



University of South Australia

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IMPACTS ON BIODIVERSITY AT THE NATIONAL LEVEL
– THE *ENVIRONMENT PROTECTION & BIODIVERSITY
ACT 1999(Cth.)* AND ITS RECENT REVIEW

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National Strategies, Plans and Programmes

- *See CBD, Art. 6(a) ("develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity")*
- **IGAE, 1992**, cl.3.5.4 – conservation of biological diversity and ecological integrity is one of 4 core principles
- **National ESD Strategy, 1992** – Objective 9.1
- **National Biodiversity Strategy 1996**: currently under revision by NRM Ministerial Council, proposed to release new version April 2010
- **National Reserves System**: established 1996 for terrestrial biodiversity conservation
- **National Oceans Policy 1998**: proposed national representative system of marine protected areas (MPA's)



National Strategies, Plans and Programmes

Australia's National Reserves System

- based on “CAR” concept (comprehensive, adequate and representative”)
 - established in 1996, but builds on previous efforts over more than 100 years:
 - Includes over 9000 parks and reserves (also reserves managed by private trusts)
 - Covers 900,000 sq.kms
 - 30 million ha. added between 1996-2008
 - Represents more than 11% of Australian landmass
 - Covers Cth., States, Territories, AAT and offshore islands
 - Does not include marine system – separate policy for MPA’s
- See Report of Senate Standing Committee on Environment, 2007
(“Conserving Australia: Australia’s National Parks, Conservation Reserves and Marine Protected Areas” for an overview:



EP & BC Act 1999 (Cth.)

- Repealed previous Cth. biodiversity-related legislation;
 - *National Parks and Wildlife Conservation Act 1975*
 - *Whale Protection Act 1980*
 - *World Heritage Properties Conservation Act 1983*
 - *Endangered Species Protection Act 1987*
- Great Barrier Reef Marine Park Act 1975 (Cth.) not affected
- Amendments to the Act subsequently also repealed:
 - Wildlife Protection (Regulation of Exports and Imports) Act 1982 (2001) – re CITES
 - Australian Heritage Commission Act 1975 (Cth.) (2003)



EP & BC Act 1999 (Cth.) – Mechanisms for the Protection of Biodiversity

- Declaration of “controlled actions” – EIA and approval
- Protected areas
- Listing of endangered species, ecological communities, etc
- Compliance and enforcement mechanisms
- Other:
 - Conservation agreements
 - Access and benefit-sharing
 - Biodiversity offsets (via conditions on environmental approvals)



EP & BC Act 1999 (Cth.) - 1. EIA and Approval re “Controlled Actions”

- EIA may be required re any action likely to have a significant impact on a “matter of national environmental significance”, as follows:
 - A declared World Heritage property (s.12)
 - A National Heritage place (s.15B)
 - A declared Ramsar wetland (s.16)
 - A listed threatened species or endangered community (s.18)
 - A listed migratory species (s.20)
 - A nuclear action (s. 21); and
 - Activities involving a Commonwealth marine area (s.24)
- Re approval, Minister must have regard to “general considerations” (s. 146F) and additional considerations specific to the particular MNES (ss. 146G – M) e.g., any international obligations involved





EP & BC Act 1999 (Cth.) – 1. EIA and Approval re “Controlled Actions”

- the Act’s EIA and approval procedures may also be applied to actions involving Commonwealth land (s.26), Commonwealth Heritage places outside the Australian jurisdiction (s.27B) and Commonwealth agencies (s.28) – if such actions may have a significant environmental impact.

