

527B Breeding in captivity

For the purposes of this Act, a live animal of a particular kind is taken to have been ***bred in captivity*** if, and only if, it was bred in circumstances declared by the regulations to be circumstances the breeding in which of:

- (a) any live animal; or
 - (b) any live animal of that kind; or
 - (c) any live animal included in a class of live animals that includes live animals of that kind;
- would constitute breeding in captivity.

527C Artificial propagation

For the purposes of this Act, a live plant of a particular kind is taken to have been ***artificially propagated*** if, and only if, it was propagated in circumstances declared by the regulations to be circumstances the propagation in which of:

- (a) any live plant; or
 - (b) any live plant of that kind; or
 - (c) any live plant included in a class of live plants that includes live plants of that kind;
- would constitute artificial propagation.

527D Things represented to be CITES specimens

- (1) For the purposes of this Act, if a thing is represented by an accompanying document, the package or a mark or label, or from any other circumstances, to be:
 - (a) the skin, feathers, horns, shell or any other part of a CITES listed animal; or
 - (b) part of a CITES listed plant; or
 - (c) reproductive material from a CITES listed animal or a CITES listed plant; or
 - (d) an article produced by or from, or derived from, one or more CITES listed animals or one or more CITES listed plants, whether with or without any other material;

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then the thing is taken to be a CITES specimen.

Note: This subsection has the effect (among other things) of widening the scope of sections 303CC, 303CD and 303GN, which are offence provisions relating to the export, import and possession of specimens.

- (2) The Minister must not issue a permit under section 303CG authorising the export or import of a thing that is taken under subsection (1) to be a CITES specimen unless the thing is a CITES specimen apart from subsection (1).

- (3) In this section:

CITES listed animal means an animal of a species included in Appendix I, II or III to CITES.

CITES listed plant means a plant of a species included in Appendix I, II or III to CITES.

export has the same meaning as in Part 13A.

import has the same meaning as in Part 13A.

Subdivision F—Impacts

527E Meaning of *impact*

- (1) For the purposes of this Act, an event or circumstance is an ***impact*** of an action taken by a person if:
- (a) the event or circumstance is a direct consequence of the action; or
 - (b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.
- (2) For the purposes of paragraph (1)(b), if:
- (a) a person (the ***primary person***) takes an action (the ***primary action***); and
 - (b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and

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(c) the secondary action is not taken at the direction or request of the primary person; and

(d) an event or circumstance is a consequence of the secondary action;

then that event or circumstance is an **impact** of the primary action only if:

(e) the primary action facilitates, to a major extent, the secondary action; and

(f) the secondary action is:

(i) within the contemplation of the primary person; or

(ii) a reasonably foreseeable consequence of the primary action; and

(g) the event or circumstance is:

(i) within the contemplation of the primary person; or

(ii) a reasonably foreseeable consequence of the secondary action.

Division 2—General list of definitions

528 Definitions

In this Act, unless the contrary intention appears:

accredited authorisation process has the meaning given by subsection 33(2A).

accredited management arrangement has the meaning given by subsection 33(2).

acquisition of property has the meaning given by subsection 519(2).

action has the meaning given by Subdivision A of Division 1 of Part 23.

action management plan, in relation to an action, means a plan for managing the impacts of the action on a matter protected by a provision of Part 3, such as a plan for conserving habitat of a species.

agency of a State or self-governing Territory means:

- (a) a Minister of the State or Territory; or
- (b) a body corporate established for a public purpose by a law of the State or Territory; or
- (c) a body corporate established by:
 - (i) the Governor of the State; or
 - (ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or
 - (iii) if the Territory is the Northern Territory—the Administrator of the Territory; or
 - (iv) a Minister of the State or Territory;otherwise than by or under a law of the State or Territory; or

- (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the State or Territory; or
- (e) a body corporate that is a subsidiary of:
 - (i) a body or company referred to in paragraph (b), (c) or (d); or
 - (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be an agency of the State or Territory for the purposes of this definition; or
- (f) a person holding, or performing the duties of:
 - (i) an office established by or under a law of the State or Territory (except a judicial office or an office of member of a tribunal); or
 - (ii) an appointment made under a law of the State or Territory (except appointment to a judicial office or an office of member of a tribunal); or
- (g) a person holding, or performing the duties of, an appointment made by:
 - (i) the Governor of the State; or
 - (ii) if the Territory is the Australian Capital Territory—the Governor-General acting in relation to the Australian Capital Territory; or
 - (iii) if the Territory is the Northern Territory—the Administrator of the Territory; or
 - (iv) a Minister of the State or Territory;otherwise than by or under a law of the State or Territory.

aggravated offence:

- (a) in Subdivision B of Division 1 of Part 13—has the meaning given by section 196F; and
- (b) in Subdivision B of Division 2 of Part 13—has the meaning given by section 211F; and
- (c) in Subdivision B of Division 4 of Part 13—has the meaning given by section 254F.

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aircraft means an apparatus that can derive support in the atmosphere from the reactions of the air.

animal means any member, alive or dead, of the animal kingdom (other than a human being).

animal reproductive material means:

- (a) an embryo, an egg or sperm of an animal; or
- (b) any other part, or product, of an animal from which another animal could be produced.

Antarctic has the same meaning as in the *Antarctic Treaty (Environment Protection) Act 1980*.

Apia Convention means the Convention on Conservation of Nature in the South Pacific, done at Apia, Western Samoa, on 12 June 1976, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1990 No. 41.

approved conservation advice has the meaning given by subsection 266B(2).

article includes a substance or a mixture of substances.

artificially propagated, in relation to a plant or plant reproductive material, has the meaning given by section 527C.

assess an action includes assess the impacts that the action:

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

assessment report has the meaning given by subsection 130(2).

Australian aircraft has the meaning given by subsection 5(5).

Australian Biosphere reserve management principles has the meaning given by section 340.

Australian Heritage Council means the body established by the *Australian Heritage Council Act 2003*.

Australian IUCN reserve management principles has the meaning given by subsection 348(1).

Australian jurisdiction has the meaning given by subsection 5(5).

Australian Ramsar management principles has the meaning given by section 335.

Australian vessel has the meaning given by subsection 5(5).

Australian Whale Sanctuary has the meaning given by subsection 225(2).

Australian World Heritage management principles has the meaning given by section 323.

authorisation process means a process set out in a law of the Commonwealth or a State or Territory under which actions are authorised.

authorised officer means:

- (a) a warden; or
- (b) an inspector.

baggage has the meaning given by section 443.

bilateral agreement has the meaning given by subsection 45(2).

bilaterally accredited authorisation process has the meaning given by subsection 46(2A).

bilaterally accredited management arrangement has the meaning given by subsection 46(2).

biodiversity means the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes:

- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

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Biodiversity Convention means the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992, as amended and in force for Australia from time to time.

