

# ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 - SECT 3

## Objects of Act

(1) The objects of this Act are:

(a) to provide for the protection of the [environment](#), especially those aspects of the [environment](#) that are matters of national [environmental](#) significance; and

(b) to promote ecologically sustainable development through the conservation and [ecologically sustainable use](#) of natural resources; and

(c) to promote the conservation of [biodiversity](#); and

(ca) to provide for the protection and conservation of heritage; and

(d) to promote a co-operative approach to the protection and management of the [environment](#) involving governments, the community, [land](#)-holders and indigenous peoples; and

(e) to assist in the co-operative implementation of Australia's international [environmental](#) responsibilities; and

(f) to recognise the role of indigenous people in the conservation and [ecologically sustainable use](#) of Australia's [biodiversity](#); and

(g) to promote the use of indigenous peoples' knowledge of [biodiversity](#) with the involvement of, and in co-operation with, the owners of the knowledge.

(2) In order to achieve its objects, the Act:

(a) recognises an appropriate role for the Commonwealth in relation to the [environment](#) by focussing Commonwealth involvement on matters of national [environmental](#) significance and on Commonwealth [actions](#) and [Commonwealth areas](#); and

(b) strengthens intergovernmental co-operation, and minimises duplication, through [bilateral agreements](#); and

(c) provides for the intergovernmental accreditation of [environmental assessment](#) and approval processes; and

(d) adopts an efficient and timely Commonwealth [environmental assessment](#) and approval process that will ensure activities that are likely to have significant [impacts](#) on the [environment](#) are properly [assessed](#); and

(e) enhances Australia's capacity to ensure the conservation of its [biodiversity](#) by including provisions to:

(i) protect [native species](#) (and in particular prevent the [extinction](#), and promote the recovery, of threatened species) and ensure the conservation of [migratory species](#); and

(ii) establish an [Australian Whale Sanctuary](#) to ensure the conservation of whales and other [cetaceans](#); and

(iii) protect [ecosystems](#) by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and

(iv) identify processes that threaten all levels of [biodiversity](#) and implement plans to address these processes; and

(f) [includes](#) provisions to enhance the protection, conservation and presentation of world heritage properties and the conservation and wise use of Ramsar [wetlands](#) of international [importance](#); and

(fa) [includes](#) provisions to identify [places](#) for inclusion in the [National Heritage List](#) and [Commonwealth Heritage List](#) and to enhance the protection, conservation and presentation of those [places](#); and

(g) promotes a partnership approach to [environmental](#) protection and [biodiversity](#) conservation through:

(i) [bilateral agreements](#) with States and Territories; and

(ii) [conservation agreements](#) with [land](#)-holders; and

(iii) recognising and promoting indigenous peoples' role in, and knowledge of, the conservation and [ecologically sustainable use](#) of [biodiversity](#); and

(iv) the involvement of the community in management planning.

## ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 - SECT 3A

### Principles of ecologically sustainable development

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

(a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;

(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

(c) the principle of inter-generational equity--that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

(d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;

(e) improved valuation, pricing and incentive mechanisms should be promoted.

# ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 - SECT 136

## General considerations

### Mandatory considerations

(1) In deciding whether or not to approve the taking of an [action](#), and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:

(a) matters relevant to any [matter protected](#) by a provision of Part 3 that the Minister has decided is a [controlling provision](#) for the [action](#);

(b) economic and social matters.