EP & BC Act 1999 (Cth.) – 2. Protected Areas

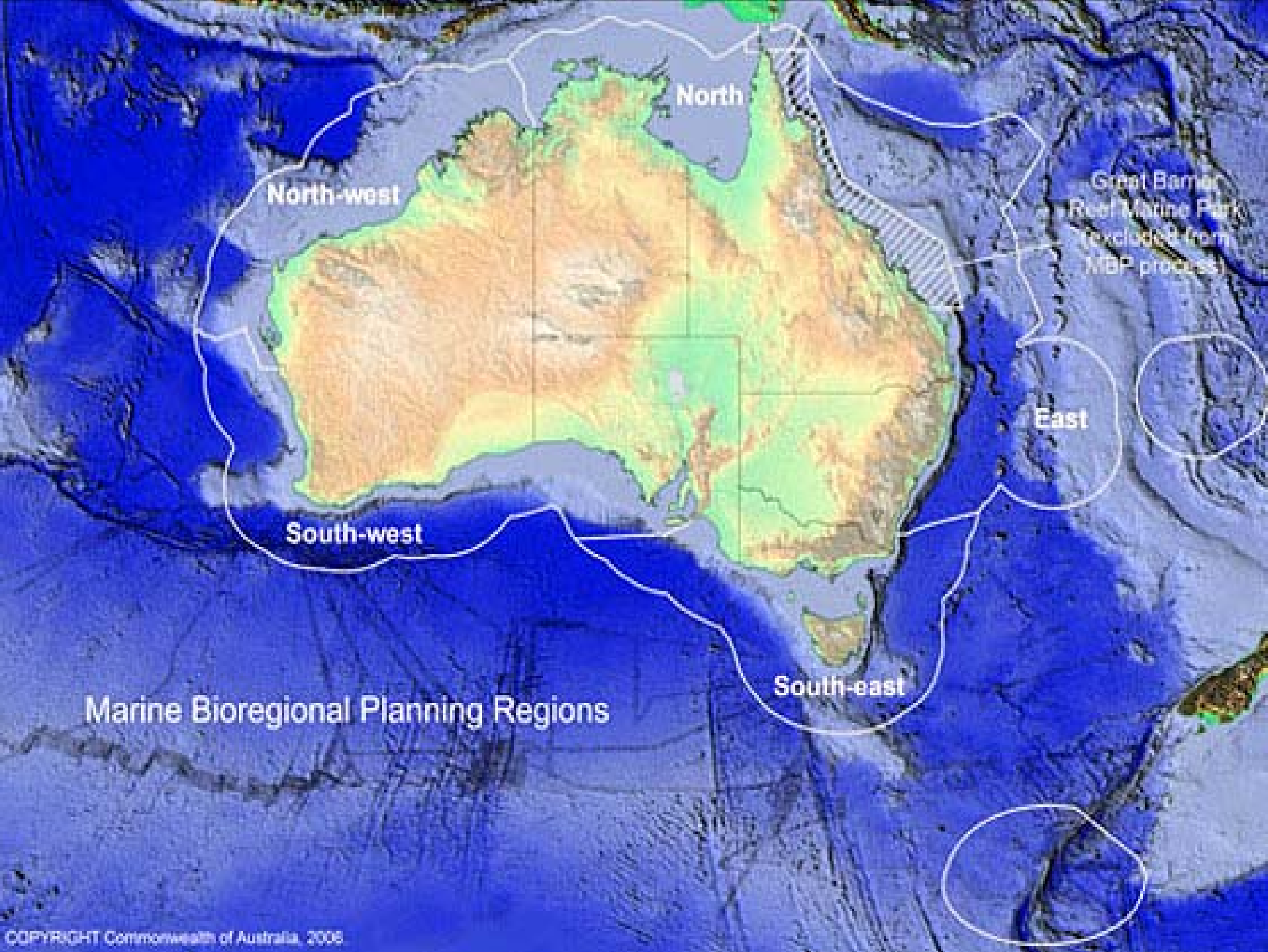
| CATEGORY | PLANS | CONTROLS | MNES |
|---|--|---|--------------------------------------|
| BIOREGIONS (s.176) | BIOREGIONAL PLAN (s.176) | Minister to have regard to plan re any relevant decision (s. 176 (5)) | - |
| CTH. RESERVES (s.344) Note also: conservation zones (s.390D) | MANAGEMENT PLAN (s.366) | Actions and mining operations must be in accordance with management plan (ss.354,355) | - Note s.26 (re EIA and approval) |
| WORLD HERITAGE (s.314) | WRITTEN PLAN (s.316) – best endeavors re States (s. 321) | Minister 's approval (s.146G) Cth. agencies (s.322) | s. 12 |
| NATIONAL HERITAGE (s.324C) | MANAGEMENT PLAN (s. 324S) – best endeavors (s.324X) | Minister's approval (146H) Cth. Agencies (s.324S) | s.15B |
| RAMSAR WETLANDS (s.326) | WRITTEN PLAN (s.326) – best endeavors (s.333) | Minister's approval (s.146H) Cth. agencies (ss.330) | s. 16 |
| BIOSPHERE RESERVES (s.337) | WRITTEN PLAN (s.338) | - | - |
| AUSTRALIAN WHALE SANCTUARY (s.225) | - | Taking or treating of cetaceans prohibited except with permit (ss. 229,230 and 238) | - |