Note: The English text of this Convention is set out in Australian Treaty Series 1993 No. 32.

biological resources includes genetic resources, organisms, parts of organisms, populations and any other biotic component of an ecosystem with actual or potential use or value for humanity.

bioregional assessment, in relation to an area, means the scientific analysis of the ecology, hydrology and geology of the area for the purpose of assessing the potential direct and indirect impacts of coal seam gas development or large coal mining development on water resources in the area, including any impacts of associated salt production and/or salinity.

bioregional plan means a bioregional plan for a bioregion as mentioned in section 176.

Biosphere reserve has the meaning given by section 337.

Board means a Board established under section 377.

Bonn Convention means the Convention on the Conservation of Migratory Species of Wild Animals done at Bonn on 23 June 1979, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1991 No. 32.

bred in captivity, in relation to an animal or animal reproductive material, has the meaning given by section 527B.

CAMBA means the Agreement between the Government of Australia and the Government of the People's Republic of China for the protection of Migratory Birds and their Environment done at Canberra on 20 October 1986, as amended and in force for Australia from time to time.

Note: The English text of the Agreement is set out in Australian Treaty Series 1988 No. 22.

cetacean means a member of the sub-order Mysticeti or Odontoceti of the Order Cetacea, and includes:

- (a) a part of such a member; and
- (b) any animal reproductive material of such a member, or any part of such reproductive material; and
- (c) any product derived from such a member; and
- (d) the whole or part of the dead body of such a member; and
- (e) any product derived from the dead body, or part of the dead body, of such a member.

CITES means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington on 3 March 1973, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1976 No. 29.

CITES I species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix I to CITES.

CITES I specimen means a specimen that belongs to a CITES I species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES II species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix II to CITES.

CITES II specimen means a specimen that belongs to a CITES II species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES III species means a species included in the list referred to in section 303CA, where there is a notation to the effect that the species is included in Appendix III to CITES.

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CITES III specimen means a specimen that belongs to a CITES III species, where there is a notation in the list referred to in section 303CA that describes the specimen.

CITES specimen means:

- (a) a CITES I specimen; or
- (b) a CITES II specimen; or
- (c) a CITES III specimen.

civil penalty provision has the meaning given by section 482.

coal seam gas development means any activity involving coal seam gas extraction that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

- (a) in its own right; or
- (b) when considered with other developments, whether past, present or reasonably foreseeable developments.

coastal sea of Australia or an external Territory has the same meaning as in subsection 15B(4) of the *Acts Interpretation Act 1901*.

coastal waters of a State or the Northern Territory has the meaning given by section 227.

commercial fishing activity has the meaning given by subsection 390SC(1A).

commissioner means a person holding an appointment under paragraph 107(1)(a).

Commonwealth agency means:

- (a) a Minister; or
- (b) a body corporate established for a public purpose by a law of the Commonwealth; or
- (c) a body corporate established by a Minister otherwise than under a law of the Commonwealth; or

- (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the Commonwealth; or
 - (e) a body corporate that is a subsidiary of:
 - (i) a body or company referred to in paragraph (b), (c) or (d); or
 - (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be a Commonwealth agency for the purposes of this definition; or
 - (f) a person holding, or performing the duties of:
 - (i) an office established by or under a law of the Commonwealth (except a judicial office or office of member of a tribunal); or
 - (ii) an appointment made under a law of the Commonwealth (except an appointment to a judicial office or office of member of a tribunal); or
 - (g) a person holding, or performing the duties of, an appointment made by the Governor-General, or by a Minister, otherwise than under a law of the Commonwealth;
- but does not include:
- (h) a person holding an office established by or under any of the following Acts, or holding an appointment made under any of them:
 - (i) the *Northern Territory (Self-Government) Act 1978*;
 - (ii) the *Norfolk Island Act 1979*;
 - (iii) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (i) any of the following:
 - (i) an Aboriginal Land Trust, or an Aboriginal Land Council, established under the *Aboriginal Land Rights (Northern Territory) Act 1976*;
 - (ii) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;

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- (iii) the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; or
- (j) a company prescribed by the regulations for the purposes of this paragraph.

Commonwealth aircraft has the meaning given by section 403.

Commonwealth area has the meaning given by section 525.

Commonwealth Heritage criteria has the meaning given by subsection 341D(1).

Commonwealth Heritage List means the list referred to in section 341C.

Commonwealth Heritage management principles has the meaning given by section 341Y.

Commonwealth Heritage place has the meaning given by subsection 341C(3).

Commonwealth Heritage value has the meaning given by section 341D.

Commonwealth land has the meaning given by section 27.

Commonwealth marine area has the meaning given by section 24.

Commonwealth reserve means a reserve declared under Division 4 of Part 15.

Commonwealth ship has the meaning given by section 403.

components of biodiversity has the meaning given by subsection 171(3).

conservation agreement means an agreement made under section 305.

conservation dependent: a native species may be included in the **conservation dependent** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

conservation dependent species means a listed threatened species that is included in the conservation dependent category of the list referred to in section 178.

conservation order means an order made under section 464 (with variations (if any) under section 466 or 469).

conservation zone means a Commonwealth area that is declared to be a conservation zone under Division 5 of Part 15.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

continental shelf means the continental shelf (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

continuation of a use of land, sea or seabed has the meaning given by section 43B.

control: a Commonwealth agency **controls** a place only if the agency has rights (whether arising under a law, lease, licence or otherwise) to:

- (a) occupy or use the place; and
- (b) take actions in relation to the place that could potentially have an impact on heritage values that the place may have.

controlled action has the meaning given by section 67.

controlling provision has the meaning given by section 67.

convict a person of an offence has a meaning affected by section 527.

copy, when used in relation to a warrant issued under section 409 or 416 (or a form of warrant completed under subsection 409A(6) or 416(6)), includes:

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- (a) a copy sent by fax or other electronic means; or
- (b) a copy of a copy so sent.

country includes a place that is a territory, dependency or colony (however described) of a foreign country.

critical habitat for a listed threatened species or a listed threatened ecological community has the meaning given by subsection 207A(4).

critically endangered:

- (a) a native species may be included in the **critically endangered** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the **critically endangered** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

daily newspaper means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days.

declaration affected person has the meaning given by subsection 390SE(3).

declared commercial fishing activity has the meaning given by subsection 390SC(1).

declared Ramsar wetland has the meaning given by section 17.

declared State or Territory means a State or self-governing Territory that is declared by the Minister under section 505E.

declared World Heritage property has the meaning given by section 13.

designated proponent of an action means the person designated under Division 2 of Part 7 as the proponent of the action.

directed environmental audit has the meaning given by subsection 460(4).

Director of Biosecurity has the same meaning as in the *Biosecurity Act 2015*.