### Factors to be [taken](#) into account

(2) In considering those matters, the Minister must [take](#) into account:

(a) the [principles of ecologically sustainable development](#); and

(b) the [assessment report](#) (if any) relating to the [action](#); and

(ba) if Division 3A of Part 8 (assessment on referral information) applies to the [action](#)--the finalised recommendation report relating to the [action](#) given to the Minister under [subsection 93\(5\)](#); and

(bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the [action](#):

(i) the documents given to the Minister under [subsection 95B\(1\)](#), or the statement given to the Minister under [subsection 95B\(3\)](#), as the case requires, relating to the [action](#); and

(ii) the recommendation report relating to the [action](#) given to the Minister under [section 95C](#); and

(c) if Division 5 (public [environment](#) reports) of Part 8 applies to the [action](#):

(i) the finalised public [environment](#) report relating to the [action](#) given to the Minister under [section 99](#); and

(ii) the recommendation report relating to the [action](#) given to the Minister under [section 100](#); and

(ca) if Division 6 (environmental [impact](#) statements) of Part 8 applies to the [action](#):

(i) the finalised [environmental impact](#) statement relating to the [action](#) given to the Minister under [section 104](#); and

(ii) the recommendation report relating to the [action](#) given to the Minister under [section 105](#); and

(d) if an inquiry was conducted under Division 7 of Part 8 in relation to the [action](#)--the report of the [commissioners](#); and

(e) any other information the Minister has on the [relevant impacts](#) of the [action](#) (including information in a report on the [impacts](#) of [actions taken](#) under a policy, plan or program under which the [action](#) is to be [taken](#) that was given to the Minister under an agreement under Part 10 (about strategic [assessments](#))); and

(f) any relevant comments given to the Minister in accordance with an invitation under [section 131](#) or [131A](#); and

(fa) any relevant advice obtained by the Minister from the Independent Expert [Scientific Committee](#) on Coal Seam Gas and [Large Coal Mining Development](#) in accordance with section 131AB; and

(g) if a notice relating to the [action](#) was given to the Minister under [subsection 132A\(3\)](#)--the information in the notice.

Note: The Minister must also [take](#) into account any relevant comments given to the Minister in response to an invitation under paragraph 131AA(1)(b). See [subsection 131AA\(6\)](#).

Person's [environmental](#) history

(4) In deciding whether or not to approve the taking of an [action](#) by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:

(a) the person's history in relation to [environmental](#) matters; and

(b) if the person is a body corporate--the history of its [executive officers](#) in relation to [environmental](#) matters; and

(c) if the person is a body corporate that is a [subsidiary](#) of another body or company (the *parent body*)--the history in relation to [environmental](#) matters of the parent body and its [executive officers](#).

Minister not to consider other matters

(5) In deciding whether or not to approve the taking of an [action](#), and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by this Division to consider.

## **ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 - SECT 138**

### **Requirements for decisions about Ramsar wetlands**

In deciding whether or not to approve for the purposes of [section 16](#) or [17B](#) the taking of an [action](#), and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under the [Ramsar Convention](#).

## ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 - SECT 139

### Requirements for decisions about threatened species and endangered communities

(1) In deciding whether or not to approve for the purposes of a subsection of [section 18](#) or [section 18A](#) the taking of an [action](#), and what conditions to attach to such an approval, the Minister must not act inconsistently with:

- (a) Australia's obligations under:
  - (i) the [Biodiversity Convention](#); or
  - (ii) the [Apia Convention](#); or
  - (iii) [CITES](#); or
- (b) a [recovery plan](#) or [threat abatement plan](#).

(2) If:

(a) the Minister is considering whether to approve, for the purposes of a subsection of [section 18](#) or [section 18A](#), the taking of an [action](#); and

(b) the [action](#) has or will have, or is likely to have, a significant [impact](#) on a particular [listed threatened species](#) or a particular [listed threatened ecological community](#);

the Minister must, in deciding whether to so approve the taking of the [action](#), have regard to any [approved conservation advice](#) for the species or community.

## ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 - SECT 140

### Requirements for decisions about migratory species

In deciding whether or not to approve for the purposes of [section 20](#) or [20A](#) the taking of an [action](#) relating to a [listed migratory species](#), and what conditions to attach to such an approval, the Minister must not act inconsistently with Australia's obligations under whichever of the following conventions and agreements because of which the species is [listed](#):

- (a) the [Bonn Convention](#);
- (b) [CAMBA](#);
- (c) [JAMBA](#);
- (d) an international agreement approved under [subsection 209\(4\)](#).



# ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 - SECT 391

## Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

(1) The Minister must [take](#) account of the precautionary principle in making a decision [listed](#) in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

(2) The *precautionary principle* is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the [environment](#) where there are threats of serious or irreversible [environmental](#) damage.

Decisions in which precautionary principle must be considered

(3) The decisions are:

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
1	75	whether an <a href="#">action</a> is a <a href="#">controlled action</a>
2	133	whether or not to approve the taking of an <a href="#">action</a>
3	201	whether or not to grant a permit
4	216	whether or not to grant a permit
5	238	whether or not to grant a permit
6	258	whether or not to grant a permit
6A	269AA	whether or not to have a <a href="#">recovery plan</a> for a <a href="#">listed threatened species</a> or a <a href="#">listed threatened ecological community</a>
7	269A	about making a <a href="#">recovery plan</a> or adopting a plan as a <a href="#">recovery plan</a>
7A	270A	whether or not to have a <a href="#">threat abatement plan</a> for a <a href="#">key threatening process</a>
7B	270B	about making a <a href="#">threat abatement plan</a> or adopting a plan as a <a href="#">threat abatement plan</a>

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**Decisions in which precautionary principle must be considered**

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<b>Item</b>	<b>Section decision is made under</b>	<b>Nature of decision</b>
8	280	about approving a variation of a plan adopted as a <a href="#">recovery plan</a> or <a href="#">threat abatement plan</a>
9	285	about making a <a href="#">wildlife conservation plan</a> or adopting a plan as a <a href="#">wildlife conservation plan</a>
10	295	about approving a variation of a plan adopted as a <a href="#">wildlife conservation plan</a>
10A	303CG	whether or not to grant a permit
10AA	303DC	whether or not to amend the <a href="#">list</a> of exempt native <a href="#">specimens</a>
10B	303DG	whether or not to grant a permit
10C	303EC	about including an item in the <a href="#">list</a> referred to in <a href="#">section 303EB</a>
10D	303EN	whether or not to grant a permit
10E	303FN	about declaring an operation to be an approved <a href="#">wildlife trade</a> operation
10F	303FO	about declaring a plan to be an approved <a href="#">wildlife trade</a> management plan
10G	303FP	about declaring a plan to be an accredited <a href="#">wildlife trade</a> management plan
10H	303GB	whether or not to grant an exceptional circumstances permit
11	316	about making a plan for managing a property that is included in the <a href="#">World Heritage List</a> and is entirely within one or more <a href="#">Commonwealth areas</a>
11A	324S	about making a plan for managing a <a href="#">National Heritage place</a>
12	328	about making a plan for managing a <a href="#">wetland</a> that is designated for inclusion in the <a href="#">List</a> of <a href="#">Wetlands</a> of International <a href="#">Importance</a> kept under the <a href="#">Ramsar Convention</a> and is entirely within one or more <a href="#">Commonwealth areas</a>
13	338	about making a plan for managing a <a href="#">Biosphere reserve</a> entirely within one or more <a href="#">Commonwealth areas</a>

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**Decisions in which precautionary principle must be considered**

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<b>Item</b>	<b>Section decision is made under</b>	<b>Nature of decision</b>
13A	341T	about endorsing a plan for managing a <a href="#">Commonwealth Heritage place</a>
14	370	about approving a management plan for a <a href="#">Commonwealth reserve</a>

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## ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 – CHAPTER 2 - PART 3 – SUBDIVISION B

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

(1) A person must not [take](#) an [action](#) that:

(a) has or will have a significant [impact](#) on the [ecological character](#) of a [declared Ramsar wetland](#); or

(b) is likely to have a significant [impact](#) on the [ecological character](#) of a [declared Ramsar wetland](#).

Civil penalty:

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

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

(2) Subsection (1) does not apply to an [action](#) if:

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

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

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a [controlling provision](#) for the [action](#) and, if the decision was made because the Minister believed the [action](#) would be [taken](#) in a manner specified in the notice of the decision under [section 77](#), the [action](#) is [taken](#) in that manner; or

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

(3) In this Act:

*"ecological character"* has the same meaning as in the [Ramsar Convention](#).