EP & BC Act 1999 (Cth.) – 2. Protected Areas – Summary

- 35 Commonwealth Reserves (6 national parks, 2 botanic gardens and 27 marine reserves (MPA's))
- 17 World Heritage properties
- Over 100 National Heritage List properties (including all 17 World Heritage properties)
- 64 Ramsar wetlands
- 14 Biosphere reserves





North

North-west

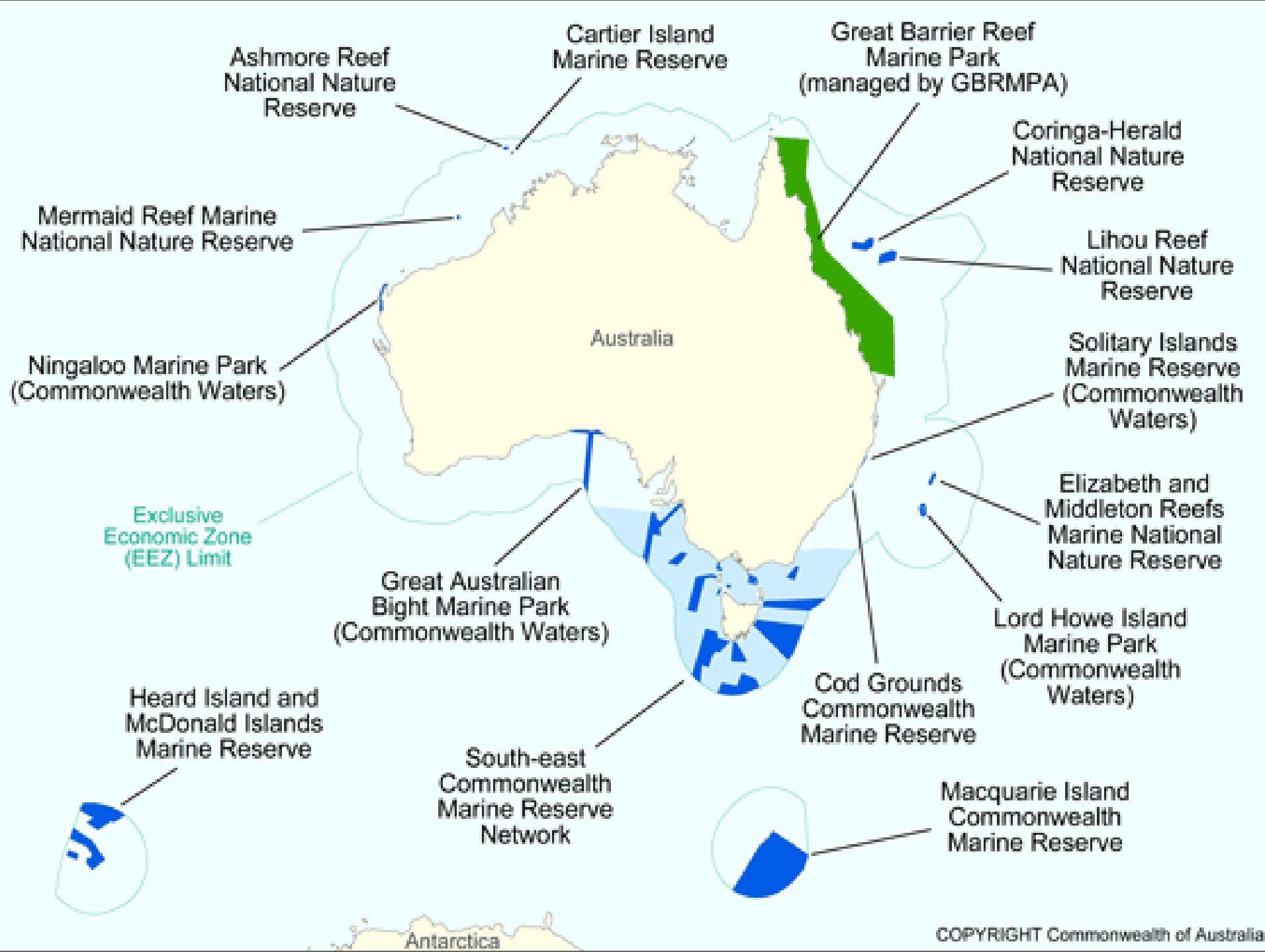
Great Barrier Reef Marine Park (excluded from MBP process)