Director means the Director of National Parks referred to in section 514A.

dory means:

- (a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a law of the Commonwealth, a State or a Territory authorising the vessel to be used in association with a primary commercial fishing vessel; or
- (b) a vessel that is used in association with a primary commercial fishing vessel.

Note: A dory might also be known as a tender commercial fishing vessel.

ecological character has the meaning given by subsection 16(3).

ecological community means the extent in nature in the Australian jurisdiction of an assemblage of native species that:

- (a) inhabits a particular area in nature; and
- (b) meets the additional criteria specified in the regulations (if any) made for the purposes of this definition.

ecologically sustainable use of natural resources means use of the natural resources within their capacity to sustain natural processes while maintaining the life-support systems of nature and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the needs and aspirations of future generations.

ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

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eligible seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

endangered:

- (a) a native species may be included in the ***endangered*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the ***endangered*** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

environmental authorisation has the meaning given by section 43A.

environmental authority has the meaning given by subsection 458(4).

environmental law means:

- (a) this Act; or
- (b) the regulations; or
- (c) the *Great Barrier Reef Marine Park Act 1975*; or
- (d) regulations made under the *Great Barrier Reef Marine Park Act 1975*.

environmental penalty provision means:

- (a) a civil penalty provision under this Act; or

- (b) a civil penalty provision under the *Great Barrier Reef Marine Park Act 1975*.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

evidential material has the meaning given by subsection 406(2).

exclusive economic zone means the exclusive economic zone (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

executing officer, in relation to a warrant, means:

- (a) the authorised officer named in the warrant as being responsible for executing the warrant; or
- (b) if that authorised officer does not intend to be present at the execution of the warrant—another authorised officer whose name has been written in the warrant by the authorised officer so named; or
- (c) another authorised officer whose name has been written in the warrant by the authorised officer last named in the warrant.

executive officer of a body corporate has the meaning given by section 493.

extinct: a native species may be included in the **extinct** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

extinct in the wild: a native species may be included in the **extinct in the wild** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13.

Federal Court means the Federal Court of Australia.

Federal Register of Legislation means the Federal Register of Legislation established under the *Legislation Act 2003*.

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

Fisheries Minister means the Minister administering the *Fisheries Management Act 1991*.

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

fishing activity has the meaning given by subsection 390SC(2).

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

foreign whaling vessel has the meaning given by subsection 236(5).

frisk search has the meaning given by subsection 413(3).

genetic resources means any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential value for humanity.

goods has the meaning given by section 443.

Great Barrier Reef Marine Park means the Great Barrier Reef Marine Park established under the *Great Barrier Reef Marine Park Act 1975*.

Great Barrier Reef Marine Park Authority means the Great Barrier Reef Marine Park Authority established by the *Great Barrier Reef Marine Park Act 1975*.

habitat means the biophysical medium or media:

- (a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; or
- (b) once occupied (continuously, periodically or occasionally) by an organism, or group of organisms, and into which organisms of that kind have the potential to be reintroduced.

heritage value of a place includes the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

holder means:

- (a) in the case of a permit issued under Chapter 5—the person to whom the permit was issued or transferred, as the case may be; or
- (b) in the case of an approval under Part 9—the person named in the approval under paragraph 133(2)(c).

impact has the meaning given by section 527E.

important cetacean habitat area means an area declared, by a declaration in force under subsection 228A(1), to be an important cetacean habitat area.

Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development means the Committee established by section 505C.

indigenous heritage value of a place means a heritage value of the place that is of significance to indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history.

indigenous people's land has the meaning given by subsection 363(3).

indigenous person has the meaning given by subsection 363(4).

indigenous tradition has the meaning given by section 201.

inspector means:

- (a) a person appointed as an inspector under section 396;
- (b) a person who is an inspector because of section 397; or
- (c) a person who is an inspector because of an arrangement entered into under section 398.

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interested person has the meaning given by section 475.

interfere with a cetacean has the meaning given by subsection 229B(4).

IUCN category has the meaning given by subsection 346(1).

JAMBA means the Agreement between the Government of Japan and the Government of Australia for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment done at Tokyo on 6 February 1974, as amended and in force for Australia from time to time.

Note: The English text of the Agreement is set out in Australian Treaty Series 1981 No. 6.

jointly managed reserve has the meaning given by subsection 363(5).

Kakadu National Park has the meaning given by subsection 387(3).

Kakadu region has the meaning given by subsection 386(1).

keep a cetacean or member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community means:

- (a) in the case of a cetacean, or a species of animal or community of animals—have charge or possession of the cetacean or member, either in captivity or in a domesticated state; and
- (b) in the case of a species of plant or community of plants—have possession of the member.

key threatening process means a threatening process included in the list referred to in section 183.

land has the meaning given by subsection 345(2).

land council for indigenous people's land has the meaning given by subsection 363(2).

large coal mining development means any coal mining activity that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

- (a) in its own right; or
- (b) when considered with other developments, whether past, present or reasonably foreseeable developments.

large-scale disposal facility for radioactive waste has a meaning affected by subsection 22(2).

list includes a list containing no items.

listed marine species means a marine species included in the list referred to in section 248.

listed migratory species means a migratory species included in the list referred to in section 209.

listed threatened ecological community means an ecological community included in the list referred to in section 181.

listed threatened species means a native species included in the list referred to in section 178.

List of Overseas Places of Historic Significance to Australia means the record referred to in section 390K.

live animal includes animal reproductive material.

live plant includes plant reproductive material.

longfin mako shark means the listed migratory species with the common name longfin mako shark and the scientific name *Isurus paucus*.

magistrate means a magistrate who is remunerated by salary or otherwise, and includes a Judge, or acting Judge, of the Local Court of the Northern Territory.

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management arrangement includes:

- (a) a management plan; and
- (b) a regime; and
- (c) a policy.

master of a foreign whaling vessel has the meaning given by subsection 236(5).

matter protected by a provision of Part 3 has the meaning given by section 34.

member includes:

- (a) in relation to a species of animal (other than a species of cetacean):
 - (i) any part of an animal of the species; and
 - (ii) any animal reproductive material of an animal of the species, or any part of such reproductive material; and
 - (iii) the whole or any part of the dead body of an animal of the species; and
- (b) in relation to a species of plant:
 - (i) any part of a plant of the species; and
 - (ii) any plant reproductive material of a plant of the species, or any part of such reproductive material; and
 - (iii) the whole or any part of a plant of the species that has died; and
- (c) in relation to an ecological community:
 - (i) any part of an animal or plant of the community; and
 - (ii) any animal reproductive material of an animal, or plant reproductive material of a plant, of the community, or any part of such animal reproductive material or plant reproductive material; and
 - (iii) the whole or any part of an animal or plant of the community that has died.

migration zone has the same meaning as in the *Migration Act 1958*.

migratory species has the meaning given by subsection 209(8).

mineral has the meaning given by subsection 355(3).

mining operations has the meaning given by subsection 355(2).

monitoring power relating to premises has the meaning given by section 407.

monitoring warrant has the meaning given by section 409.