### 17. What is a declared Ramsar wetland?

Areas designated for [listing](#)

(1) A [wetland](#), or part of a [wetland](#), designated by the Commonwealth under [Article 2](#) of the [Ramsar Convention](#) for inclusion in the [List](#) of [Wetlands](#) of International [Importance](#) kept under that [Article](#) is a [declared Ramsar wetland](#) as long as the [wetland](#) or part is not:

(a) excluded by the Commonwealth from the boundaries of a [wetland](#) in the [List](#) under that [Article](#); or

(b) deleted by the Commonwealth from the [List](#) under that [Article](#).

Areas declared by the Minister

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

### **17A. Making and revoking declarations of wetlands**

Declaring threatened [wetlands](#) of international [importance](#)

(1) The Minister may declare a specified [wetland](#) to be a [declared Ramsar wetland](#) by notice in the *Gazette* if the Minister is satisfied that:

(a) the [wetland](#) is of international significance or is likely to be of international significance because of its ecology, botany, zoology, limnology or hydrology; and

(b) the [ecological character](#) of some or all of the [wetland](#) is under threat.

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

Consulting State or Territory before making declaration

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

Consultation not required if threat is imminent

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

Failure to comply with subsection (2)

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

When a declaration is in force

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

Specifying period for which declaration is in force

(6) The Minister must specify in a declaration the period for which it is to be in force. The period must not be longer than the shorter of the following periods:

(a) the period the Minister believes the Commonwealth needs to:

(i) decide whether the [wetland](#) is of international significance in terms of ecology, botany, zoology, limnology or hydrology; and

(ii) designate the [wetland](#) for inclusion in the [List of Wetlands](#) of International [Importance](#) kept under [Article 2](#) of the [Ramsar Convention](#);

(b) 12 months.

Revocation of declaration of threatened [wetland](#)

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

(a) the Minister is satisfied that the [wetland](#) is not of international significance because of its ecology, botany, zoology, limnology or hydrology; or

(b) the Minister is satisfied that there is no longer a threat to any part of the [wetland](#).

### **17B. Offences relating to declared Ramsar wetlands**

(1) A person is guilty of an offence if:

(a) the person [takes](#) an [action](#); and

(b) the [action](#) results or will result in a significant [impact](#) on the [ecological character](#) of a [wetland](#); and

(c) the [wetland](#) is a [declared Ramsar wetland](#).

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

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

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

(2) A person is guilty of an offence if:

(a) the person [takes](#) an [action](#); and

(b) the [action](#) is likely to have a significant [impact](#) on the [ecological character](#) of a [wetland](#); and

(c) the [wetland](#) is a [declared Ramsar wetland](#).

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

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

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

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

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

Note 2: An [executive officer](#) of a body corporate [convicted](#) of an offence against this section may also be guilty of an offence against [section 495](#).

Note 3: If a person [takes](#) an [action](#) on [land](#) that contravenes this section, a [landholder](#) may be guilty of an offence against [section 496C](#).

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

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

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

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a [controlling provision](#) for the [action](#) and, if the decision was made because the Minister believed the [action](#) would be [taken](#) in a manner specified in the notice of the decision under [section 77](#), the [action](#) is [taken](#) in that manner; or

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

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

## ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 – CHAPTER 2 - PART 3 – SUBDIVISION C

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

Species that are [extinct in the wild](#)

(1) A person must not [take](#) an [action](#) that:

(a) has or will have a significant [impact](#) on a [listed threatened species](#) included in the [extinct in the wild](#) category; or

(b) is likely to have a significant [impact](#) on a [listed threatened species](#) included in the [extinct in the wild](#) category.

