a) a document, film, computer file or other thing that can be readily copied; or

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- (b) a storage device the information in which can be readily copied;
the authorised officer must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
 - (a) the thing that has been seized was seized under paragraph 422(2)(b) or (c); or
 - (b) possession of the document, film, computer file, thing or information by the occupier could constitute an offence.

425 Occupier entitled to be present during search

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

426 Receipts for things seized under warrant

- (1) If a thing is seized under a warrant or moved under subsection 421(2), the executing officer or an officer assisting must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

427 Restrictions on personal searches

A warrant cannot authorise a strip search or a search of a person's body cavities.

428 When a thing is in the possession of a person

This Division applies to a person (the *possessor*) who has a thing under his or her control in any place (whether for the use or benefit of the possessor or of another person), even if another person has the actual possession or custody of the thing, as if the possessor has possession of the thing.

Division 6—Arrest and related matters

430 Powers of arrest

- (1) An authorised officer may, without warrant, arrest any person, if the authorised officer believes on reasonable grounds that:
 - (a) the person is committing or has committed an offence against an environmental law; and
 - (b) proceedings against the person by summons would not be effective.
- (2) If an authorised officer (subject to subsection (2A)) arrests a person under subsection (1), the authorised officer must:
 - (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; and
 - (aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; and
 - (b) in any other case—produce his or her identity card for inspection by that person.
- (2A) Subsection (2) does not apply to an authorised officer if:
 - (a) the authorised officer is a member of a police force or an officer of Customs; and
 - (b) the officer is in uniform.
- (3) If a person is arrested under subsection (1), an authorised officer must without unreasonable delay bring the person, or cause the person to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.
- (4) A reference in this section to an offence against an environmental law does not include an offence against Part VIIA of the *Great Barrier Reef Marine Park Act 1975* (compulsory pilotage).

431 Power to conduct a frisk search of an arrested person

An authorised officer who arrests a person for an offence against an environmental law, or who is present at such an arrest, may, if the authorised officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the arrested person is carrying any eligible seizable items:

- (a) conduct a frisk search of the arrested person at or soon after the time of arrest; and
- (b) seize any eligible seizable items found as a result of the search.

432 Power to conduct an ordinary search of an arrested person

An authorised officer who arrests a person for an offence against an environmental law, or who is present at such an arrest, may, if the authorised officer suspects on reasonable grounds that the arrested person is carrying:

- (a) evidential material in relation to that or another offence against an environmental law; or
- (aa) evidential material in relation to a contravention of an environmental penalty provision; or
- (b) an eligible seizable item;

conduct an ordinary search of the arrested person at or soon after the time of arrest, and seize any such thing found as a result of the search.

433 Power to conduct search of arrested person's premises

An authorised officer who arrests a person at premises for an offence against an environmental law, or who is present at such an arrest, may seize a thing in plain view at those premises that the authorised officer believes on reasonable grounds to be:

- (a) evidential material in relation to that or another offence against an environmental law; or
- (aa) evidential material in relation to a contravention of an environmental penalty provision; or

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(b) an eligible seizable item.

433A Interaction of this Division with Schedule 1

This Division does not limit, and is not limited by, Schedule 1. In particular, the detention of a person under Schedule 1 is not to be taken to constitute the arrest of the person for the purposes of this Division.

**Division 6A—Provisions relating to detention of suspected
foreign offenders**

433B Provisions relating to detention of suspected foreign offenders

Schedule 1 has effect.

Division 7—Miscellaneous provisions about searches, entry to premises, warrants etc.

434 Conduct of ordinary searches and frisk searches

An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.

435 Announcement before entry

- (1) An authorised officer must, before any person enters premises under a warrant or to arrest a person under this Act:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An authorised officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including an authorised officer); or
 - (b) that the effective execution of the warrant or the arrest is not frustrated.

436 Offence of making false statements in warrants

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

- (a) makes a statement in an application for a warrant; and
- (b) does so knowing the statement is false or misleading in a material particular.