National Heritage criteria has the meaning given by subsection 324D(1).

National Heritage List means the list referred to in section 324C.

National Heritage management principles has the meaning given by section 324Y.

National Heritage place has the meaning given by subsection 324C(3).

National Heritage value has the meaning given by section 324D.

native amphibian means an amphibian of a native species.

native animal means an animal of a native species.

native bird means a bird of a native species.

native mammal means a mammal of a native species.

native plant means a plant of a native species.

native reptile means a reptile of a native species.

native species means a species:

- (a) that is indigenous to Australia or an external Territory; or
- (b) that is indigenous to the seabed of the coastal sea of Australia or an external Territory; or
- (c) that is indigenous to the continental shelf; or
- (d) that is indigenous to the exclusive economic zone; or

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- (e) members of which periodically or occasionally visit:
 - (i) Australia or an external Territory; or
 - (ii) the exclusive economic zone; or
- (f) that was present in Australia or an external Territory before 1400.

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

nuclear action has the meaning given by subsection 22(1).

nuclear installation has the meaning given by subsection 22(1).

occupier of premises means the person apparently in charge of the premises.

officer assisting, in relation to a warrant, means:

- (a) an authorised officer who is assisting in executing the warrant; or
- (b) a person who is not an authorised officer, but who has been authorised by the relevant executing officer to assist in executing the warrant.

officer of Customs has the same meaning as it has in the *Customs Act 1901*.

ordinary search has the meaning given in subsection 414(3).

organism includes:

- (a) a virus; and
- (b) the reproductive material of an organism; and
- (c) an organism that has died.

place includes:

- (a) a location, area or region or a number of locations, areas or regions; and
- (b) a building or other structure, or group of buildings or other structures (which may include equipment, furniture, fittings

and articles associated or connected with the building or structure, or group of buildings or structures); and

- (c) in relation to the protection, maintenance, preservation or improvement of a place—the immediate surroundings of a thing in paragraph (a) or (b).

plant means a member, alive or dead, of the plant kingdom or of the fungus kingdom, and includes a part of a plant and plant reproductive material.

plant reproductive material means:

- (a) a seed or spore of a plant; or
- (b) a cutting from a plant; or
- (c) any other part, or product, of a plant from which another plant can be produced.

population of a species or ecological community means an occurrence of the species or community in a particular area.

porbeagle shark means the listed migratory species with the common name porbeagle shark and the scientific name *Lamna nasus*.

precautionary principle has the meaning given by subsection 391(2).

premises includes a place, vehicle, vessel and aircraft.

prescribed waters means waters in respect of which regulations made for the purposes of section 226 are in force.

primary commercial fishing vessel means:

- (a) a vessel in relation to which a licence or other permission (however described and whether or not in force) has been granted under a law of the Commonwealth, a State or a Territory authorising the vessel to be used to take fish for commercial purposes; or
- (b) a vessel that is used to take fish for commercial purposes.

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principles of ecologically sustainable development has a meaning affected by section 3A.

progeny includes:

- (a) in relation to an animal—any animal reproductive material of that animal or of any progeny of that animal; and
- (b) in relation to a plant—any plant reproductive material of that plant or of any progeny of that plant; and
- (c) in relation to a live animal that is animal reproductive material—any animal resulting from that material or any progeny of such animal; and
- (d) in relation to a live plant that is plant reproductive material—any plant resulting from that material or any progeny of such plant.

To avoid doubt, a reference in this Act to ***progeny*** of an animal or a plant includes a reference to any descendant of that animal or plant.

radioactive waste has the meaning given by subsection 22(1).

Ramsar Convention means the Convention on Wetlands of International Importance especially as Waterfowl Habitat done at Ramsar, Iran, on 2 February 1971, as amended and in force for Australia from time to time.

Note: The English Text of the Convention is set out in Australian Treaty Series 1975 No. 48.

range of a species means the area where members of the species live, feed, breed or visit periodically or regularly.

ranger means a person holding an appointment as a ranger under Part 17.

recovery plan means a plan made or adopted under section 269A.

regulated live specimen has the meaning given by section 303EA.

regulated native specimen has the meaning given by section 303DA.

relevant impacts of an action has the meaning given by section 82.

remediation determination means a determination, as in force from time to time, made under section 480D.

remediation order means an order, as in force from time to time, made under section 480A.

reprocessing has the meaning given by subsection 22(1).

Scientific Committee means the Threatened Species Scientific Committee established by section 502.

seabed has the meaning given by subsection 345(2).

Secretary means the Secretary of the Department that:

- (a) deals with the matter to which the provision containing the reference relates; and
- (b) is administered by the Minister administering the provision.

seized has a meaning affected by section 406B.

self-governing Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory.

shortfin mako shark means the listed migratory species with the common name shortfin mako shark and the scientific name *Isurus oxyrinchus*.

species means a group of biological entities that:

- (a) interbreed to produce fertile offspring; or
- (b) possess common characteristics derived from a common gene pool;

and includes:

- (c) a sub-species; and
- (ca) for the purposes of Part 13A—a distinct population of such biological entities; and

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- (d) except for the purposes of Part 13A—a distinct population of such biological entities that the Minister has determined, under section 517, to be a species for the purposes of this Act.

In this definition, *the purposes of Part 13A*:

- (a) include the purposes of the definitions of *CITES I species*, *CITES II species* and *CITES III species*; and
- (b) do not include determining the meaning of the expression *listed threatened species* when used in Part 13A.

specific environmental authorisation has the meaning given by section 43A.

specimen has the meaning given by section 527A.

spent nuclear fuel has the meaning given by subsection 22(1).

subsidiary of a body corporate has a meaning affected by section 526.

sub-species means a geographically separate population of a species, being a population that is characterised by morphological or biological differences from other populations of that species.

take, except in Part 13A, includes:

- (a) in relation to an animal—harvest, catch, capture and trap; and
- (b) in relation to a plant—harvest, pick, gather and cut.