Civil penalty:

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

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

[Critically endangered](#) species

(2) A person must not [take](#) an [action](#) that:

(a) has or will have a significant [impact](#) on a [listed threatened species](#) included in the [critically endangered](#) category; or

(b) is likely to have a significant [impact](#) on a [listed threatened species](#) included in the [critically endangered](#) category.

Civil penalty:

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

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

[Endangered](#) species

(3) A person must not [take](#) an [action](#) that:

(a) has or will have a significant [impact](#) on a [listed threatened species](#) included in the [endangered](#) category; or

(b) is likely to have a significant [impact](#) on a [listed threatened species](#) included in the [endangered](#) category.

Civil penalty:



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

Vulnerable species

(4) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or

(b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

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

Critically endangered communities

(5) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened ecological community included in the critically endangered category; or

(b) is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category.

Civil penalty:

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

Endangered communities

(6) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or

(b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category.

Civil penalty:

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

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

### **18A. Offences relating to threatened species etc.**

(1) A person is guilty of an offence if:

(a) the person [takes](#) an [action](#); and

(b) the [action](#) results or will result in a significant [impact](#) on:

(i) a species; or

(ii) an [ecological community](#); and

(c) the species is a [listed threatened species](#), or the community is a [listed threatened ecological community](#).

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

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

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

(2) A person is guilty of an offence if:

(a) the person [takes](#) an [action](#); and

(b) the [action](#) is likely to have a significant [impact](#) on:

(i) a species; or

(ii) an [ecological community](#); and

(c) the species is a [listed threatened species](#), or the community is a [listed threatened ecological community](#).

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

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

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

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

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

Note 2: An [executive officer](#) of a body corporate [convicted](#) of an offence against this section may also be guilty of an offence against [section 495](#).

Note 3: If a person [takes](#) an [action](#) on [land](#) that contravenes this section, a [landholder](#) may be guilty of an offence against [section 496C](#).

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

(a) the [listed threatened species](#) subject to the significant [impact](#) (or likely to be subject to the significant [impact](#)) is:

(i) a species included in the [extinct](#) category of the [list](#) under [section 178](#);

or

(ii) a [conservation dependent species](#); or

(b) the [listed threatened ecological community](#) subject to the significant [impact](#) (or likely to be subject to the significant [impact](#)) is an [ecological community](#) included in the [vulnerable](#) category of the [list](#) under [section 181](#).

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

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

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

(1) A subsection of [section 18](#) or [18A](#) relating to a [listed threatened species](#) does not apply to an [action](#) if an approval of the taking of the [action](#) by the person is in operation under Part 9 for the purposes of any subsection of that section that relates to a [listed threatened species](#).

(2) A subsection of [section 18](#) or [18A](#) relating to a [listed threatened ecological community](#) does not apply to an [action](#) if an approval of the taking of the [action](#) by the person is in operation under Part 9 for the purposes of either subsection of that section that relates to a [listed threatened ecological community](#).

(3) A subsection of [section 18](#) or [18A](#) does not apply to an [action](#) if:

(a) Part 4 lets the person [take](#) the [action](#) without an approval under Part 9 for the purposes of the subsection; or

(b) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a [controlling provision](#) for the [action](#) and, if the decision was made because the Minister believed the [action](#) would be [taken](#) in a manner specified in the notice of the decision under [section 77](#), the [action](#) is [taken](#) in that manner; or

(c) the [action](#) is an [action](#) described in [subsection 160\(2\)](#) (which describes [actions](#) whose authorisation is subject to a special [environmental assessment](#) process).

(4) A subsection of [section 18](#) or [18A](#) does not apply to an [action](#), to the extent that it is covered by [subsection 517A\(7\)](#).

## ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 – CHAPTER 2 - PART 3 – SUBDIVISION D

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

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

Civil penalty:

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

### 20A. Offences relating to listed migratory species

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

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

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

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

(2) A person is guilty of an offence if:

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

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

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

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

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

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

Note 2: An [executive officer](#) of a body corporate [convicted](#) of an offence against this section may also be guilty of an offence against [section 495](#).