East

South-west

South-east

Marine Bioregional Planning Regions



EP & BC Act 1999 (Cth.) – 3. Listings

| LIST | PLANS | CONTROLS | MNES |
|--|---|---|---|
| <p>THREATENED SPECIES (s.178) For 6 categories, see s.179</p> <p>NB: conservation dependent category treated apart.</p> | <p>Approved conservation advice (s.266B)</p> <p>Recovery plan (s.269AA) – jointly with a State (s.269A)</p> | <p>Prohibition of: -killing or injuring (s.196) -taking, trading (s.196B) without permit (s.197)</p> <p>Cth. agencies (s.268)</p> | <p>s.18 (except conservation dependent)</p> |
| <p>THREATENED ECOLOGICAL COMMUNITIES (s. 181) – categories: -Critically endangered -Endangered -Vulnerable (s.182)</p> | <p>DITTO</p> | <p>DITTO</p> | <p>s.18 (except vulnerable)</p> |
| <p>KEY THREATENING PROCESSES (s.183)</p> | <p>Threat abatement plan (s.270A) – jointly with a State (s.270B)</p> | <p>–</p> | <p>–</p> |
| <p>CRITICAL HABITAT REGISTER (s.207A)</p> | <p>–</p> | <p>Offence of knowingly damaging critical habitat (s.207B)</p> | <p>–</p> |



EP & BC Act 1999 (Cth.) – 3. Listings

| LIST | PLANS | CONTROLS | MNES |
|--|--|--|--|
| MIGRATORY SPECIES (S. 209) | Wildlife Conservation Plans (s.285) | Prohibitions on killing or injuring (s. 211); taking (s.211B) and trading (s.211D) without a permit (under s.216) or other justification under s.212 | s.20 |
| MARINE SPECIES (s.248) | DITTO | Prohibitions on killing or injuring (s. 254); taking (s.254B) and trading (s.254D) without a permit (under s.258) or other justification under s.255 | No specific matter, but see s.24 re actions in Commonwealth marine waters |
| CITES SPECIES (s.303CA) Also, re cetaceans (no listing process) | – | Permits re export (s.303CC) and import (s.303CD) Controls re killing, injuring, taking etc without a permit (ss. 229, 229B, 229D) | – |