Note: For the meaning of *take* in Part 13A, see section 303BC.

taxon means any taxonomic category (for example, a species or a genus), and includes a particular population.

terms of reference:

- (a) in relation to an inquiry under Division 7 of Part 8—has the meaning given by paragraph 107(1)(b); and
- (b) in relation to an assessment under Division 3 of Part 15B—has the meaning given by paragraph 390SH(1)(b).

territorial sea means the territorial sea (as defined in the *Seas and Submerged Lands Act 1973*) of Australia (including its external Territories).

threat abatement plan means a plan made or adopted under section 270B.

threatening process has the meaning given by subsection 188(3).

trade:

- (a) when used in the context of a reference to a member of a listed threatened species, listed migratory species, listed marine species or listed threatened ecological community—includes:
 - (i) buy the member, agree to receive it under an agreement to buy, agree to accept it under such an agreement or acquire it by barter; or
 - (ii) sell the member, offer it for sale, agree to sell it, have it in possession for the purpose of sale, deliver it for the purpose of sale, receive it for the purpose of sale or dispose of it by barter for the purpose of gain or advancement; or
 - (iii) export the member from Australia or an external Territory or import it into Australia or an external Territory; or
 - (iv) cause or allow any of the acts referred to in subparagraph (i), (ii) or (iii) to be done; or
- (b) when used in the context of a reference to a cetacean (not being a reference that covers a cetacean because a cetacean is a member referred to in paragraph (a))—has the meaning given by subsection 229B(4).

traditional owners of indigenous people's land has the meaning given by subsection 368(4).

treat a cetacean has the meaning given by subsection 229D(3).

Uluru-Kata Tjuta National Park has the meaning given by subsection 344(3).

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Uluru region has the meaning given by subsection 386(2).

usage right has the meaning given by subsection 350(7).

vehicle includes a hovercraft.

vessel means a ship, boat, raft or pontoon or any other thing capable of carrying persons or goods through or on water and includes a floating structure and hovercraft.

vulnerable:

- (a) a native species may be included in the ***vulnerable*** category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13; and
- (b) an ecological community may be included in the ***vulnerable*** category of the list of threatened ecological communities in accordance with Subdivision A of Division 1 of Part 13.

warden means a person holding an appointment as a warden under Part 17.

warrant premises means premises in relation to which a warrant is in force.

water resource has the same meaning as in the *Water Act 2007*.

wetland has the same meaning as in the Ramsar Convention.

whale watching has the meaning given by section 238.

wildlife means:

- (a) an animal; or
- (b) a specimen derived from an animal; or
- (c) a plant; or
- (d) a specimen derived from a plant.

wildlife conservation plan means a plan of a kind referred to in section 285 that has been made or adopted under that section.

World Heritage Convention means the Convention for the Protection of the World Cultural and Natural Heritage done at Paris

on 23 November 1972, as amended and in force for Australia from time to time.

Note: The English text of the Convention is set out in Australian Treaty Series 1975 No. 47.

World Heritage List means the list kept under that title under Article 11 of the World Heritage Convention.

world heritage values of a property has the meaning given by subsection 12(3).

Schedule 1—Provisions relating to detention of suspected foreign offenders

Note: See section 433B.

Part 1—Preliminary

Division 1—Objects of this Schedule

1 Main objects of this Schedule

- (1) This Schedule has 3 main objects.
- (2) The first main object is to provide for the detention (*environment detention*) in Australia or a Territory of persons who:
 - (a) are reasonably suspected by an authorised officer of having committed an offence:
 - (i) involving the use of a foreign vessel; or
 - (ii) in the Australian jurisdiction but outside the migration zone; and
 - (b) are not Australian citizens or Australian residents;
for a limited period for the purposes of determining whether to charge them with the offence.
- (3) The second main object is to provide for persons in environment detention to be searched, screened, given access to facilities for obtaining legal advice, and identified.
- (4) The third main object is to facilitate the transition of persons from environment detention to immigration detention under the *Migration Act 1958*:
 - (a) by providing for the things mentioned in subclause (3) to be done in a way corresponding to the way that Act provides for those things to be done to persons in immigration detention; and

- (b) by authorising the disclosure of personal information about individuals who are or have been in environment detention to persons, agencies and organisations responsible for holding the individuals in immigration detention, for the purpose of the immigration detention and welfare of the individuals.

Note: The enforcement visa of a person who is neither an Australian citizen nor an Australian resident ceases to have effect under the *Migration Act 1958* when the person ceases to be in environment detention, so that Act requires the person to be taken into immigration detention.

Division 2—Definitions

2 Definitions

In this Schedule, unless the contrary intention appears:

approved officer means:

- (a) an authorised officer (other than a person who is an authorised officer because of subsection 397(3)); or
- (b) a detention officer;

who is approved under Division 4 for the purposes of the provision in which the expression occurs.

Australian resident means:

- (a) a person who holds a permanent visa (as defined in the *Migration Act 1958*) that is in effect; or
- (b) a New Zealand citizen who is usually resident in Australia or a Territory and who holds a special category visa (as defined in the *Migration Act 1958*) that is in effect; or
- (c) any other person who is usually resident in Australia or a Territory and whose continued presence in Australia or a Territory is not subject to a limitation as to time imposed by law.

authorised Migration Act officer means an authorised officer, within the meaning of the *Migration Act 1958*.

detainee means a person detained under Part 2.

detention means detention under Part 2.

detention officer means a person appointed under clause 3 to be a detention officer.

foreign vessel means a vessel that is not an Australian vessel.

Division 3—Appointment etc. of detention officers

3 Minister may appoint persons to be detention officers

- (1) The Minister may, by instrument, appoint one or more persons (except persons who are authorised officers) to be detention officers.

Note: Authorised officers have the same powers as detention officers, as well as other powers, so there is no reason for authorised officers to be appointed as detention officers.

- (2) An instrument appointing persons to be detention officers:
- (a) may identify the persons by reference to a class; and
 - (b) may provide for persons to be appointed when they become members of the class at or after a time specified in the instrument.

4 Detention officers subject to directions

- (1) A detention officer is, in the exercise of his or her powers, and the performance of his or her duties, under this Schedule, subject to the directions given by the Minister.
- (2) A direction given by the Minister under subclause (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction. See regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

5 Detention officer etc. not liable to certain actions

- (1) A detention officer, or a person assisting a detention officer in the exercise of powers under this Schedule or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the

Schedule 1 Provisions relating to detention of suspected foreign offenders

Part 1 Preliminary

Division 3 Appointment etc. of detention officers

Clause 5

exercise or purported exercise of any power conferred by this Schedule or by regulations made for the purposes of this Schedule.

Note: Section 498A makes similar provision for authorised officers and their assistants.

- (2) However, subclause (1) does not affect a contractual liability of a detention officer or person assisting a detention officer.

Division 4—Approval of authorised officers and detention officers**6 The Secretary may approve authorised officers and detention officers**

- (1) The Secretary may, by instrument, approve one or more authorised officers and/or detention officers for the purposes of a specified provision of this Schedule, from among authorised officers and/or detention officers who have successfully completed minimum training prescribed by the regulations.
- (2) An instrument approving authorised officers and/or detention officers:
 - (a) may identify them by reference to a class; and
 - (b) may provide for them to be approved when they become members of the class at or after a time specified in the instrument.