Note 3: If a person [takes](#) an [action](#) on [land](#) that contravenes this section, a [landholder](#) may be guilty of an offence against [section 496C](#).

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

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

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

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a [controlling provision](#) for the [action](#) and, if the decision was made because the Minister believed the [action](#) would be [taken](#) in a manner specified in the notice of the decision under [section 77](#), the [action](#) is [taken](#) in that manner; or

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

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

## **20B. Certain actions relating to listed migratory species not prohibited**

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

# ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 – CHAPTER 3 – PART 5 – BILATERAL AGREEMENTS

## 44. Object of this Part

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

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

## 52. Agreements relating to declared Ramsar wetlands

(1) The Minister may enter into a [bilateral agreement](#) containing a provision relating to a [declared Ramsar wetland](#) only if:

- (a) the Minister is satisfied that the provision is not inconsistent with Australia's obligations under the [Ramsar Convention](#); and
- (b) the Minister is satisfied that the agreement will promote the management of the [wetland](#) in accordance with the [Australian Ramsar management principles](#); and
- (c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a [management arrangement](#) or an [authorisation process](#) under [section 46](#) for the purposes of a [bilateral agreement](#) containing a provision relating to a [declared Ramsar wetland](#) only if:

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

## 54. Agreements relating to migratory species

(1) The Minister may enter into a [bilateral agreement](#) containing a provision relating to a [listed migratory species](#) only if:



(a) the Minister is satisfied that the provision is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is [listed](#):

(i) the [Bonn Convention](#);

(ii) [CAMBA](#);

(iii) [JAMBA](#);

(iv) an international agreement approved under [subsection 209\(4\)](#); and

(b) the Minister is satisfied that the agreement will promote the survival and/or enhance the conservation status of each species to which the provision relates; and

(c) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a [management arrangement](#) or an [authorisation process](#) under [section 46](#) for the purposes of a [bilateral agreement](#) containing a provision relating to a [listed migratory species](#) only if:

(a) the Minister is satisfied that the [management arrangement](#) or [authorisation process](#) is not inconsistent with the Commonwealth's obligations under whichever of the following conventions or agreements because of which the species is [listed](#):

(i) the [Bonn Convention](#);

(ii) [CAMBA](#);

(iii) [JAMBA](#);

(iv) an international agreement approved under [subsection 209\(4\)](#); and

(b) the Minister is satisfied that the [management arrangement](#) or [authorisation process](#) will promote the survival and/or enhance the conservation status of each species to which the provision relates.

# ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 – CHAPTER 4 – PART 8 – DIVISION 3 – CONTROLLED ACTIONS

## 85. Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister must choose one of the following ways of [assessing](#) the [relevant impacts](#) of an [action](#) the Minister has decided is a [controlled action](#):

- (a) an accredited [assessment](#) process;
- (aa) an [assessment](#) on referral information;
- (b) an [assessment](#) on preliminary documentation;
- (c) a public [environment](#) report;
- (d) an [environmental impact](#) statement;
- (e) a public inquiry.

## 87. Minister must decide on approach for assessment

Minister must choose one [assessment](#) approach

(1) The Minister must decide which one of the following approaches must be used for [assessment](#) of the [relevant impacts](#) of an [action](#) that the Minister has decided is a [controlled action](#):

- (a) [assessment](#) by an accredited [assessment](#) process;
- (aa) [assessment](#) on referral information under Division 3A;
- (b) [assessment](#) on preliminary documentation under Division 4;
- (c) [assessment](#) by public [environment](#) report under Division 5;
- (d) [assessment](#) by [environmental impact](#) statement under Division 6;
- (e) [assessment](#) by inquiry under Division 7.