EP & BC Act 1999 (Cth.) – 4. Compliance & Enforcement Mechanisms

- **Conservation order** (s.464) – issued by Minister
 - where necessary to protect a threatened species or ecological community on Commonwealth land
- **Remediation determination** – issued by Minister
 - To remedy damage caused by breach of a civil penalty provision of the Act
- **Injunction** (civil enforcement) – Federal Court
 - For breach of Act (s.475) or a conservation agreement (s.476)
 - May be sought by an “interested person” – see s.475(6)
- **Remediation order** (s.480D) – Federal Court (s.480A)
 - To remedy damage caused by a breach of the Act
 - Only Minister may apply to court for a remediation order
- **Remediation action** (civil liability) – ss.499, 500: Minister may take action to remedy damage caused by breach of the Act – person responsible liable for expenses involved.
- **Penalties** - both criminal and civil



EP & BC Act 1999 (Cth.) – 5. Other Measures

- **Conservation agreements (s.305)**
 - Minister may enter into for purpose of protecting biodiversity or any matter of national environmental significance
 - May provide for measures to repair or mitigate damage (s. 307A)
- **Environmental audits (s.458)**
 - May be required where approval or permit granted, in event of breach of a condition or unanticipated environmental impacts
- **Access to biological resources and benefit-sharing (s.301)** – dealt with by Part 8A of EPBC Regulations.)
- **Non-native species (s. 301A)** - to be dealt with by Regs.
- **Biodiversity offsets (bio-banking)** – may be provided for through an environmental approval, but not explicitly addressed by the Act



Reform of EPBC Act – the Report of the Independent Review (2009)

- General recommendations:
 - Repeal EPBC Act and replace with a new *Australian Environment Act* (R1)
 - Confirm ESD as underpinning philosophy (R2) and revise objects to promote conservation of ecological integrity and nationally important biodiversity (R3)
 - Develop a system of national environmental accounts (R67)
 - Establish a National Environmental Commissioner and Commission to advise Minister re decisions on EIA and approvals and promote the adoption of environmentally sustainable practices (R71)
 - Minister to have power to issue environment protection orders (R58)



Reform of EPBC Act – the Report of the Independent Review (2009)

- Recommendations re controlled actions (“MNES”)
 - Introduce new MNES re “ecosystems of environmental significance” (R8)
 - Introduce new greenhouse trigger for activities producing 500,000 tonnes or more CO₂-e (R10)
 - Include vulnerable ecological communities as MNES (R14)
 - Minister to be able to consider wider range of environmental impacts re controlled actions (3 options provided)



Reform of EPBC Act – the Report of the Independent Review (2009)

Recommendations re Protected Areas:

- Expand role of bioregional plans (rename “regional plans”) to include terrestrial as well as marine environment and allow Cth. to develop such plans unilaterally (R6)
- Simplify process for National heritage listing (R29)
- Management plans to focus on outcomes rather than content and process (R32);
- Minister to be able to prepare management plans for WH properties, Ramsar wetlands and NHL places where collaboration with States has not produced effective plans (R34)
- Revise provisions re management of Cth. Reserves to ensure they meet the needs of marine reserves (R35)
- Strengthen the protection of biodiversity in conservation zones (R36)
- Repeal provisions re Biosphere Reserves (R37)



Reform of EPBC Act – the Report of the Independent Review (2009)

Recommendations re Listings Processes:

- Cth., States and territories to establish a single list of threatened species, including marine species and ecological communities, through accreditation of State and Territory listing processes (R5)
- Identify critical habitat for listed species at the time of listing and discontinue the Register of Critical Habitat (R12)
- When listing species/communities, Minister to consider ESD in exceptional circumstances (R15)
- Minister to have the power to make emergency listings of species/communities (R16)
- Greater flexibility re recovery and threat abatement plans to allow their development at a regional scale (R18)
- Better definition of key threatening processes and allow their identification at a range of scales (R19)
- Allow merits review of decisions by Minister re permits for activities affecting protected species (R48)



Reform of EPBC Act – the Report of the Independent Review (2009)

Recommendations re other matters:

- COAG to develop a national bio-banking system and standards (R7)
- New Act to facilitate bio-banking as part of project approvals (R8)
- RE access to biological resources and benefit – sharing, move Part 8A of EPBC Regs into Act and increase penalties for non-compliance