7 Persons who are authorised officers for purposes of the *Migration Act 1958* are taken to be approved for this Schedule

- (1) A person who:
 - (a) is an authorised officer or a detention officer; and
 - (b) is an authorised Migration Act officer for a provision of the *Migration Act 1958* listed in column 2 of an item of the table;is, while he or she meets the conditions in paragraphs (a) and (b), taken to be approved under clause 6 for the purposes of the provision of this Schedule listed in column 3 of the item.

Corresponding provisions of the <i>Migration Act 1958</i> and this Schedule		
Column 1 Item	Column 2 Provision of the <i>Migration Act 1958</i>	Column 3 Provision of this Schedule
1	Subsection 252(4)	Subclause 15(3)

Schedule 1 Provisions relating to detention of suspected foreign offenders

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Division 4 Approval of authorised officers and detention officers

Clause 7

Corresponding provisions of the <i>Migration Act 1958</i> and this Schedule		
Column 1 Item	Column 2 Provision of the <i>Migration Act 1958</i>	Column 3 Provision of this Schedule
2	Paragraph 252(6)(a)	Paragraph 15(5)(a)
3	Subparagraph 252(6)(b)(i)	Subparagraph 15(5)(b)(i)
4	Subsection 252AA(1)	Subclause 16(1)
5	Subsection 252A(1)	Subclause 17(1)
6	Subsection 252C(1)	Subclause 19(1)
7	Subsection 252D(2)	Subclause 20(2)
8	Subsection 252G(3)	Subclause 22(3)
9	Section 261AA	Clause 28
10	Subsection 261AE(1)	Subclause 32(1)
11	Subsection 261AE(3)	Subclause 32(3)
12	Section 261AG	Clause 34
13	Section 261AJ	Clause 37
14	Subsection 261AK(1) (except paragraph (a))	Subclause 38(1) (except paragraph (a))
15	Subsection 261AK(3)	Subclause 38(3)

Limits on approval

- (2) However, the person is not taken to be approved to carry out an identification test in relation to which section 5D of the *Migration Act 1958* provides that the person is not an authorised officer (for the purposes of that Act).

Note: This is relevant to items 9 to 15 of the table in subclause (1).

Persons specified by Secretary not approved

- (3) The Secretary may, by instrument, specify that the person is not taken to be approved:
- (a) for the purposes of the provision of this Schedule; or
 - (b) for the purposes of carrying out under this Schedule identification tests of a type specified under

section 5D of the *Migration Act 1958* in relation to the person.

The instrument has effect according to its terms, despite subclause (1).

- (4) An instrument under subclause (3) may specify one or more persons by reference to their being members of a specified class at or after a time specified in the instrument.
- (5) An instrument made under subclause (3) is not a legislative instrument.

Part 2—Detaining suspected foreign offenders

Division 1—Initial detention by an authorised officer

8 Power to detain

- (1) An authorised officer may detain a person in Australia or a Territory for the purposes of determining during the period of detention whether or not to charge the person with an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, if the authorised officer has reasonable grounds to believe that the person:
 - (a) is not an Australian citizen or an Australian resident; and
 - (b) either or both of the following:
 - (i) was on a foreign vessel when it was used or otherwise involved in the commission of the offence;
 - (ii) committed the offence in the Australian jurisdiction but outside the migration zone.
- (2) Subclause (1) does not authorise an authorised officer to use more force in detaining a person than is reasonably necessary.

9 Relationship with Part IC of the *Crimes Act 1914*

- (1) Part IC of the *Crimes Act 1914* applies in relation to the detainee while detained under this Part as if:
 - (a) he or she were a protected suspect for a Commonwealth offence for the purposes of that Part; and
 - (b) an authorised officer were an investigating official for the purposes of that Part.
- (2) Subclause (1) does not affect the operation of Division 2 of Part IC of the *Crimes Act 1914* as it applies of its own force in relation to a person who is lawfully arrested.

Division 2—Continued detention by a detention officer

10 Detention officer may detain person already detained by authorised officer

- (1) For the purposes of facilitating an authorised officer determining whether or not to charge a person with an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, a detention officer may detain the person in Australia or a Territory if the detention officer has reasonable grounds to believe that the person:
 - (a) has been detained by an authorised officer under Division 1;
and
 - (b) has been presented, while detained by that authorised officer, to a detention officer for detention by a detention officer.
- (2) However, the detention officer may not detain the person if the detention officer has reasonable grounds to believe that the person has ceased to be in detention since the last time the person was detained by an authorised officer under Division 1.
- (3) Subclause (1) does not authorise a detention officer to use more force in detaining a person than is reasonably necessary.

Division 3—Detention on behalf of an authorised officer or detention officer

11 Detention on behalf of an authorised officer or detention officer

- (1) A person is taken to be detained by an authorised officer or detention officer under this Part while the person is held, on behalf of the authorised officer or detention officer, in any of the following:
 - (a) a prison or remand centre;
 - (b) a police station or watch house;
 - (c) a hospital or other place where the person is receiving medical treatment;
 - (d) another place approved by the Minister in writing;
 - (e) a vessel.
- (2) This clause has effect even while the authorised officer or detention officer is not present where the person is held on behalf of the authorised officer or detention officer.
- (3) An approval of a place by the Minister is not a legislative instrument.

Division 4—Moving detainees

12 Power to move detainees

- (1) An authorised officer or detention officer may:
 - (a) take a detainee in Australia to another place in Australia or to a place in an external Territory; and
 - (b) take a detainee in an external Territory to another place in the Territory or to a place in Australia or another Territory.
- (2) Subclause (1) does not authorise an authorised officer or detention officer to use more force than is reasonably necessary to take the detainee to the place.
- (3) In exercising the power under subclause (1), the authorised officer or detention officer must have regard to all matters that he or she considers relevant, including:
 - (a) the administration of justice; and
 - (b) the welfare of the detainee.

Division 5—End of detention

13 End of detention

A detainee must be released from detention:

- (a) as soon as an authorised officer or detention officer knows or reasonably believes that the detainee is an Australian citizen or an Australian resident; or
 - (b) at the time the detainee is brought before a magistrate following a decision to charge the detainee with an offence referred to in subclause 8(1); or
 - (c) at the time a decision is made not to charge the detainee with an offence referred to in that subclause; or
 - (d) at the end of 168 hours after the detention began;
- whichever occurs first.

Division 6—Offence of escaping from detention

14 Escape from detention

- (1) A person commits an offence if:
 - (a) the person is in detention; and
 - (b) the person escapes from that detention.
- (2) The offence is punishable on conviction by imprisonment for up to 2 years.