Considerations in making choice

(3) In making the decision, the Minister must consider:

(a) information relating to the [action](#) given to the Minister in the referral of the proposal to [take](#) the [action](#); and

(b) any other information available to the Minister about the [relevant impacts](#) of the [action](#) that the Minister considers relevant (including information in a report on the [impacts of actions](#) under a policy, plan or program under which the [action](#) is to be [taken](#) that was given to the Minister under an agreement under Part 10 (about strategic [assessments](#))); and

(c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and

(d) the matters (if any) prescribed by the regulations; and

(e) the guidelines (if any) published under subsection (6).

Accredited [assessment](#) process

(4) The Minister may decide on an [assessment](#) by an accredited [assessment](#) process only if the Minister is satisfied that:

(a) the process is to be carried out under a law of the Commonwealth, a State or a [self-governing Territory](#); and

(b) the process and the law meet the standards (if any) prescribed by the regulations; and

(c) the process will ensure that the [relevant impacts](#) of the [action](#) are adequately [assessed](#); and

(d) he or she will receive a report of the outcome of the process that will provide enough information on the [relevant impacts](#) of the [action](#) to let him or her make an informed decision whether or not to approve under Part 9 (for the purposes of each [controlling provision](#)) the taking of the [action](#).

[Assessment](#) on referral information

(4A) The Minister may decide on an [assessment](#) on referral information under Division 3A only if the Minister is satisfied (after considering the matters in subsection (3)) that the [action](#) meets the criteria prescribed in the regulations for the purposes of this subsection.

[Assessment](#) on preliminary documentation

(5) The Minister may decide on an [assessment](#) on preliminary documentation under Division 4 only if the Minister is satisfied (after considering the matters in subsection (3)) that that approach will allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each [controlling provision](#)) the taking of the [action](#).

Guidelines for choosing [assessment](#) approach

(6) The Minister may publish in the *Gazette* guidelines setting out criteria for deciding which approach must be used for [assessing](#) the [relevant impacts](#) of an [action](#).

## 88. Timing of decision on assessment approach

Initial decision

(1) The Minister must decide on the approach to be used for [assessment](#) of the [relevant impacts](#) of the [action](#) within 20 business days after the Minister receives the referral of the proposal to [take](#) the [action](#).

Note: [Section 156](#) sets out rules about time limits.

When initial decision must be made

(2) The Minister must make the decision under subsection (1) on the same day as the Minister has decided, under [subsection 75\(1\)](#), that the [action](#) is a [controlled action](#), unless the Minister has requested more information under [subsection 76\(3\)](#) or [section 89](#) for the purposes of deciding on the approach to be used for [assessment](#) of the [relevant impacts](#) of the [action](#).

Time does not run while further information sought

(4) If the Minister has requested more information in relation to the [action](#) under [subsection 76\(1\)](#), (2) or (3) or [section 89](#), a day is not to be counted as a business day for the purposes of subsection (1) if it is:

(a) on or after the day the Minister requested the information; and

(b) on or before the day on which the Minister receives the last of the information requested.

Running of time may be suspended by agreement

(5) The Minister and the [designated proponent](#) of the [action](#) may agree in writing that days within a period worked out in accordance with the agreement are not to be counted as business days for the purposes of subsection (1). If the agreement is made, those days are not to be counted for the purposes of that subsection.

## 89. Minister may request more information for making decision

(1) If the Minister believes on reasonable grounds that the information given to the Minister in relation to an [action](#) is not enough to allow the Minister to make an informed decision on the approach to be used for [assessment](#) of the [relevant impacts](#) of the [action](#), the Minister may request the [designated proponent](#) to provide specified information relevant to making the decision.

(2) Without limiting subsection (1), if the [action](#) is to be [taken](#) in a State or [self-governing Territory](#), the Minister may request the [designated proponent](#) of the [action](#) to provide information about:

(a) whether the [relevant impacts](#) of the [action](#) have been, or are being, [assessed](#) by the State or Territory; and

(b) if so, the method of [assessment](#) that was, or is being, used and what stage the [assessment](#) has reached.

(3) The Minister may make a request in relation to an [action](#) under this section even if the Minister has made a request under [subsection 76\(3\)](#) in relation to the [action](#).