437 Offences relating to telephone warrants

A person must not:

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- (a) state in a document that purports to be a form of warrant under section 409A or 416 the name of a magistrate unless the magistrate issued the warrant; or
- (b) state on a form of warrant under section 409A or 416 a matter that, to the person's knowledge, departs in a material particular from the form authorised by the magistrate; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under section 409A or 416 that the person knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) departs in a material particular from the terms authorised by a magistrate under that section; or
- (d) give to a magistrate a form of warrant under section 409A or 416 that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

438 Retention of things seized under Division 4 or 6

- (1) This section applies to a thing that is seized under Division 4 or 6.
- (2) The thing may be retained until:
 - (a) the reason for the seizure of the thing no longer exists; or
 - (b) it is decided that the thing is not to be used in evidence;whichever happens first.
- (3) As soon as practicable after the end of the period during which the thing may be retained under subsection (2), the Secretary must cause reasonable steps to be taken to return the thing to the person from whom it was seized (or to the owner if that person is not entitled to possess it).
- (4) Subsection (3) does not apply if:
 - (a) the thing is forfeited or forfeitable to the Commonwealth; or
 - (b) the thing has been dealt with under this Part, or as otherwise authorised (by a law, or an order of a court, of the

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Commonwealth or of a State or Territory), in a way that means the Secretary is not in a position to cause reasonable steps to be taken to return the thing; or

- (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

440 Law relating to legal professional privilege not affected

This Part does not affect the law relating to legal professional privilege.

441 Other laws about search, arrest etc. not affected

- (1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth relating to:
- (a) the search of persons or premises; or
 - (b) arrest and related matters; or
 - (c) the stopping, detaining or searching of aircraft, vehicles or vessels; or
 - (d) the seizure of things.
- (2) To avoid doubt, it is declared that even though another law of the Commonwealth provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

442 Persons to assist authorised officers

- (1) Subject to subsection (5), the owner, or person in charge:
- (a) of any vehicle, vessel, aircraft or platform boarded by an authorised officer under section 403; or

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- (b) of any premises entered by an authorised officer under section 405;
must, if requested by an authorised officer to do so, provide reasonable assistance to the authorised officer in the performance of the functions, or carrying out of the duties, or the exercise of the powers, conferred on the authorised officer under this Act.
- (2) A person must not contravene subsection (1).
Penalty: Imprisonment for 12 months.
- (3) Subject to subsection (5), the owner, or the person in charge, of:
(a) premises entered under a warrant; or
(b) an aircraft, vehicle or vessel stopped under section 403;
must, if requested by an authorised officer to do so, provide reasonable assistance to the authorised officer in the performance of the functions, or carrying out of the duties, or the exercise of the powers, conferred on the authorised officer under this Act.
- (4) A person must not contravene subsection (3).
Penalty: Imprisonment for 12 months.
- (5) Where an authorised officer (subject to subsection (6)) makes a request of a person under this section, the authorised officer must:
(a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he or she is a member of that police force; or
(aa) in the case of an officer of Customs—produce, for inspection by that person, written evidence of the fact that he or she is an officer of Customs; or
(b) in any other case—produce his or her identity card for inspection by that person;
and, if the authorised officer fails to do so, that person is not obliged to comply with the request.
- (6) Subsection (5) does not apply to an authorised officer if:
(a) the authorised officer is a member of a police force or an officer of Customs; and
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Division 7 Miscellaneous provisions about searches, entry to premises, warrants etc.

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(b) the officer is in uniform.

Division 8—Power to search goods, baggage etc.

443 Power to search goods, baggage etc.

- (1) This section applies to any goods that are to be, are being, or have been, taken on or off a ship that voyages, or an aircraft that flies, between:
 - (a) a place in Australia and a place outside Australia; or
 - (b) a place in an external Territory and a place outside that Territory.
- (2) If an authorised officer believes, on reasonable grounds that goods are goods to which this section applies, he or she may:
 - (a) examine the goods; or
 - (b) if the goods are baggage—open and search the baggage; or
 - (c) if the goods are in a container—open and search the container.
- (3) An authorised officer may ask a person who owns, is carrying or is otherwise associated with, or appears to the authorised officer to be associated with, goods to which this section applies any question in respect of the goods.
- (4) A person must not refuse or fail to answer a question put to the person under subsection (3).

Penalty: 60 penalty units.

- (5) In this Act:

baggage includes any parcel or other goods that:

- (a) a passenger; or
- (b) the master, a mate, an engineer or any other member of the crew of a ship; or
- (c) the pilot or any other member of the crew of an aircraft; has had with him or her on the ship or aircraft.

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goods includes baggage.