Part 3—Searching and screening detainees and screening their visitors

Division 1—Searches of detainees

15 Searches of detainees

- (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched.
- (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows:
 - (a) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to help the detainee to escape from detention;
 - (b) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a document or other thing that is, or may be, evidence of:
 - (i) an offence against an environmental law; or
 - (ii) an offence against section 6 of the *Crimes Act 1914* relating to an offence described in subparagraph (i).
- (3) If, in the course of a search under this clause, a weapon or other thing referred to in paragraph (2)(a), or a document or other thing referred to in paragraph (2)(b), is found, an approved officer:
 - (a) may take possession of the weapon, document or other thing; and
 - (b) may retain the weapon, document or other thing for such time 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*.

- (4) This clause does not authorise an approved officer, or another person conducting a search pursuant to subclause (5), to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (5) A search under this clause of a detainee, and the detainee's clothing, must be conducted by:
 - (a) an approved officer of the same sex as the detainee; or
 - (b) in a case where an approved officer of the same sex as the detainee is not available to conduct the search—any other person who is of the same sex and:
 - (i) is requested by an approved officer; and
 - (ii) agrees;to conduct the search.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an approved officer, conducts a search under this clause if the person acts in good faith and does not contravene subclause (7).
- (7) An approved officer or other person who conducts a search under this clause must not use more force, or subject a detainee to greater indignity, than is reasonably necessary in order to conduct the search.
- (8) To avoid doubt, a search of a detainee may be conducted under this clause irrespective of whether a screening procedure is conducted in relation to the detainee under clause 16 or a strip search of the detainee is conducted under clause 17.

Note: This clause corresponds closely to section 252 of the *Migration Act 1958*.

Division 2—Screening of detainees

16 Power to conduct a screening procedure

- (1) A screening procedure in relation to a detainee, other than a detainee to whom clause 23 applies, may be conducted by an approved officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
 - (a) to inflict bodily injury; or
 - (b) to help the detainee, or any other detainee, to escape from detention.
- (2) An approved officer who conducts a screening procedure under this clause must not use greater force, or subject the detainee to greater indignity, than is reasonably necessary in order to conduct the screening procedure.
- (3) This clause does not authorise an approved officer to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (4) To avoid doubt, a screening procedure may be conducted in relation to a detainee under this clause irrespective of whether a search of the detainee is conducted under clause 15 or 17.
- (5) In this clause:

conducting a screening procedure, in relation to a detainee, means:

 - (a) causing the detainee to walk, or to be moved, through screening equipment; or
 - (b) passing hand-held screening equipment over or around the detainee or around things in the detainee's possession; or

- (c) passing things in the detainee's possession through screening equipment or examining such things by X-ray.

screening equipment means a metal detector or similar device for detecting objects or particular substances.

Note: This clause corresponds closely to section 252AA of the *Migration Act 1958*.

Division 3—Strip searches of detainees

17 Power to conduct a strip search

- (1) A strip search of a detainee, other than a detainee to whom clause 23 applies, may be conducted by an approved officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:

- (a) to inflict bodily injury; or
- (b) to help the detainee, or any other detainee, to escape from detention.

Note: Clause 18 sets out rules for conducting a strip search under this clause.

- (2) A **strip search** of a detainee means a search of the detainee, of his or her clothing or of a thing in his or her possession. It may include:

- (a) requiring the detainee to remove some or all of his or her clothing; and
- (b) an examination of that clothing and of the detainee's body (but not of the detainee's body cavities).

- (3) A strip search of a detainee may be conducted by an approved officer only if:

- (a) an authorised officer or detention officer suspects on reasonable grounds that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause (1); and
- (b) the authorised officer, or detention officer, referred to in paragraph (a) suspects on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and
- (c) the strip search is authorised as follows:
 - (i) if the detainee is at least 18—the Secretary, the Director, the Chairperson of the Great Barrier Reef Marine Park Authority or an SES Band 3 employee in

- the Department (who is not the authorised officer referred to in paragraphs (a) and (b) nor the approved officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions;
- (ii) if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.
- (4) An authorised officer or detention officer may form a suspicion on reasonable grounds for the purposes of paragraph (3)(a) on the basis of:
- (a) a search conducted under clause 15 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or
 - (b) a screening procedure conducted under clause 16 (whether by that authorised officer or detention officer or by another authorised officer or detention officer); or
 - (c) any other information that is available to the authorised officer or detention officer.
- (5) An authorisation of a strip search given for the purposes of subparagraph (3)(c)(i):
- (a) may be given by telephone, fax or other electronic means; and
 - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of a strip search conducted on the basis of that authorisation.
- (8) The power to authorise a strip search under subparagraph (3)(c)(i) cannot be delegated to any other person.

Clause 18

- (9) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (10) The magistrate need not accept the power conferred.
- (11) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.
- (12) To avoid doubt, a strip search of a detainee may be conducted under this clause irrespective of whether a search of the detainee is conducted under clause 15 or a screening procedure is conducted in relation to the detainee under clause 16.
- (13) In this clause:

SES Band 3 employee means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 252A of the *Migration Act 1958*.

18 Rules for conducting a strip search

- (1) A strip search of a detainee under clause 17:
 - (a) must not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search; and
 - (b) must be conducted in a private area; and
 - (c) must be conducted by an approved officer of the same sex as the detainee; and
 - (d) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person who is of the opposite sex to the detainee; and
 - (e) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the strip search; and

- (f) must not be conducted on a detainee who is under 10; and
 - (g) if the detainee is at least 10 but under 18, or is incapable of managing his or her affairs—must be conducted in the presence of:
 - (i) the detainee's parent or guardian if that person is in detention with the detainee and is readily available at the same place; or
 - (ii) if that is not acceptable to the detainee or subparagraph (i) does not apply—another person (other than an approved officer) who is capable of representing the detainee's interests and who, as far as is practicable in the circumstances, is acceptable to the detainee; and
 - (h) subject to subclause (4), if the detainee is at least 18, and is not incapable of managing his or her affairs—must be conducted in the presence of another person (if any) nominated by the detainee, if that other person is readily available at the same place as the detainee, and willing to attend the strip search within a reasonable time; and
 - (i) must not involve a search of the detainee's body cavities; and
 - (j) must not involve the removal of more items of clothing, or more visual inspection, than the approved officer conducting the search believes on reasonable grounds to be necessary to determine whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause 17(1); and
 - (k) must not be conducted with greater force than is reasonably necessary to conduct the strip search.
- (2) Paragraphs (1)(d) and (e) do not apply to a parent or guardian, or person present because of subparagraph (1)(g)(ii), if the detainee has no objection to that person being present.
- (3) Paragraphs (1)(d) and (e) do not apply to a person nominated by the detainee under paragraph (1)(h) to attend the strip search.
- (4) Neither:
- (a) a detainee's refusal or failure to nominate a person under paragraph (1)(h) within a reasonable time; nor
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Schedule 1 Provisions relating to detention of suspected foreign offenders

Part 3 Searching and screening detainees and screening their visitors

Division 3 Strip searches of detainees

Clause 18

- (b) a detainee's inability to nominate a person under that paragraph who is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time;prevents a strip search being conducted.
- (5) A strip search of a detainee may be conducted with the assistance of another person if the approved officer conducting the strip search considers that to be necessary for the purposes of conducting it. That person must not be of the opposite sex to the detainee unless:
 - (a) the person is a medical practitioner; and
 - (b) a medical practitioner of the same sex as the detainee is not available within a reasonable time.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an approved officer, assists in conducting a strip search if the person acts in good faith and does not contravene this clause.
- (7) A detainee must be provided with adequate clothing if during or as a result of a strip search any of his or her clothing is:
 - (a) damaged or destroyed; or
 - (b) retained under clause 19.