## 90. Directing an inquiry after starting an assessment

### Application

(1) This section applies if:

(a) the Minister has made a decision (the *first decision*) under [section 87](#) that the [relevant impacts](#) of an [action](#) must be [assessed](#) by:

(i) [assessment](#) by public [environment](#) report under Division 5; or

(ii) [assessment](#) by [environmental impact](#) statement under Division 6; and

(b) the [designated proponent](#) publishes:

(i) a draft report under [section 98](#) (about public [environment](#) reports); or

(ii) a draft statement under [section 103](#) (about [environmental impact](#) statements).

### Revoking and substituting decision

(2) The Minister may revoke the first decision and make another decision (the *new decision*) under [section 87](#) (in substitution for the first decision) that the [relevant impacts](#) of the [action](#) must be [assessed](#) by an inquiry under Division 7.

### Effect of revocation and substitution

(3) When the first decision is revoked and the new decision is substituted for it:

(a) whichever of Divisions 5 and 6 applied in relation to the [action](#) because of the first decision ceases to apply in relation to the [action](#); and

(b) Division 7 applies in relation to the [action](#).

## 91. Notice of decision on assessment approach

(1) Within 10 business days after making a decision on the approach to be used for [assessment](#) of the [relevant impacts](#) of an [action](#), the Minister must:

(a) give written notice of the decision to:

(i) the person proposing to [take](#) the [action](#); and

(ia) the [designated proponent](#) of the [action](#) (if the [designated proponent](#) is not the person proposing to [take](#) the [action](#)); and

(ii) if the [action](#) is to be [taken](#) in a State or [self-governing Territory](#) and a [controlling provision](#) for the [action](#) is in Division 1 of Part 3 (which deals with matters of national [environmental](#) significance)--the appropriate Minister of the State or Territory; and

(b) publish notice of the decision in accordance with the regulations.

Note 1: [Section 156](#) sets out rules about time limits.

Note 2: Subparagraph (1)(a)(ii) also applies to [actions](#) to be [taken](#) in an area offshore from a State or the Northern Territory. See [section 157](#).

(1A) In the written notice of the decision, the Minister must also advise the person proposing to [take](#) the [action](#) that the person may elect under section 132B to submit an [action management plan](#) for approval.

Note: An [action management plan](#) is approved after a decision is made approving the taking of the [action](#).

(2) If the Minister decided that the [relevant impacts](#) of the [action](#) are to be [assessed](#) by an accredited [assessment](#) process, the written notice and the published notice must specify the process.

# ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 – CHAPTER 5 – PART 13

## 209. Listed migratory species

(1) The Minister must:

(a) establish a [list](#) of [migratory species](#) for the purposes of this Act; and

(b) amend the [list](#), as necessary, so that it [includes](#) all species required to be included in the [list](#) under subsection (3).

(2) The Minister must establish the [list](#) within 30 days after the commencement of this Act.

(3) The [list](#) must include:

(a) all [migratory species](#) that are:

(i) [native species](#); and

(ii) from time to time included in the appendices to the [Bonn Convention](#);

and

(b) all [migratory species](#) from time to time included in annexes established under [JAMBA](#) and [CAMBA](#); and

(c) all [native species](#) from time to time identified in a [list](#) established under, or an instrument made under, an international agreement approved by the Minister under subsection (4).

The [list](#) must not include any other species.

(4) The Minister may, by legislative instrument, approve an international agreement for the purposes of subsection (3) if satisfied it is an agreement relevant to the conservation of [migratory species](#).

(6) The Minister may correct an inaccuracy or update the name of a [migratory species](#).

(7) The [list](#) of [migratory species](#) made under subsection (1), and any amendments to the [list](#) made under paragraph (1)(b) or subsection (6), are legislative instruments, but neither [section 42](#) nor Part 6 of the [Legislative Instruments Act 2003](#) applies to the [list](#) or any amendments.

(8) In this Act:

*"migratory species"* has the meaning given by [Article I](#) of the [Bonn Convention](#).