Division 8A—Power to ask questions about specimens

443A Authorised officer may ask questions about the nature or origin of specimens

When section applies

- (1) This section applies if an authorised officer has reasonable grounds to suspect that:
- (a) a specimen has been exported, or is proposed to be exported, in contravention of section 303CC or 303DD; or
 - (b) a specimen has been imported, or is proposed to be imported, in contravention of section 303CD or 303EK; or
 - (c) a person has in the person's possession a specimen, and that possession contravenes section 303GN.

Note: Sections 303CC, 303CD, 303DD, 303EK and 303GN are included in Part 13A, which deals with international movement of wildlife specimens.

Questions

- (2) If the authorised officer has reasonable grounds to suspect that a person has information about the nature or origin of the specimen, the authorised officer may ask the person one or more questions about the nature or origin of the specimen.
- (2A) The authorised officer may ask the questions:
- (a) in any case—by asking them in the presence of the person; or
 - (b) if the authorised officer is not a member of a police force and is not an officer of Customs—by sending written questions to the person.

Answers to questions

- (3) Subject to subsections (6) and (7), if a person is asked a question under subsection (2), the person must not intentionally refuse or

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intentionally fail to answer the question to the extent that the person is capable of doing so.

- (4) A person who contravenes subsection (3) commits an offence punishable on conviction by a fine not exceeding 10 penalty units.
- (5) In subsection (3), strict liability applies to the circumstance that the person was asked a question under subsection (2).

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

No requirement to give incriminating answers

- (6) If a person is asked a question under subsection (2), the person is not required to answer the question if the answer might tend to incriminate the person or expose the person to a penalty.

Identity cards etc.

- (7) If a person is asked a question under subsection (2) by an authorised officer, the person is not required to answer the question unless:
 - (a) if the authorised officer is a member of a police force—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is a member of that police force; or
 - (b) if the authorised officer is an officer of Customs—the authorised officer produces, for inspection by the person, written evidence of the fact that the authorised officer is an officer of Customs; or
 - (c) if the authorised officer is not a member of a police force and is not an officer of Customs:
 - (i) if the questions are asked in the presence of the person—the authorised officer produces the authorised officer's identity card for inspection by the person; or
 - (ii) if the questions are asked by sending written questions to the person—the authorised officer sends with the questions a copy of his or her instrument of appointment.

Division 9—Power to ask for names and addresses

444 Authorised person may ask for person's name and address

- (1) An authorised officer may ask an individual to tell the authorised officer the individual's name and address if the authorised officer has reasonable grounds to suspect that the individual has been involved in the commission of an offence against an environmental law.
- (2) Subject to subsection (4), a person must not refuse or fail to comply with a request under subsection (1).

Penalty: 10 penalty units.
- (3) A person commits an offence punishable upon conviction by a fine not exceeding 10 penalty units if the person:
 - (a) in purported compliance with a request under subsection (1), gives a name and address; and
 - (b) does so knowing the name or address is false or misleading.
- (4) If an authorised officer makes a request of a person under subsection (1), the person is not required to comply with the request unless:
 - (a) if the authorised officer is a member of a police force—he or she produces, for inspection by the person, written evidence of the fact that he or she is a member of that police force; or
 - (aa) if the authorised officer is an officer of Customs—he or she produces, for inspection by the person, written evidence of the fact that he or she is an officer of Customs; or
 - (b) in any other case—the authorised officer produces his or her identity card for inspection by the person.

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Division 10—Seizure and forfeiture etc.

**Subdivision AA—Seizure of specimens involved in a
contravention of Part 13A**

444A Seizure of specimens involved in a contravention of Part 13A

- (1) An authorised officer may seize a specimen if he or she has reasonable grounds to suspect that the specimen has been used or otherwise involved in the commission of an offence against Part 13A.

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

- (2) If a warrant has been issued under Division 4:
- (a) if the warrant relates to premises—this section does not apply:
- (i) to the executing officer, or an officer assisting, while he or she is searching premises under the warrant; or
- (ii) to anything found during the course of such a search; and
- (b) if the warrant relates to a person—this section does not apply:
- (i) to the executing officer, or an officer assisting, while he or she is searching a person, or an aircraft, vehicle or vessel, under the warrant; or
- (ii) to anything found during the course of such a search.

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

444B Notice about seizure

- (1) Subject to subsection (2), if a specimen is seized by an authorised officer under section 444A, the authorised officer must give:
- (a) the owner of the specimen; or