Note: This clause corresponds closely to section 252B of the *Migration Act 1958*.

Division 4—Keeping of things found by screening or strip search of detainees

19 Possession and retention of certain things obtained during a screening procedure or strip search

- (1) An approved officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing:
 - (a) might provide evidence of the commission of an offence against an environmental law, or an offence against section 6 of the *Crimes Act 1914* relating to such an offence; or
 - (b) is forfeited or forfeitable to the Commonwealth.
- (2) A weapon or other thing described in subclause 16(1) or 17(1) that is found in the course of conducting a screening procedure under clause 16 or a strip search under clause 17 is forfeited to the Commonwealth.
- (3) An approved officer must not return a thing that is forfeited or forfeitable to the Commonwealth. Instead, the approved officer must, as soon as practicable, give a thing that is forfeited under subclause (2) to a constable (within the meaning of the *Crimes Act 1914*).

Note: See sections 450 and 451 of this Act, which deal with court-ordered forfeiture and how forfeited items are to be dealt with.
- (4) An approved officer must take reasonable steps to return anything that is not forfeited or forfeitable but is retained under subclause (1) to the person from whom it was taken, or to the owner if that person is not entitled to possess it, if one of the following happens:
 - (a) it is decided that the thing is not to be used in evidence;
 - (b) the period of 60 days after the approved officer takes possession of the thing ends.

Clause 20

- (5) However, the approved officer does not have to take those steps if:
- (a) in a paragraph (4)(b) case:
 - (i) proceedings in respect of which the thing might provide evidence have been instituted before the end of the 60 day period and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (ii) the approved officer may retain the thing because of an order under clause 21; or
 - (b) in any case—the approved officer is otherwise authorised (by a law, or an order of a court or a tribunal, of the Commonwealth or a State or Territory) to retain, destroy or dispose of the thing.

Note: This clause corresponds closely to section 252C of the *Migration Act 1958*.

20 Approved officer may apply for a thing to be retained for a further period

- (1) This clause applies if an approved officer has taken possession of a thing referred to in subclause 19(4) and proceedings in respect of which the thing might provide evidence have not commenced before the end of:
- (a) 60 days after the approved officer takes possession of the thing; or
 - (b) a period previously specified in an order of a magistrate under clause 21.
- (2) The approved officer may apply to a magistrate for an order that the approved officer may retain the thing for a further period.
- (3) Before making the application, the approved officer must:
- (a) take reasonable steps to discover which persons' interests would be affected by the retention of the thing; and
 - (b) if it is practicable to do so, notify each person who the approved officer believes to be such a person of the proposed application.
- (4) A notice under paragraph (3)(b) is not a legislative instrument.
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Note: This clause corresponds closely to section 252D of the *Migration Act 1958*.

21 Magistrate may order that thing be retained

- (1) The magistrate may order that the approved officer who made an application under clause 20 may retain the thing if the magistrate is satisfied that it is necessary for the approved officer to do so:
 - (a) for the purposes of an investigation as to whether an offence has been committed; or
 - (b) to enable evidence of an offence to be secured for the purposes of a prosecution.
- (2) The order must specify the period for which the approved officer may retain the thing.
- (3) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (4) The magistrate need not accept the power conferred.
- (5) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

Note: This clause corresponds closely to section 252E of the *Migration Act 1958*.

Division 5—Screening detainees' visitors

22 Powers concerning entry to premises where detainee is detained

- (1) An authorised officer or detention officer may request that a person about to enter premises where a detainee is in detention do one or more of the following:
 - (a) walk through screening equipment;
 - (b) allow an authorised officer or detention officer to pass hand-held screening equipment over or around the person or around things in the person's possession;
 - (c) allow things in the person's possession to pass through screening equipment or to be examined by X-ray.
- (2) **Screening equipment** means a metal detector or similar device for detecting objects or particular substances.
- (3) If an approved officer suspects on reasonable grounds that a person about to enter premises where a detainee is in detention has in the person's possession a thing that might:
 - (a) endanger the safety of the detainees, staff or other persons on the premises; or
 - (b) disrupt the order or security arrangements on the premises;the approved officer may request that the person do some or all of the things in subclause (4) for the purpose of finding out whether the person has such a thing. A request may be made whether or not a request is also made to the person under subclause (1).
- (4) An approved officer may request that the person do one or more of the following:
 - (a) allow the approved officer to inspect the things in the person's possession;
 - (b) remove some or all of the person's outer clothing such as a coat, jacket or similar item;
 - (c) remove items from the pockets of the person's clothing;

- (d) open a thing in the person's possession, or remove the thing's contents, to allow the approved officer to inspect the thing or its contents;
- (e) leave a thing in the person's possession, or some or all of its contents, in a place specified by the approved officer if he or she suspects on reasonable grounds that the thing or its contents are capable of concealing something that might:
 - (i) endanger the safety of the detainees, staff or other persons on the premises; or
 - (ii) disrupt the order or security arrangements on the premises.
- (5) A person who leaves a thing (including any of its contents) in a place specified by an approved officer is entitled to its return when the person leaves the premises.
- (6) However, if possession of the thing, or any of those contents, by the person is unlawful under a Commonwealth, State or Territory law applying to the premises:
 - (a) the thing or the contents must not be returned to the person; and
 - (b) an approved officer must, as soon as practicable, give the thing or the contents to a constable (within the meaning of the *Crimes Act 1914*).
- (7) A person who is about to enter premises where a detainee is detained may be refused entry if the person does not comply with a request under this clause.

Note: This clause corresponds closely to section 252G of the *Migration Act 1958*.

Division 6—Law applying to detainee in State or Territory prison etc.

23 Detainees held in State or Territory prisons or remand centres

- (1) This clause applies to a detainee if:
 - (a) the detainee is held in detention in a prison or remand centre of a State or Territory; and
 - (b) a law of that State or Territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre.
- (2) To the extent that the State or Territory law confers that power, or affects the exercise of that power, it applies to the detainee as though it were a law of the Commonwealth.
- (3) Clauses 16 and 17 do not apply to a detainee to whom this clause applies.

Note: This clause corresponds closely to section 252F of the *Migration Act 1958*.